

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

PROCEDURAL HISTORY

On March 12, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student 1) attending the Spokane 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 and the education of other students (students) eligible for special education in the District.

On March 13, 2019, 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 March 15, 2019, OSPI received part one of the District's response to the complaint and forwarded it to the Parent on the same day. All personally identifiable information for students other than Student 1 was removed.

On March 15, 2019, OSPI requested that the District provide additional responsive documentation regarding the allegations made in this complaint with respect to Student 1 and several District schools selected for review (elementary schools 1-3 and middle school).

On March 15, 2019, the Parent provided OSPI with additional information and additional allegations. OSPI declined to add any additional issues to the complaint investigation, but considered the additional information provided as part of the investigation. OSPI forwarded the additional information to the District on March 19, 2019.

On April 1, 2019, OSPI received part two of the District's response to the complaint and forwarded it to the Parent on April 2, 2019. All personally identifiable information for students other than Student 1 was removed.

On April 8, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On April 23, 2019, OSPI received additional information from the Parent and forwarded that information to the District on April 24, 2019.

On April 30, 2019, OSPI received additional information from the Parent and forwarded that information to the District on the same day.

On May 3, 2019, OSPI requested clarifying information from the District and interviewed the District's associate director of special education via phone.

On May 3, 2019, OSPI received additional information from the Parent and forwarded that information to the District on May 6, 2019.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on March 13, 2018. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

OSPI also notes that the Parent raised allegations that the District was negligent, recklessly endangered Student 1, and violated her civil rights. Negligence and reckless endangerment are civil and criminal liabilities, and as such OSPI does not have authority through the special education citizen complaint process to investigate or make conclusions under these standards. OSPI acknowledges that the Parent's concerns are serious; however, this decision does not comment on whether the District was negligent or whether District staff recklessly endangered the Student.

LEGAL STANDARDS

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 closely monitored to prevent harm to the student and 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. 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 device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions: the restraint must be closely monitored to prevent harm to the student and must be discontinued as soon as the likelihood of serious harm has dissipated; the restraint shall not interfere with the student's breathing; and, 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. WAC 392-172A-02110.

Likelihood of Serious Harm: Likelihood of serious harm means: A substantial risk that 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; 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 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 the person has threatened the physical safety of another and has a history of one or more violent acts. WAC 392-172A-01109.

Imminent: Imminent means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. WAC 392-172A-01092.

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

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

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

IEP Definition: An individualized education program (IEP) must contain a statement of, among other things: the special education services, related services, and supplementary aids to be provided to the student; the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; behavioral intervention plan, if necessary for the student to receive FAPE; emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; and, the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210¹. 34 CFR §300.320; WAC 392-172A-03090.

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

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. 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 BIP that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols are subject to the conditions and limitations as follows: the student's parent provides consent, as defined in WAC 392-172A-01040, in advance, to the emergency response

¹ Further, RCW 28A.600.486 requires districts to provide parents and guardians of children who have IEPs or section 504 plans a copy of the district's policy on the use of isolation and restraint at the time that the program or plan is created.

protocols to be adopted; 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; and, any other special precautions that must be taken. WAC 392-172A-02105.

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is served through enrollment in the district and is eligible to receive special education services. 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.

Program Length: Students who receive special education should be allowed to participate in a district's educational programs and services to the same extent as their non-disabled peers, consistent with their rights under IDEA. Any decision to limit or restrict their access and participation must be made by their IEP team, based solely on any adjustments necessary due to their disability and/or unique needs. 34 CFR §300.114; WAC 392-172A-02050. If a student receiving special education services cannot attend school a full school day, the reason must be documented in his or her records and addressed in the student's IEP. 34 CFR §300.320; WAC 392-172A-03090. *See also*, Shoreline School District No. 412, 55 IDELR 178 (OCR 2010).

Parent Requests: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). IDEA, 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments affect the student's need for transportation. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. IDEA, 64 Fed. Reg. 12, 475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School*

District, 36 IDELR 289 (WA SEA 2002). The term “transportation” is defined as: travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for students eligible to receive special education services. 34 CFR §300.34(c)(16); WAC 392-172A-01155(3)(p).

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

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

ISSUE ONE

1. Did the District use isolation and restraint consistent with the requirements of WAC 392-172A-02110 from May 2018 through December 2018, for Student 1 and the other Students? This includes:
 - a. Did the District use isolation and restraint only when there was an imminent likelihood of harm; and,
 - b. Did the District follow all required follow-up and reporting procedures?

FINDINGS OF FACT

Parent’s Allegations & District Response

1. In his complaint, the Parent alleged that District failed to use isolation and restraint consistent with the requirements of the IDEA and state law. Specifically, the Parent alleged the following related to fourteen (reported) and twelve (potential/unreported) incidents in which Student 1 was isolated or restrained, and based on his conversations with other parents in the District:
 - The District used restraint and isolation absent an imminent likelihood of serious harm;
 - The District failed to complete isolation or restraint reports for some incidents;
 - The District failed to give proper or timely notification—verbal or written—of restraint and isolation to parents;

- The District's written notification to the District and parents did not contain the required information;
 - The District administered isolation in a manner that was harmful to students, including an unpadded isolation room and kept Student 1 locked in the isolation room while she was injuring herself. The Parent, in his complaint, described the isolation room door as "inherently dangerous...an exposed unpadded steel door, against which [Student 1] repeatedly banged her head in numerous isolation incidents...it is unclear as to whether any of the isolation chamber walls were padded";
 - The District restrained or isolated Student 1 without the Parent's "written approval, in clear violation of RCW 28A.600.485(3)(a)";
 - The District did not review or debrief each use of restraint or isolation with the Parent or Student 1 for any of the incidents or restraint or isolation; and,
 - The District only rarely reviewed or debrief incidents with staff involved.
2. The Parent stated, in his reply to the District's response to this complaint, that the District's failure to debrief incidents with him left him unable to determine "whether isolation was justified under the legal standards for ANY of the incidents." In addition, the Parent stated, "timely review and debriefing would have been invaluable in helping me deal with [Student 1's] behaviors – and warning me of the trend of behavior escalation happening in the fall" and it would have allowed the Parent to be "in a position to advocate for [Student 1's] legal rights and best interests – to include protesting against illegal use of isolation before it resulted in repeated ER injuries."
 3. The District, in its response, stated that Student 1 "has a well-documented history of aggression toward self and others" and the District "does not believe there are any incidents where isolation was initiated that did not result from an imminent likelihood of serious harm." The District did state it is aware of "five incidents of isolation where the District did not follow all required follow-up and reporting procedures" for Student 1. The District stated, "the majority of these incidents involved Student 1 choosing to enter the room for a time out, and then an escalation occurred while student 1 was in the space."

