

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-66

PROCEDURAL HISTORY

On June 19, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) regarding a student (Student) attending the Seattle School District (District). The Complainant 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 June 20, 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 June 25, 2018, OSPI received additional information from the Complainant. OSPI forwarded the additional information to the District on June 26, 2018.

On July 12, 2018, OSPI received the District's response to the complaint and forwarded it to the Complainant on July 13, 2018. OSPI invited the Complainant to reply with any information he had that was inconsistent with the District's information. OSPI did not receive a reply from the Complainant.

On July 19, 2018, OSPI asked the District for additional information/documentation. On July 26, 2018, OSPI received the requested information from the District and forwarded the additional information to the Complainant on the same day.

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

OVERVIEW

Prior to November 7, 2017, the Student, who was eligible for special education, was homeschooled due to medical concerns. In the homeschool setting, the Parent utilized a Rifton activity chair with the Student on some occasions. When the Parent used the Rifton activity chair with the Student, the Parent belted the Student into the seat. The Student could belt herself into the chair, but she could not unbuckle herself from the chair. However, the Student could signal that she wanted to be let out of the chair. The Student associated the chair with doing schoolwork. The Student also used the chair to calm herself when anxious.

When the Student transferred into the District in November 2017, in the Student's ninth grade year, the District sometimes used a Rifton activity chair with the Student when transporting her between classes, as well as whenever the Student requested to use it. The Student was belted into the chair when it was used, but whenever the Student requested to be unbelted from the chair, the District would unbuckle the Student. In February 2018, the District created a "fade plan" to encourage the Student to be less reliant on the Rifton activity chair.

The Complainant alleged that the District's use of the Rifton activity chair constitutes an impermissible restraint of the Student. The District denies this allegation.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on June 20, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUE

1. Did the District use restraint and/or isolation consistent with the requirements of WAC 392-172A-02110 during the 2017-2018 school year?

LEGAL STANDARDS

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

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

FINDINGS OF FACT

Background Information

1. The Student has been diagnosed with several serious medical conditions, including a seizure disorder (idiopathic intractable epilepsy), encephalopathy, apnea and hypoxic episodes, a vagal nerve stimulator, and autism. The Student was initially identified as eligible for special education on March 3, 2005, under the 'Health Impaired' category. During a subsequent evaluation, however, the Student's eligibility category was changed to 'Multiple Disabilities.'
2. Prior to November 2017, the Student resided within the boundaries of a different Washington State school district. However, with the exception of preschool and one year in a special education elementary classroom, the Student was homeschooled until November 2017. A private doctor recommended that the Student be homeschooled, as she was susceptible to

illness and easily became sick in the public school setting. At home, the Student received access to caregivers and applied behavior analysis (ABA) therapy.

3. On March 6, 2017, during the Student's eighth grade year, the Student's former school district reevaluated her for special education eligibility. The Student's March 2017 reevaluation included assessments in the following areas: academics, behavior/social skills, adaptive skills, communication, hearing/vision, medical, and physical therapy. Based on the results of the Student's March 2017 reevaluation, her evaluation group determined that she continued to be eligible under the "Multiple Disabilities" category. The March 2017 reevaluation report recommended that she receive specially designed instruction in preacademics, adaptive skills, and communication, with physical therapy as a related service.
4. On March 6, 2017, a new individualized education program (IEP) was created for the Student. The March 2017 IEP included goals in the areas of adaptive, preacademics, and communication. The March 2017 IEP provided for the following specially designed instruction to be given in *a home instruction setting*:
 - Preacademics – 20 minutes once a week (to be provided by a homebound special education teacher)
 - Adaptive/life skills – 20 minutes once a week (to be provided by a homebound special education teacher)
 - Communication – 20 minutes once a week (to be provided by a homebound special education teacher)

The March 2017 IEP provided for the following related services to be given in *a home instruction setting*:

- Physical therapy – 45 minutes two times annually (to be provided by a physical therapist (PT))

The cover page of the March 2017 IEP included the following handwritten note: "[Parent] has decided NOT to access the Homebound Program for medically fragile students service. [Parent] will only access PT services. [Parent] will work through case manager for access to general information, questions, or concerns."