Student 1: Background

1. Student 1 is eligible for special education services under the category autism. Her most recent evaluation occurred in October 2017 in another district in Washington. The Student's evaluation report noted she is non-verbal and that she "exhibits self-injurious behavior, such as slapping herself in the face or biting her hand, especially when she gets frustrated and has difficulty communicating. She also has shown aggressive behavior toward others such as hitting, pushing, and kicking." The report stated that she continued to qualify for specially designed instruction in behavior, adaptive, math, reading, writing, and communication.
2. In October 2017, the other district conducted a functional behavioral assessment (FBA). The FBA stated Student 1 "can demonstrate appropriate behaviors at school, with support and guidance from school staff." The Students also received outside behavior management and instruction from a private organization. The FBA observed a number of "maladaptive

behaviors” and described the following target behaviors: “bite her own hand, pinch/squeeze others, scratch others, elbow others, and or shove others 50-100 times/day for 1-5 seconds, causing redness or irritation 50% of the time.” The FBA also described prior interventions, settings, and recommendations for the IEP team.

Student 1: 2017-2018 School Year

3. On May 15, 2018, Student 1 transferred to and enrolled in the District to attend ninth grade at a District high school. The Student’s registration paperwork listed her as an “unaccompanied youth” and the box for “foster care” was checked. The Parent was listed as her “Parent/Guardian.” While enrolled in the District, the Student lived in a group home.²
4. On May 21, 2018 the District held a transfer review/intake meeting. The Student transferred with an IEP from her previous school district that was develop on October 26, 2017. The District accepted Student 1’s October 2017 IEP.

The October 2017 IEP stated the Student “struggles to communicate her needs and wants and will squeeze, push, scratch, hit. This behavior impedes her learning and the learning of those around her.” The IEP also stated the Student “displays behavior which requires a Behavior Intervention Plan and Emergency Response Protocol.” The October 2017 IEP included annual goals and specially designed instruction in the areas of reading, math, written language, adaptive, behavior, and communication, and several accommodations and a modification. The IEP noted the Student required “1:1 para support during all school hours and beyond the 1837 instructional minutes to support her in all activities due to physical aggression and safety.”

Student 1 also had a behavior intervention plan (BIP) for the target behavior of “hurting self or others” and included strategies for increasing “pro-social, expected behaviors.” The BIP included a de-escalation plan, which included the following “do not block aggression or self-injurious behavior – direct [Student 1] to go to quiet area and sit down to get calm” and “do not block aggression or self-injurious behavior. Begin noticing and calmly praising at first sign of calming. Allow [Student 1] to be calm for at least 1 minute before approaching.”

4. May 22, 2018 was Student 1’s first day of school in the District. While enrolled in the District the Student was in the “Autism Behavioral Learning Environment” (ABLE)³ classroom.

² The Parent resided in a different city in another part of the state where Student 1 previously lived and went to school.

³ The ABLE program is focused on students with autism and uses an applied behavioral analysis (ABA) like model. The intent is that this classroom is an intervention and students transition out of the ABLE program and into other classrooms. Many of the students need intense behavior interventions, are no verbal, and have higher need.

5. On May 22, 2018, the District's behavior observation form indicated Student 1 was restrained—"3 person escort to safety room-door closed"⁴—and isolated for some period of time. The form also indicated the Student used the safety room by choice. There is no corresponding restraint/isolation form recording these incidents.
6. On May 30, 2018, the behavior observation form indicated the Student was escalated and was offered "book, blue chair, safety room, cartoon." The Parent, in his complaint, stated this represented an unreported isolation.
7. On June 1, 2018, the observation behavior form indicated the Student was isolated: "safety room w/ door locked." There is no corresponding restraint/isolation form.
8. On June 11, 2018, according to the District's restraint/isolation report, Student 1 was "physically escorted into the timeout room using right response techniques" by the special education teacher and a paraeducator. The restraint and subsequent isolation lasted 9 minutes. According to the report, Student 1 was "asking to eat after lunch was finished. She became agitated when we had no food for her. [Student 1] grabbed [paraeducator], spat on me, then attacked me. I physically escorted [Student 1] into timeout." According to the report, a group home staff person was notified that day by phone and written notification was sent on June 12, 2018.⁵

According to the Parent, he was not notified and found out about this incident on January 17, 2019 following a public records request.

9. On June 14, 2018, Student 1 was restrained and isolated. According to the District's restraint/isolation report, the special education teacher and a paraeducator "used a Right Response 2 person escort to put [Student 1] into the safety room." The restraint and subsequent isolation lasted 20 minutes. According to the report, Student 1:
Was disrupted by the change in schedule due to the last day of school. She became agitated and attacked the paraeducator working with her. [Paraeducator] and [teacher] had to get her to physically disengage with the para[educator] and put [Student 1] into the [safety] room. While in the room she slammed her face into the window and metal of the door. She then sat down and hit the back of her head on the wall of the safety room. She

⁴ The District uses safety room, isolation room, time out room, and quiet room interchangeably.

⁵ According to the District, for most students living in group homes, the group home has educational guardianship over these students, meaning the group home manager is the student's guardian for educational purposes. The District's associate director of special education stated that he believes Student 1 was the only student for which this was not true—in other words, the only student in the group home for whom the Parent retained educational guardianship. The District stated it did not realize or was not notified until mid-October 2018 that the Parent was Student 1's guardian. Thus, the District explained, this is why the group home was being notified—verbally and in writing—when an isolation or restraint occurred for Student 1.

spat blood on the window of the timeout room and we called emergency services. She was taken to [hospital] at 10:30 am.

The report stated Student 1 was taken to the hospital to be examined for possible head trauma. According to the report, a group home staff person was notified that day by phone and written notification was sent on June 15, 2018. The Parent stated he did not receive written notification of the incident.

According to the Parent, the District's report is inaccurate as the 911 call logs indicated the paraeducator called 911 around 8:50 am, prior to the time listed on the report form. The Parent also stated the description of the incident "deficient and seriously minimizes what happened." The Parent, in his complaint, stated he asked the District to correct the report.

10. On June 14, 2018, Student 1 was taken to the hospital following the incident at school. The medical records stated Student 1 presented "to the emergency department with a history of self harming behavior. She presents emergency department after an outburst in class where she was banging her head on a metal door...There is swelling to the forehead and back of her head. There are no other signs of injury."

According to the Parent, the special education teacher called the Parent from the hospital and told him that the Student was injured. The Parent stated the special education teacher "said NOTHING to me about [the Student] being in any sort of isolation chamber or anything like that. Nor did Mr. Henry apparently tell the ER staff at [hospital] that [the Student] had been in an isolation chamber." The Parent stated he "did not suspect...that the June 14, 2018 ER incident had involved isolation, until November 28, 2018, when I was informed of that isolation room ER injury."

11. The District's 2017-2018 school year ended on June 14, 2018.

Student 1: 2018-2019 School Year

12. The District's 2018-2019 school year began on August 30, 2018.
13. On September 19, 2018, according to the restraint/isolation report, Student 1 was "escorted into timeout using right response techniques" by the special education teacher and a paraeducator and "she had her iPad with her so she could communicate her wants and needs." The isolation lasted 29 minutes. According to the report, "another student was agitated and yelling. This caused [Student 1] to escalate, spit, and physically attack staff. [Student 1] was put into isolation for the safety of herself and others. She deescalated and returned to work at her seat after communicating her readiness via iPad." According to the report, the Student was injured (bit her lip during escalation) and was checked by the nurse. According to the report, a group home staff person was notified by phone and written notification was sent that same day.

14. Later on September 19, 2018, the special education teacher emailed the paraeducators and the ABE program coordinator and stated Student 1 "was put into time-out today. We need a critical debrief asap." Based on the documentation, it appears a debrief occurred later that afternoon.
15. On September 20, 2018, according to the Parent, the assistant principal called the Parent to tell him that Student 1 had been in the isolation room the previous day.
16. On September 21, 2018, the Parent emailed the assistant principal and special education teacher and requested that "all reports of isolation and restraint and similar incidents" be sent to him, in addition to the Student's group home. The Parent also asked if the student had a behavior intervention plan (BIP) or emergency response protocol (ERP) and mentioned that the Student had a behavior assessment in her previous school district.
17. On October 12, 2018, Student 1's IEP team met and developed her annual IEP.
18. On October 29, 2018 the behavior observation form indicated Student 1 was potentially in isolation. The form stated Student 1 "went to quiet room...ask for break...cry...got time out." The Parent, in his complaint, stated this represents an unreported isolation.
19. On November 6, 2018, according to the restraint/isolation report, Student 1 "walked into the timeout room under her own power and the door was left open. The door was closed when she started kicking the door." The isolation lasted 7 minutes (although the report listed "restraint" instead of "isolation"). According to the report,

Another student had a behavioral episode and it upset [Student 1]. She cried and stomped and spat from 11:32 to 11:37. At 11:37, [Student 1] walked into the quiet room under her own power in an attempt to deescalate her. [Student 1] had her iPad with her so that she could communicate. [Student 1] continued to cry and kick the wall, then tried to kick the staff who was monitoring her situation. The door was closed from 11:38-11:45. [Student 1] was then able to communicate her need for a break and returned to her usual activities.

According to the report, a group home staff person was notified by phone and written notification was sent that day. According to the Parent, the report should have stated "'both', instead of just 'Restraint'" and he requested that the District amend the report.
20. According to the nurse's log from November 6, 2018, "per teacher during an incident student spit blood...there is no blood or injury noted" and the nurse was unable to enter the isolation room as Student 1 was "not safe at...time per teacher...[nurse] told teacher to let [nurse] know if more blood or an injury is seen."
21. On November 6, 2018, according to the Parent's complaint, the behavior observation form also included another incident of isolation that was not reported, in addition to the incident describe above.

22. Also on November 6, 2018, the special education teacher emailed the Parent regarding the behavior incident that occurred that day. The email contained the same narrative of the incident found in the restraint/isolation report.
23. On November 13, 2018, the behavior observation form indicated Student 1 was escalated and "went into safety room voluntary at 10:05...self calming [at] 10:19...10:40 crying, pounding with iPad." The Parent stated this represented an isolation that should have been reported.
24. On November 15, 2018, the behavior observation form indicated Student 1 was potentially isolated. The form stated Student 1 "went into safety room when asked at 7:50...self calming at 8:18" after being escalated, and later "went into safety room when asked." The Parent stated this represented an isolation that should have been reported. There was no corresponding restraint/isolation form.
25. On November 16, 2018, according to the restraint/isolation report, Student 1 "walked herself to the Quiet Room under direction of staff. Another student was in a behavior and [Student 1] began to escalate." Once Student 1 was in the quiet room, "she began kick and punching at staff, and staff had to shut the door. She de-escalated and was taken to the bus." The isolation lasted 10 minutes and according to the report Student 1 "had been escalating throughout the day. Another student having a behavior triggered her escalation in this case." Two paraeducators were involved and the report stated a staff member was "injured" when Student 1 spit on staff, getting blood in the staff person's nose, which required the staff person to go to urgent care.

According to the report, a group home staff person was notified that day by phone and written notification sent on November 19, 2018. The written notification stated "this letter serves as written follow up to the verbal notification you received on 11/16/2018 regarding the use of isolation and/or restraint which occurred on 11/19/2018 at 2:00 am. *This is not notification of another incident.*" The written notification did not contain any further information about incident.⁶

In the Parent's complaint, he pointed out that the report incorrectly listed the incident as occurring on November 19 instead of November 16, 2018, and that the report did not list one of the involved paraeducators as the "author" of the report. The Parent also stated the group home staff person was notified in person rather than on the phone.

The nurse's log stated the nurse checked on Student 1 "who [was] calm at [that] time. There is no injury seen. No blood" and the nurse told the paraeducator to call the nurse "when [Student 1] gets out of the isolation room [if] they notice any bleeding or injury."