2017-2018 School Year

5. The District's 2017-2018 school year began on September 6, 2017.
6. At the beginning of the 2017-2018 school year, the Student was in the ninth grade and eligible for special education. At this time, the Student enrolled in the District, but did not begin attending school at that time.
7. On October 24, 2017, the District reviewed the Student's March 2017 transfer IEP. The District's transfer review form noted that the Student's March 2017 IEP needed to be amended. However, based on the documentation in this complaint, the District did not amend the Student's transfer IEP to reflect her attendance in a school setting.

8. On October 25, 2017, the special education supervisor (supervisor 1) emailed the Parent, stating:

When we were reviewing [Student's] paperwork for out of district students, we noticed that [Student] was assigned to the Homebound Program due to her doctor's recommendation that she not attend public school. Has this changed?

Later that same day, the Parent replied:

Yes her MD and I felt her placement in the program that was available was inappropriate for her. They did not have a medically fragile program. We both feel the program here in Seattle, being medically fragile inclusive, will be the right fit for her. I appreciate your concern and looking out for our well-being.
9. On November 6, 2017, the Student began attending a District special education program for medically fragile students. In its response to this complaint, the District stated that between November 7, 2017 and February 28, 2018 (the last day before the implementation of a new IEP for the Student), the Student received the following specially designed instruction and related services: functional academics and activities of daily living, speech and language instruction, communication instruction, and physical therapy.
10. On November 29, 2017, the special education teacher emailed the school psychologist, stating:

I believe that we need to take a look at [Student's] behavioral needs as well. I have recently been told by PT that her needs are more behavioral than they are PT and that PT will likely not be able to provide or recommend any equipment. This kid certainly needs equipment. I was even told to contact the Behavioral and Emotional Support Team about her which I did. I will CC you in my response to their email.
11. The District was on break November 23-24, 2017.
12. On December 1, 2017, the Parent provided consent for the District to conduct a reevaluation of the Student.¹ The Parent recommended that the Student be assessed in the following areas: (a) communication, including devices needed/suggested; (b) ABA therapy for help with challenging behaviors and safety (elopement); and, (c) physical therapy, occupational therapy, and speech language pathologist (SLP).
13. On December 15, 2017, the District's behavior and autism intervention team (BAIT) observed the Student in her medically fragile classroom.
14. The District was on break from December 18, 2017 through January 1, 2018.
15. On January 3, 2018, the special education teacher emailed the occupational therapist (OT) and the PT, asking, "[A]ny news about getting a second Rifton chair² for my classroom?" Later that same day, the PT responded, stating:

¹ The District received the signed consent form from the Parent on December 15, 2017.

² The Rifton chair is a positioning chair that provides versatile and adaptable seating for people with disabilities ranging from pediatric to adult. <https://www.rifton.com/products/special-needs-chairs/rifton-activity-chairs>.

I forgot to ask you what admin said about using the Rifton chair for [Student]. If they agree that she should have it then I can have further justification for getting another Rifton chair. Do we agree that only a Rifton adapted chair would work for all three students?

16. On January 5, 2018, the BAIT again observed the Student in her medically fragile classroom.

17. On January 17, 2018, a member of BAIT emailed the Student's special education teacher their "follow-up" notes from their observations of the Student. In pertinent part, these notes read:

Concerns: [Student] has been using a Rifton chair as her preferred seating. The concern was the use of a seat belt for that chair and that it could be construed as a restraint as the PT has not specified the seating for positioning needs.

Recommendations: Rifton Chair – The chair does not appear to be used as a restraint for the following reasons:

a. [Student] appears to seek out sitting in that chair—she will choose it as the chair she wants to sit in. She also engages in clear communication (will take staff's hand to both unbuckle and buckle the seat belt) to be both belted in and unbelted—which staff honors.

b. [Student] has a Rifton chair at home that was written into her home IEP as needed for academic instruction. The Rifton chair appears to be familiar to her and she seems to have learned to associate the chair with doing work.

c. In addition to being familiar, the Rifton chair appears to be more comfortable than other seating options within the classroom. She might prefer to sit in it simply because it is the most comfortable seating option.