⁶ The District's response stated this letter is what is sent to parents to notify them that a restraint or isolation occurred. As such, for each reference to "written notification" being sent, OSPI assumes this same form letter template is sent notifying a parent of the date and time of the restraint or isolation, but including no further details.

26. According to the Parent's complaint, the November 16, 2018 behavior observation form also includes another incident of isolation that was not reported, in addition to the incidents describe above.
27. On November 19, 2018 the behavior observation form indicated the Student "took a break in quiet room from 10:05 –". The Parent, in his complaint, stated this represents an unreported isolation.
28. On November 19, 2018, the assistant principal emailed the Parent and stated, regarding the incident on November 16, "I am emailing to let you know that [Student 1] was in isolation for about 9 minutes before the end of school. She had a difficult day, and I had been called down a couple times to assist." The assistant principal further stated:
According to staff, she had been de-escalating in the room. She returned to baseline and was coming out of the Quiet Room when another student had a behavior. [The Student] re-escalated and followed staff prompts to go back into the Quiet Room. She was upset enough at that point for them to have to close the door. Earlier in the day a staff member got blood in her nose from [the Student] spitting and had to go get checked out. Evidently they were seeing her escalate to that level again and had to close the door. She calmed down and we were able to get her on the bus.
29. On November 21, 2018, according to the restraint/isolation report, Student 1 went "into the safety room under her own power" and was isolated for 4 minutes. The special education teacher and two paraeducators were involved. According to the report,
[Student 1's] iPad malfunctioned after [Student 1] threw it against the wall during the preceding 2 days. [Student 1] became agitated and attacked another student. [Paraeducator] stepped in between [Student 1] and the other students and with a firm voice instructed [Student 1] to go into the safety room. [Student 1] complied and went into the room. She was escalated (crying, kicking, throwing her ipad) from 0934-0938 hrs. She recovered in the safety room, slept for a bit, and came out peacefully.

According to the report, a group home staff person was notified that day by phone and written notification was sent that same day.

30. Also on November 21, 2018, the special education teacher emailed the Parent regarding the behavior incident that occurred that day. The email contained the same narrative of the incident found in the restraint/isolation report.
31. On November 26, 2018, according to the restraint/isolation report, Student 1 was "put into isolation after other interventions had failed. She went into the quiet room under her own power" and was isolated for 11 minutes. The special education teacher and a paraeducator were involved. According to the report, Student 1 was,
Visually agitated all day. She had put herself into the quiet room to calm down. Another student started yelling and this provoked [Student 1] to yell, punch herself, throw the iPad, kick the door, cry, and attempt to come out of the quiet room in force. [Student 1] was in

isolation from 1233-1244 hrs. She deescalated and went into her recovery phase in the quiet room.

According to the report, a group home staff person was notified that day by phone and written notification was sent that same day.

32. Also on November 26, 2018, the special education teacher emailed the Parent regarding the behavior incident that occurred that day. The email contained the same narrative of the incident found in the restraint/isolation report.

33. On November 27, 2018, according to the restraint/isolation report, Student 1 “was physically escorted to the quiet room using right response techniques.” The restraint and subsequent isolation lasted 21 minutes. The special education teacher and two paraeducators were involved. According to the report, Student 1 became:

Escalated and started spitting, kicking, and attacked [paraeducator]. We had to physically escort [Student 1] into the quiet room. She exhibited unsafe behaviors from 8:26 am to 8:44 am. She chose to cool down in the quiet room with a beanbag chair and weighted blanket. She had her iPad the entire time.

According to the report, a group home staff person was notified that day by phone and written notification was sent that same day. According to the address on the written notification, this letter was sent to the Parent.

34. Also on November 27, 2018, the special education teacher emailed the Parent regarding the behavior incident that occurred that day. The email contained the same narrative of the incident found in the restraint/isolation report.

35. On November 28, 2018, according to the restraint/isolation report (dated November 29, 2018), Student 1 “was taking a break in the quiet room when she was put into isolation.” According to the report Student 1 was isolated for an hour and 6 minutes, and the special education teacher and two paraeducators were involved. According to the report, Student 1 was:

Taking a break in the quiet room when another student escalated.⁷ This caused her to escalate (kicking, yelling, head banging, etc.) While escalated [Student 1] broke an iPad with her face and slammed into the quiet room door repeatedly. She was taken out of the quiet room and to the hospital for observation.

⁷ According to the campus resource officer’s report regarding the other student that was escalated during this incident, Student 1 and the other student do not get along well with each other and “stated they have to be separated from each other.” The special education teacher “stated when one acts out, the other does the same. [Special education teacher] stated the school is in the process of keeping [other student] and [Student 1] separated while at school.” Police on the scene, responding to the other student, were wearing body cameras which showed the isolation room—a free standing small room within the classroom, with a metal door that had a small window in it. The body camera showed a staff person (most likely the special education teacher) standing at the closed door of the isolation room, looking in the window. You can also hear someone on the body camera saying Student 1 “smashed her head against the door” and would need to be checked out by the paramedics for a possible concussion.

According to the report, Student 1 was taken to the hospital for observation “after the number of blows to the head she gave herself.” The report noted, there were “paramedics who were already on the scene [who] check[ed] her for a concussion.” A group home staff person was notified that day by phone and written notification was sent that same day.

According to the Parent’s complaint, the behavior observation form also includes another incident of isolation that was not reported, in addition to the incidents describe above.

36. On November 28, 2018, Student 1 was taken to the hospital following the incident. The medical records indicated that the Student presented to the emergency department for “evaluation of a head injury...today at school there was another child from her group home making her upset and so she was placed in a quiet room. She then began to hit her lpad on her forehead repeatedly and then began to hit her head on the wall” and the assistant principal reported “notable swelling to the forehead and would like her to get evaluated.” The records from the fire department, provided by the Parent as part of this complaint, indicated Student 1 banged her head against the “metal door approx. 10-12 times.”