Moving Forward:

- BAIT can help [the special education teacher] develop a protocol for when the chair is used and how it is used. In the protocol a definition of what [Student's] communication for belt on and off looks like and the provision that it must be honored. The protocol should also include how to fade [Student's] need for the chair and the belt. It would be worthwhile to see if there was a weighted blanket or other object that could be used to give [Student] the feeling of being secure in the chair without actually having to be buckled in. Also, having [Student] get used to less comfortable seating by conducting highly preferred activities (e.g., snack) in a less comfortable chair.
- Other concerns center around the lack of an actual designated Rifton Chair for [Student]. It was recommended that the home chair come to school if possible given that it was recommended in the home IEP for instruction.

BAIT also recommended that the District start a functional behavioral assessment for the Student. It also recommended that the District "create...more activities for [Student]."

18. In a separate email on January 17, 2018, the Complainant³ emailed the special education teacher, the OT, and the PT, stating, "I...think we need a legal opinion...as to the use of the seat belt with [Student] since she cannot unbuckle it independently."
19. On January 30, 2018, the Complainant emailed the assistant principal, the discipline program manager, another special education supervisor (supervisor 2), and the safety partner⁴, asking them to determine whether the District's use of the Rifton chair with the Student constituted "use of restraint." The Complainant noted that "the student sits independently therefore the seat belt is not for orthopedic purposes as designed by the manufacturer." The Complainant attached an informational poster on the Rifton chair to this email. The Complainant stressed the importance of the following statement on this poster: "Using straps, trays or supports to restrict a child's movement is considered behavioral restraint, which may raise ethical and legal issues for your facility. Rifton Equipment is not intended for this use."⁵
20. On February 2, 2018, the Parent emailed the special education teacher, stating:
I am glad that [Student] is doing so much good work in the classroom. I am glad that we can partner together. I just wanted you to know that you have my 100% full permission to use the Rifton/Activity chair at school. I have a Rifton/Activity chair at home for [Student] and we use it for a multitude of reasons.

First and foremost it is for her safety. There are situations where she does need to be protected from her impulsivity. As you know, she is prone to Elopement [sic] and we never know when this will happen. It has been my experience that she gets flustered in chaotic situations and it brings out behavior issues like elopement or self injurious behavior. These moments are the ones that I place her in her chair. I would like for you to use it to transport her to and from activities and the nurses office. I have taken her to school and had to run after her during passing periods where the halls are pure chaos. It would only take one second for someone to turn away from her and she would be lost in the crowd. She can also be lured away very easily with a preferred item. I am not implying anyone would do this, it is just my job to protect her from all potential dangers. When she wants to go on walks, she takes my hand and we walk for short distances. I have read in the communication log she does the same to you. Remember stress, overstimulation, and certain odors trigger her seizures. I can't imagine getting her the treatment she needs while trying to surf through a crowd to get to her.

We also use the chair so that she participates in activities. If allowed she will turn in circles until she is exhausted. Sometimes she just needs some help centering herself. The chair

³ The Complainant worked for the District as a physical therapy assistant. The Complainant worked with the Student in her medically fragile classroom.

⁴ Safety partners work with school-based safety committees to help address and identify safety hazards. Safety partners also provide access to safety training resources.

⁵ The informational poster also states that the Rifton chair is properly used for postural support ("Some children need supports and straps to maintain their posture as they do activities with their head and hands, and to prevent developing deformities") and safety ("Sometimes straps are needed to prevent children from falling out of equipment or injuring themselves (like the straps on a car seat)").

does this very effectively every time. She often requests to go in her chair when she is overwhelmed. I always respect that request, as well as her request to leave the chair. She always places my hand on the belt as if to say, ok I am calm now I feel I can join the group.

We also use the chair for medical reasons. With her incredibly complex medical history she has a lot of issues that the chair helps. She has SIBO (small intestinal bacterial overgrowth), which is helped by being in a seated position that is slightly tilted back. In a regular chair she will not stay seated long enough to alleviate the pain from that condition. It is important that she be fed in the chair. Remember she is on a mechanical soft diet, and is tube fed at night. Positioning is very important for her safety and ease of pain. I try to use positioning instead of pain relievers.

21. On February 5, 2018, supervisor 1 responded to the Complainant's January 30, 2018 email, stating:

The chair is not being used...as a restraint for the student. The student requests the seatbelt and if she requests to be unbuckled she is released. It is not used to hold her in any way that is under the definition of isolation or restraint.

The student was a home bound student in her last district. The Rifton chair is in her IEP to be used while working with her. She is used to being buckled in and requests that the belt be buckled. Because this is how it was used for so long, she has not yet been able to use the chair without the seat belt. She is very insistent that the belt be buckled.