37. On November 28, 2018, following the incidents in the ABLE classroom, staff texted each other the following, in part:

- Director of special education: “Do you want me to connect with [special education teacher] informally today and then do a formal critical debrief with the whole team.”
- Assistant principal: “Yeah – that’d be great.”
- Assistant principal: “I’m the one going with [Student 1 to hospital] because [special education teacher’s] pretty rattled. The info I have right now is that [special education teacher] and staff handled it exactly right.
- Special education coordinator: “I will see when [special education teacher’s] available to do a critical debrief. We will use the format from Right Response.”

38. On December 5, 2018, according to the restraint/isolation report, Student 1 was “put into isolated timeout” for an hour and 20 minutes by the special education teacher and two paraeducators. According to the report, Student 1 was:

Taking a break in the quiet room and became frustrated when her personal iPod wouldn’t link to school wifi. She yelled, cried, kicked, and started throwing her iPod. She was put into isolation at 1:44 pm. [Student 1] calmed enough to be released from timeout at 3:00. While in timeout, [Student 1] started banging her face against the metal door and the glass window. She spat blood on the window and we called emergency services. Paramedics checked [Student 1] in the quiet room and she was sent home with group home staff.

According to the report, a group home staff person was notified that day by phone and written notification was sent December 6, 2018.

Based on the documentation in the complaint, paramedics were called to asses Student 1 after this incident, but the Student was not taken to the hospital. According to the 911 call, Student

1 was still in the safety room and escalated when they called the paramedics. At the beginning of the call, the Student 1 can be heard screaming in the background.

39. On December 6, 2018, Student 1 “was in isolated timeout” for 26 minutes. The report stated Student “went into the quiet room under her own power and had a behavior for unknown reasons. She went into her recovery phase at 9:30.” The special education teacher and a paraeducator were involved. According to the report, a group home staff person was notified that day by phone and written notification was sent that same day.

40. Also on December 6, 2018, the special education teacher emailed the Parent regarding the behavior incident that occurred that day and the previous day, December 5. The email contained the same narrative of the incidents found in the restraint/isolation reports.

41. On December 7, 2018, according to the restraint/isolation report, Student 1 was “went into isolation under her own power” for 42 minutes. The special education teacher and two paraeducators were involved. According to the report, Student 1:

Used her text-to-speech to ask for her iPad as a reward for finishing her work. Both iPads that are assigned to her are broken and the new ones are on order. [Student 1] became frustrated and attacked and spit on me. She went into the quiet room as directed by [paraeducator] and [paraeducator] without being touched. In the timeout room she kicked, yelled, cried and bit her own hand. She was calm at 1302 hrs. She went home with [group home staff person] at 1311 hrs. Today was a PPL day and class was dismissed at 1315 hrs. In my professional judgement it was safer to send [Student 1] home with familiar staff than to put her onto the bus.

The report stated Student 1 cut the back of her hand, the school nurse assessed the cut and cleared Student 1—the nurse’s log noted Student 1 had a “bite mark on her right hand and a scratch on right forehead. They are no [sic] currently bleeding” and Student 1 was “still upset and crying and refuses any treatment.” According to the report, a group home staff person was notified that day by phone and written notification was sent that same day. According to the address on the written notification, this letter was sent to the Parent.

42. Also on December 7, 2018, the special education teacher emailed the Parent regarding the behavior incident that occurred that day. The email contained the same narrative of the incident found in the restraint/isolation reports.

43. On December 10, 2018, according to the restraint/isolation report, Student 1 was “was isolated in the quiet room” for 17 minutes. The special education teacher and a paraeducator was involved. According to the report, Student 1:

Was on a break in the quiet room, which is her preferred place to take breaks. At 1315 hrs she started crying and kicking the wall. She had the text-to-speech but was unresponsive to our offers to help. At 1333 hrs she started yelling, kicking, punching her own face, and hitting the text-to-speech against her forehead. She broke the text-to-speech at some point in the room. She was calm and the door was opened at 1350 hrs. She managed to return to baseline in time to get on the bus at 1430 hrs.

According to the report, a group home staff person was notified that day by phone and written notification was sent that same day. According to the address on the written notification, this letter was sent to the Parent.

According to the Parent's complaint, a separate behavior form noted that Student 1 cut her hand while in the isolation room and that there was no medical attention related to this incident. The Parent stated the restraint/isolation report should have noted the injury.

44. Also on December 10, 2018, the special education teacher emailed the Parent regarding the behavior incident that occurred that day and the previous day, December 5. The email contained the same narrative of the incident found in the restraint/isolation reports.

45. On December 12, 2018, the Parent emailed the assistant principal, special education teacher, and the District ABLE program coordinator requesting records from the incidents where Student 1 was taken to the hospital. The Parent also asked whether "the school fill[ed] out an incident report or something like that, as opposed to simply mailing parents a form letter?"

46. On December 13, 2018, according to the restraint/isolation report, Student 1 was "was escorted into timeout using right response techniques." The restraint and subsequent isolation lasted 35 minutes and the special education teacher and two paraeducators were involved. According to the report, Student 1:

Wanted to take her iPad into the quiet room for a break and was told no (she had already broken 2 iPads, a text-to-speech, and an iPod while in the room). She escalated and attacked [special education teacher]. While in timeout she kicked, yelled, spat, engaged in [self-injurious behavior], and head butted the door. She was taken away by paramedics via ambulance at 12:31 pm...[Student 1] headbutted the door of the quiet room and sat down immediately and spat blood. We called 911 and the paramedics took her to [hospital].

According to the report, the assistant principal notified the Parent that day by phone and written notification was sent December 14, 2018. According to the address on the written notification, this letter was sent to the Parent. According to the Parent, he was not contacted by the assistant principal. The Parent stated, "the first I heard of this was a missed call and voice mail at 1:38 pm from [hospital] ER request permission to treat [Student 1]"; although, documentation indicates that when the Parent called the hospital back he spoke with the special education teacher on the phone.

According to the 911 call, the paraeducator stated the paramedics would not be let in the isolation room unless Student 1 was calm. The paraeducator stated the District has a protocol for helping students deescalate and calm down. During the call, Student 1 could be heard screaming in the background. The paraeducator stated it was not yet clear what medical assistance Student 1 required because it was not yet safe to open the isolation room door.

47. On December 13, 2018, following the incident, Student 1 was taken to the hospital. The medical records document that Student 1 presented at the hospital "with concern of head injury. Patient has had frequent outbursts and escalation over the last week as they are trying to manage the child's medications. Patient currently resides at [group home]" and the Student "had an outburst and [was] escorted to seclusion room where patient was slamming her head on a steel door."
48. December 13, 2018 was Student 1's last day of class in the District and on December 17, 2018, the Student was officially unenrolled from the District.
49. The Parent, in his complaint, noted: "To the extent that restraint or isolation might have been warranted under the statute (which I also dispute), had restraint been used instead, that would have prevented the injuries caused by isolation."
50. On December 15, 2018, the Student and the Parent consulted with a social worker regarding potential neglect at the group home, and the Student was examined by a doctor related to injuries potentially sustained at the group home and as a result of being isolated on December 13, 2018.
51. On December 24, 2018, the Parent made a public records request to the District for records related to incidents involving restraint or isolation and Student 1.
52. On January 17, 2019, the District emailed the Parent copies of isolation and restraint reports and Student 1's transfer IEP and October 2018 IEP, pursuant to the Parent's record request.
53. On January 22, 2019, the Parent requested that the District correct errors he identified on the November 19, November 29, and December 13, 2018 restraint/isolation reports.
54. On February 1, 2019, the District provided the Parent with additional records in response to his records request.
55. On February 5, 2019, the Parent requested that the District correct an error he identified on the November 6, 2018 restraint/isolation report. The Parent requested the report "be corrected to say 'Both,' instead of just 'Restraint'. The narrative includes: 'The door was closed from 11:38-11:45.' That is pretty clearly Isolation, in addition to the Restraint that is already listed."
56. On February 12, 2019, the District provided the Parent with "corrected" isolation and restraint reports pursuant to his request on January 22, 2019. The District declined the Parent's February 5, 2019 request that the report state "both" and stated the following: "With respect to your request of February 5, 2019, to amend the reference in the isolation report dated November 6, 2018, from 'Restraint' to 'Both', upon review of the description of the incident, the District agrees to amend this record by replacing the word 'Both' with 'Isolation.'"

57. On February 25 and March 8, 2019, the Parent requested that the District correct further errors or missing information he identified on restraint/isolation reports related to Student 1. The Parent further stated on February 25, that based on the behavior observation forms there were "12 other isolation room incidents which are documented on the [behavior observation form] records provided, but which were NOT reported into the district's Restraint/Isolation Report computer system." The Parent stated that the District should prepare restraint/isolation reports for these incidents and correct reporting sent to OSPI.
58. The Parent provided copies of District work orders for the ABLE classroom's isolation room. The works orders indicated the following:
- December 7, 2018: "Repair bottom of door on time out room in special needs room it is bent."
 - December 7, 2018: "Repair lock on time out room in special needs room it is broken."
 - December 13, 2018: "Time out room is not latching."
 - December 17, 2018: "Time Out Room Doors of [ABLE rooms] need padding installed. Please confirm the current status of the rooms, it is not clear if one or both rooms will require the retrofit."

Isolation and Restraint

59. The District, in its response, stated that "staff consistently use isolation only when they have a reasonable fear of imminent harm."⁸ The District acknowledged that the District's isolation and restraint reporting form previously did not contain all of the required components, but has since been revised.
60. In its response, the District provided examples of training and professional development provided to District staff in October 2014, 2015, 2016, and 2018. These trainings covered topics such as the restraint and isolation regulations, examples from previous special education citizen complaint decisions, and positive behavior and de-escalation techniques. The District also stated, that prior to the end of the 2018-2019 school year all special education staff would receive training regarding the appropriate use of restraint and isolation, proper reporting, and appropriate interventions to reduce the need for restraint and isolation. This training was, in part, order in conjunction with SECC 19-05 and in was, in part, training the District was already planning. The District's training plan includes the following:

⁸ The District response noted one exception with regard to the school at issue in special education citizen complaint (SECC) 19-05. SECC 19-05 was opened for investigation on January 22, 2019 on four issues, including whether the District used isolation and/or restraint consistent with the requirements of WAC 392-172A-02110 during the 2018-2019 school year. A decision in SECC 19-05 was issued on March 19, 2019 and found that the District improperly restrained and isolated the student; the District did not always create a restraint or isolation report; District did not review each incident with the parent, the student, or the staff involved; and, the District's report did not contain all of the required elements. The decision found that the District did provide the parent with verbal notification within 24 hours and a written report within 5 business days, although the written report was missing required elements. OSPI ordered the District to amend its restraint/isolation report, and to develop a District wide training plan and conduct training.

- District is beginning training for all ABE and behavior teachers and staff using “Life Space Crisis Intervention Training” (de-escalation and reintegration training) and “Crisis Prevention Institute⁹ Training.” The District is using a “train the trainers” model, and the trainers have been trained. The trainers will begin training other staff in May 2019.
- District has a training scheduled on May 9, 2019 for ABE and behavior program teachers with a focus on the reduction of the use of restraint and isolation and alternatives. Training will be provided by an OPSI special education program supervisor and will be provided to teachers from the four schools with ABE classrooms and the 23 schools with behavior programs. The focus will be on elementary school teachers, but all secondary teachers are invited to attend.
- As required by SECC 19-05, the District will be conducting in-person training at the high school identified in this complaint and the elementary school identified in SECC 19-05. The District will also be providing written guidance training to all of the schools in the District. The in-person and written trainings will address the restraint and isolation regulations, discussion of imminent likelihood of serious harm, proper follow-up and reporting procedures, and the District’s updated form.

61. Based on the District’s documentation and phone interview with the associate director of special education, the restraint and isolation reports are entered into a central District database by the teacher who was involved in the restraint or isolation. When entering information about a restraint or isolation incident into the District’s database staff are provided the following instructions, in part:

- Enter the student and click “report restraint”;
- Contact “Parent/Guardian **within 24 hours of the incident**”, review the information that has been entered, complete fields for parent/guardian contact;
- “Create/Send a Letter **postmarked within 5 business days of the incident**”; and,
- Finalize the report when complete.

(Emphasis in original).

The written notification that is sent home is generate by the database. The database also generates an email to the District special education administrators, notifying them that a restraint or isolation occurred.

The associate director stated, for the purposes of the requirement that a written report be sent to the District within two business days, once the restraint/isolation report is entered into the database it is considered “sent” to the District. Unlike other districts, the school staff do not print out and send a paper copy of the report to the District office.