The school team has a plan and is working to help the student use the chair without the belt. This will take time, but the team is working toward that goal.

22. On February 10, 2018, the special education teacher emailed a District compliance program specialist, stating:

[Student] does request to get in the chair as well as to clip the seat belt for her. She will often times yell and perseverate until the seatbelt is clipped. She has one at home and it has been part of her current IEP which was written [by her former school district]. I have spoken to [supervisor-1] about this and she has approved us to use it and it is not considered a restraint.

23. On February 14, 2018, the District completed the Student's reevaluation. The February 2018 reevaluation included assessments in the following areas: general background, adapted PE, adaptive/life skills, communication, medical-physical, motor, and social/behavior. Based on the results of the February 2018 reevaluation, the Student's evaluation group found that she continued to be eligible for special education under the "Multiple Disabilities" category. The February 2018 reevaluation report recommended that she receive specially designed instruction in adapted PE, adaptive/life skills, and social/behavior. The reevaluation report also recommended that the Student receive related services in speech language pathology and occupational therapy, and recommended that the Student receive supplementary aids and services in the form of adapted PE consultation. In pertinent part, the motor portion of the February 2018 reevaluation stated:

Currently, specialized equipment (adapted chair) assists with maintaining safety and providing adequate support during potential seizure activity...A rifton chair with tray was provided for [Student's] use during her home education program. [Student] is able to walk

and run. She moves freely about the classroom and is able to reach for objects, pick up objects from the floor, get off the floor, open doors, mount and dismount an adapted bike (3 wheel), and move on and off chairs. She is able to maintain good position when sitting on a regular classroom chair. By teacher report, [Student] is able to ascend and descend stairs independently. She enjoys riding the adapted 3 wheel bike with the supervision/assistance of teaching staff. [Parent] states that [Student] is able to negotiate outdoor surfaces. She moves with her center of gravity forward over her base of support. When in the hallway, she runs or walks and is directly supervised by her teacher or instructional assistants as she is impulsive and unaware of potential harm. [Student] does not hold, pass, throw, or kick a ball at this time...At this time, [Student] is demonstrating adequate mobility skills within the school environment. She maintains good position when seated in a classroom chair. She requires close supervision by classroom staff due to her unawareness of potential harm and impulsivity...[Student] benefits from having close adult proximity, as she will elope to other parts of the classroom if she is not directly involved in a motivating activity...[Student] currently has access to a Rifton chair that is utilized by classroom staff to support [Student's] transfers within her educational environment (Ex: nurses office), for safety, [Student's] mother reports that [Student] uses a Rifton activity chair at home. It is noted that a letter from [Student's] mother has been included as part of this re-evaluation's Functional Behavior Assessment, pertaining to the use of the Rifton activity chair at school. Please refer to that email for the parent's request to use the Rifton activity chair to support [Student's] safety at school...[Student] can negotiate her way around her educational setting, including stairs and ramps. [The case manager] reports that she is able to move through a crowded hallway, but safety remains a concern due to [Student's] possibility of elopement. [The case manager] reports that [Student] is able to manage parts of the educational lunchroom environment, including physically moving through the lunchroom line to retrieve food. However, the lunchroom is overstimulating for [Student] at this time (ex: loud noises, frequent movement and unpredictable noises), and she eats in her classroom...[Student] is not able to identify safe boundaries, and requires adult support to monitor mobility to and from educational environments.

24. Also on February 14, 2018, a functional behavioral assessment (FBA) of the Student was completed. In pertinent part, the February 2018 FBA stated:

A-B-C data collection logs from 1/24/18-2/1/18 covering 12 incidents of dropping to the floor, persistent attempts to retrieve preferred items, or leave the gym, all of which included some level of loud vocalization and pushing and grabbing staff to access an item within staff's reach or attempts to push around staff to get items that she has seen but which are not available for her use at that time (e.g., toys in another classroom, items in a cabinet or shelf, etc.). Of those 12 incidents 10 were hypothesized to be for access to a preferred item/activity. Of those 10, 4 were hypothesized to serve an escape function as well. Two incidents appear to be escape-based...[Student] currently uses a Rifton activity chair with a seatbelt and/or lap tray per her homebound IEP which expires March 5th of 2018. Her family continues to use the same chair with the seatbelt or lap tray in her home setting. Please see the attached email explaining the continued use of this chair from [Student's] mom...[Student] has difficulty remaining calm and seated to receive her medications unless she is given access to the Rifton chair with seatbelt...[Student] should also have access to the Rifton chair with seatbelt or lap tray following the attached fade plan.

25. The documentation in this complaint contained an undated document entitled, "Activity Chair Guidelines for Staff and Fade Plan." It read:

To meet [Student's] complex medical and educational needs, she will require access to an activity chair (with seat belt, lap-tray, and mobile castors) in all school settings (special and general education), throughout her school day. These are guidelines staff will adhere to regarding use of the seat belt and/or lap-tray as well as plan to fade the use of the adapted chair over time.

- Staff will honor [Student's] request to get out of the chair (unclip her seat belt and or remove lap tray).
- [Student] will participate in non-preferred activities in the activity chair with seatbelt and/or lap-tray.
- During highly-preferred activities, [Student] will sit in a chair that is less comfortable to her (standard classroom chair, rocking chair, or bean bag) if she is able to remain safe (remaining on task with current activity, keeping hands and feet to herself, and not climbing on activity table) during these times. *If she prefers, [Student] will also be given the opportunity to stand during highly-preferred activities, so long as she remains on task and in close proximity (within 4 feet) of the activity.
- The use of the activity chair with seatbelt and/or lap-tray will fluctuate based on the stability of [Student's] health. For example, increased seizure activity would increase the use of the activity chair for safety.
- As [Student] increases work completion and school readiness skills, and can independently complete a 5-step classroom sorting work-box (sort by color, shape, or size), classroom staff will begin to fade the use of the activity chair with a chair that is less comfortable to her (standard classroom chair, rocking chair, or bean bag).
- A maximum time-limit will not be set around use of seatbelt and/or lap-tray due to student's fluctuating health needs, however staff will be required to honor her request to leave the chair.

26. The District was on break February 19-23, 2018.

27. On February 25, 2018, the OT emailed the special education teacher, stating, in part:

I am a little concerned about adding the Rifton chair as the accommodations [in the Student's February 2018 IEP]. It says specifically in the OT and PT sections that [Student] does not require it for mobility support. In the school psych and OT sections it is noted that the family requests the Rifton chair due to safety. Could we change the language in the accommodations to reflect that, just so it is clear that it is not for mobility purposes?

The special education teacher responded on February 26, 2018, stating:

I do want to keep the Rifton chair in the accommodations since I believe it is an accommodation for her educational program. I don't think that because it is in her IEP that it means it is being used for OT or PT purposes, does it?

28. In an email thread, dated February 27, 2018, the special education teacher and supervisor 1 decided that the Student's February 2018 IEP should not use the specific descriptor of "Rifton chair." As explained by supervisor 1, "The point [is] that there may be another chair that could be used for the same purpose, but it isn't a 'Rifton' chair. By naming Rifton it would mean that only a Rifton chair could be used."

29. On February 28, 2018, the Student's IEP team, including the Parent, developed a new IEP for the Student. The February 2018 IEP included goals in the areas of social/behavior, adaptive/life skills, and adapted PE. In pertinent part, the February 2018 IEP provided for the following modification to take place from March 1, 2018 through February 28, 2019:

- Supplementary Aids and Services: Student requires access to large activity chair with seat belt, castors, and lap-tray - Daily all school settings (special education and general education)

The February 2018 IEP provided for the following specially designed instruction take place in a *special education setting*:

- Adaptive/life skills – 147 minutes, five times weekly (to be provided by a special education teacher)
- Social/behavior – 150 minutes, five times weekly (to be provided by a special education teacher)
- Adapted PE – 60 minutes, five times weekly (to be provided by an instructional assistant)

The February 2018 IEP provided for the following related services take place in a *special education setting*:

- Speech language pathology – 75 minutes a month (to be provided by a SLP)
- Occupational therapy – 75 minutes a month (to be provided by an OT)

The February 2018 IEP provided for the following supplementary aides and services take place in a *special education setting*:

- Adapted PE consultation – 30 minutes, twice a year (to be provided by an adapted PE teacher)

The February 2018 IEP also included a behavioral intervention plan (BIP), which mirrored the Student's February 2018 FBA.