62. Regarding the requirement to review an incident with involved staff, the parent, and the student, the associate director stated these debriefs do occur—verbally—therefore, there is not necessarily documentation of the debrief. Staff are expected to discuss the incident with a student’s parent either by phone or in person and discuss the incident, what occurred, and antecedent behavior consequence (ABC) information related to the incident. The associate

⁹ Crisis Prevention Institute (CPI) is a training organization that specializes in the safe management of disruptive and assaultive behavior.

director stated that it is often more challenging to review with students for several reasons, including: a student may be non-verbal or a student may go home after an incident and discussing the incident the following day would re-escalate the student. However, the associate director stated the expectation is that incidents are reviewed with students, with the specifics of the discussion depending on the specific needs of a student.

The associate director stated staff debrief the incident, why it occurred, and what could have been done differently. There is not a set, planned time the staff debriefs occur, as it often depends on the incident, the needs of the student, and the needs of the other students in the classroom. Therefore, the associate director stated the timing of the debrief may often be in the moment, and there often is not documentation of the discussion.

63. In regard to Student 1, the associate director acknowledged the incidents were not reviewed with the Parent, but instead staff were debriefing with the group home. The associate director stated he was there, in person, for at least one conversation with the group home manager.
64. As an example of the District's restraint and isolation statistics, during the 2017-2018 school year the following numbers were reported:
- Elementary School 1: 177 restraint incidents (19 students restrained); 262 isolation incidents (18 students isolated)
 - Elementary School 2: 352 restraint incidents (26 students restrained); 469 isolation incidents (24 students isolated)
 - Elementary School 3: 182 restraint incidents (19 students restrained); 225 isolation incidents (20 students isolated)
 - Middle School: 23 restraint incidents (11 students restrained); 14 isolation incidents (2 students isolated)
 - Student 1's High School: 27 restraint incidents (12 students restrained); 46 isolation incidents (12 students isolated)

One elementary school reported higher numbers of restraints and isolations during the 2017-2018 school year and many schools had fewer or zero incidents. As part of the investigation, OSPI reviewed the District's statistics and requested all of the District's isolation and restraint reporting for two randomly selected months (May and October 2018) at a sample of schools—the three elementary schools and middle school listed above.

Elementary School 1

65. In May 2018, school 1 had 40 reported incidents involving isolation and/or restraint and in October 2018 had 29 reported incidents involving isolation and/or restraint. Some of the incidents involved students who had Section 504 plans.
66. Upon reviewing the incident reports, the following patterns emerged:

Self-Calming: There were several examples of incidents where it appeared a student chose to go to the isolation room or "safety room" to self-calm or per a student's "safety plan." For example:

- A student "per his safety plan put himself in safety room until he was calm."
- A student "ran aggressively into safety room, yelling he felt unsafe. When he calmed, staff opened door."
- A student "put self in safety room several minutes after teacher reminded him he could go there" and after "room cleared of students."
- Teacher asked a student if "he needed the safety room. [The student] yelled that he did and went in on his own, closing the door. When he calmed and said he was ready teacher opened door."
- A student in isolation room for 3 minutes after he "went into safety room, closing the door himself. When he calmed and knocked a few minutes later teacher immediately opened door."

Imminent likelihood of serious harm:¹⁰ There were examples of incidents in which isolation and/or restraint were used when there appeared to be no imminent likelihood of serious harm or where, based on the report, an isolation appeared to last longer than was necessary based on the harm described. For example:

- A student was isolated for 41 minutes after he targeted other students, "escalating them and creating an unsafe environment."
- Two-person restraint and 22-minute isolation after a student "began targeting specific students...creating an unsafe classroom."
- 17-minute isolation after a student "threatened to run when teacher took him to bathroom, came back to classroom targeting, grabbed teacher's arm when she attempted to block him from opening window again. Would not comply with any directions, or be safe."
- 14-minute isolation after a student "created an unsafe situation...screaming at another student for several minutes, escalating several students in the room. Making verbal threats."
- 4-minute restraint and isolation after a student was "wandering room, non-compliant, targeting students verbally escalating student and causing student to leave room."

There were also examples of incidents where restraint or isolation may have been appropriate. For example:

- A 6-minute restraint and isolation after a student "repeated hitting staff and slapped staff in the face."
- A 1-minute restraint as a student "tried to kick peer in the groin and then kicked staff in the crotch. Throwing items from peer desks across room."
- A 2-minute restraint to prevent a student from "eloping...down the hallway."
- A 5-minute restraint and isolation after a student "punched a peer, kicked two other peers. Spitting at staff."

¹⁰ For all the schools reviewed, there was some challenge determining from the incident reports whether some of the restraints and isolations were appropriate. This was largely due to a lack of detailed information and the use of general or vague terms to describe student behavior. Examples have been provided for each school based on what could be determined from the reporting. This will be discussed further in the conclusion.

There were also incidents that involved students throwing chairs, furniture, pencils, "objects," and school supplies.

Continuous visual monitoring or capable of releasing self from isolation: There were isolation reports that indicated the isolation door was closed and reports that indicated the isolation door was open. It is unclear, based on the reports, whether staff were able to visually monitor the student if the door was closed.¹¹

Review with parent, student, and staff: Based on the incident reports, there is no indication the incidents were reviewed with the parent or student to discuss and address the precipitating behavior and appropriateness of the response. There is also no indication the incidents were reviewed with staff members who administered the isolation or restraint to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.

Inform building administrator: Based on the reports, the building administrator or administrator's designee appears to have been informed as often the author of the report or person contacting the parent is different than the staff person who administered the restraint or isolation.

Written report to District within two business days: Based on the incident reports, the incident reports were entered into the District's database the same day the incidents occurred. The written report contained the following information:

- Date and time of incident: Consistently included.
- Name, job title: Reports inconsistently included the job title.
- Description of activity that led to restraint or isolation: Consistently included.
- Type of restraint or isolation: Consistently included.
- Duration: Consistently included.
- Injury and medical care provided: Consistently included.
- Recommendations for changing resources available to the student and staff: "Field not available until 1/8/19."