30. The District was on break from April 9-13, 2018.

CONCLUSIONS

The Complainant alleged that the District improperly restrained the Student by using the Rifton chair. Washington State law defines 'restraint' 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." The definition of 'restraint' specifically excludes the 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.⁶

The documentation shows that the District belts the Student in the Rifton chair⁷ for two different reasons: (1) The Student suffers from several health complications, and the Rifton chair helps keep

⁶ Similarly, the definition of 'restraint device' specifically excludes safety devices, including safety belts for wheelchairs, changing tables, booster seats, and other ambulatory or therapeutic devices when used for the purpose intended for the safety of a student.

⁷ The documentation strongly suggests that, each time the Rifton chair was used, the Student was belted into it. For example, in a February 5, 2018 email, the special education supervisor 1 stated, "The student was a home bound student in her last district. The Rifton chair is in her IEP to be used while working with her. She is used to being

the Student safe; and, (2) In certain circumstances, the Student feels more comfortable seated in the Rifton chair and requests to use the chair with the seat buckled.

As per the first reason, the District uses the Rifton chair with the Student because she suffers from a seizure condition, and the Rifton chair helps “provid[e] [the Student with] adequate support” when experiencing a seizure. In such circumstances, the District uses the Rifton chair for the Student’s “safety”, and therefore, this does not meet the definition of restraint under WAC 392-172-01162. The District also appeared to sometimes use the chair to transport the Student because she got “flustered in chaotic situations,” such as when students are walking in the hallways between class periods, and will try to run away. Any use of the Rifton chair to transport the Student, when she is not experiencing medical issues, such as when she becomes anxious in the hallway, would be inappropriate, because this would be restricting the Student’s movement for non-medical purposes. In such cases, the District must either provide the Student with staff support in the hallway, or provide the Student with an accommodation to enter/exit the hallway at a less crowded time. This District will hold a meeting to discuss this accommodation and address this in her IEP.

As per the second reason, the Student prefers to be belted into the Rifton chair when she needs to calm down⁸ and when she is directed to complete schoolwork.⁹ The documentation shows that the Student can clearly communicate when she wants to be belted into the Rifton chair, as well as when she wants to be unbelted from the Rifton chair. For example, the BAIT observation report states, “[Student] engages in clear communication (will take staff’s hand to both unbuckle and buckle the seat belt) to be both belted in and unbelted.” On February 10, 2018, the special education teacher noted, “[Student] will often times yell and perseverate until the seatbelt is clipped.” Importantly, the documentation suggests that, whenever the Student requested that the Rifton chair be unbelted during the 2017-2018 school year, the District unbelted her. For example, in January 2018, the BAIT team observed that District staff “honors” the Student’s requests to be unbelted. On February 5, 2018, supervisor 1 emailed the Complainant, “If [Student] requests to be unbuckled she is released.” The District’s guidelines for the use of the Rifton chair, created in February 2018, stated, “Staff will honor [Student’s] request to get out of the chair (unclip her seat belt and/or remove lap tray).” Because the Student was able to clearly articulate when she wanted to be belted and unbelted from the Rifton chair, and because those requests were always granted, the District’s use of the Rifton chair did not constitute “force used to control a student.” Therefore, this does not meet the definition of restraint under WAC 392-172-01162. It

buckled in and requests that the belt be buckled. Because this is how it was used for so long, she has not yet been able to use the chair without the seat belt.”

⁸ The Parent’s February 2, 2018 letter to the special education teacher stated, “[Student] often requests to go in her chair when she is overwhelmed. I always respect that request, as well as her request to leave the chair. She always places my hand on the belt as if to say, ok I am calm now I feel I can join the group.”

⁹ On January 17, 2018, the BAIT team observed “[Student] has a Rifton chair at home that was written into her home IEP as needed for academic instruction...she seems to have learned to associate the chair with doing work.”

is also noted that the District has appropriately developed a plan to fade the Student's use of the Rifton chair.

CORRECTIVE ACTION

By or before **September 5, 2018**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By or before **September 5, 2018**, the District will hold an IEP team meeting to discuss what level and type of accommodation is necessary to transport the Student between classes without buckling her into the Rifton chair. By or before **September 5, 2018**, the District will submit to OSPI all meeting invitations, prior written notices, and other correspondence concerning the same.

DISTRICT SPECIFIC:

None

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 August, 2018

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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