Inform the parent with 24 hours: Based on the incident reports, the District consistently called and spoke with, called and left a message, or spoke with parents in person to verbally notify them of an incident within 24 hours. There were a few incident reports where the District notified group home staff instead of a parent.

Written notification to the parent within 5 business days: Based on the incident reports, the District sent the majority of the written notifications to parents within 5 business days. There were a few reports that indicated written notification was sent more than 5 business days later. Several of the incident reports from October 10, 2018 noted that there was a delay

¹¹ Based on the documentation, the isolation room in the ABLE classroom at the high school had a window in the door which would allow for visual monitoring. It is not clear whether the isolation rooms look the same at all schools in the District.

in reporting due to an unrelated staff emergency absence. The written notification sent to parents was a form letter that stated an incident occurred and the date/time. The written notification provided no other details about the incident.

67. Documentation in the complaint indicates that staff administering restraint or isolation were trained and certified by a qualified provider.

Elementary School 2

68. In May 2018, school 2 had 102 reported incidents involving isolation and/or restraint and in October 2018 had 56 reported incidents involving isolation and/or restraint. A number of the reports were incidents involving students with Section 504 plans, and one incident involved a general education student.

69. Upon reviewing the incident reports, the following patterns emerged:

Imminent likelihood of serious harm: There were examples of incidents in which isolation and/or restraint were used when there appeared to be no imminent likelihood of serious harm or where, based on the report, an isolation appeared to last longer than was necessary based on the harm described. For example:

- An hour and 29-minute restraint and isolation after a student "was repeatedly kicking staff."
- A 40-minute restraint and isolation because a student was "repeatedly kicking staff and attempting to destroy music materials."
- A 5-minute restraint and isolation because a student was "threatening other student, posturing."
- A 20-minute isolation after a student "flipped large table in the direction of others."
- An 11-minute restraint and isolation because a student was "repeatedly throwing items/materials at staff."
- A 14-minute isolation because a student was "hitting table, instigating others into arguments."
- A 13-minute isolation because a student was "antagonizing others, cursing and threatening teachers and staff."
- A 45-minute isolation because a student was "repeatedly spitting on staff."
- A 10-minute isolation because a student was "threatening others."
- A 28-minute isolation because a student "tipped desk [and was] bullying other students."
- A 23-minute isolation because a student "threw markers in the directions of others, posturing."
- 15-minute restraint and isolation after a student "broke and threw pencil hitting another student."
- A 7-minute isolation because a student "had been running around the classroom, not following directions, and disrupting other students."
- A 2-minute restraint because a student "would not leave the cafeteria, and as he was moved, he kept dragging his feet so a rear 2 person hold was used to escort into the classroom."

There were examples of restraints and isolations for students who threw glasses, chairs, "objects," books, pencil box, and markers; and where restraint or isolation may have been appropriate. For example:

- A 2-minute restraint as a student was "jumping on and off furniture and attempting to elope while outside."
- A 5-minute isolation because a student "flipped desk, overhand threw chair in the direction of other students."
- A 12-minute isolation because a student "tipped desk in the direction of other students, tipped multiple desks in the direction of teacher, threatening staff."
- An 11-minute restraint and isolation when a student "repeatedly punching staff with closed fists."
- A 3-minute restraint because a student "wrapped sweatshirt around neck, hitting and kicking at staff, threatening to kill self."
- A 5-minute restraint because a student was "trying to injure self, threatening to kill self."
- A 1-minute restraint because a student was "running around class, banging on cabinets, ripping papers, trying to throw things at teacher. Blocking student, he begins to kick, scratch, and hit the teacher repeatedly. Asked to take a break in safety room. Escort to safety room, door remained open."
- 1-minute restraint as a student "ran off school grounds."

Self-Calming: There were a few examples of incidents where it appears the student chose to go into the isolation room or "safe room," potentially as choice to self-calm. For example: Student "self-selected the safety room."

Continuous visual monitoring or capable of releasing self from isolation: There were isolation reports that indicted the isolation door was closed and reports that indicated the isolation door was open.

Review with parent, student, and staff: Based on the incident reports, there is no indication the incidents were reviewed with the parent or student to discuss and address the precipitating behavior and appropriateness of the response. There is also no indication the incidents were reviewed with staff members who administered the isolation or restraint to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.

Inform building administrator: Based on the incident reports, the building administrator or administrator's designee appears to have been informed.

Written report to District within two business days: Based on the incident reports, the incident report was entered into the District's data base the same day the incidents occurred. The written report contained the following information:

- Date and time of incident: Consistently included.
- Name and job title: Almost all the reports included the staff persons job title.
- Description of activity that led to restraint or isolation: Consistently included.
- Type of restraint or isolation: Consistently included.
- Duration: Consistently included.
- Injury and medical care provided: Consistently included.
- Recommendations for changing resources available to the student and staff: "Field not available until 1/8/19."

Inform the parent with 24 hours: Based on the incident reports, the District consistently called and spoke with, called and left a message, or spoke with parents in person to verbally notify them of an incident within 24 hours.

Written notification to the parent within 5 business days: Based on the incident reports, the District sent the majority of the written notifications (form letter) to parents within 5 business days.

70. Documentation in the complaint indicates that staff administering restraint or isolation were trained and certified by a qualified provider.

Elementary School 3

71. In May 2018, school 3 had 53 reported incidents involving isolation and/or restraint and in October 2018 had 75 reported incidents involving isolation and/or restraint.

72. Upon reviewing the incident reports, the following patterns emerged:

Imminent likelihood of serious harm: There were examples of incidents in which isolation and/or restraint were used when there appeared to be no imminent likelihood of serious harm or where, based on the report, an isolation appeared to last longer than was necessary based on the harm described. For example:

- A restraint and 32-minute isolation after a student "tried to stab teacher with a pencil."
- A two-person escort and 45-minute isolation after a student "hit and kicked teacher."
- A two-person escort and 30-minute isolation after a student "ran out of building off campus, kicking staff."
- A three-person escort and a 30-minute isolation after a student "kicked teacher in leg, picked up chair to throw."
- A three-person restraint and 50-minute isolation after a student "threw shoe at another student's head."
- A three-person escort and 56-minute isolation after a student "hit, kicked, pinched, stomped on feet of staff."
- A restraint and hour and 16-minute isolation after a student "was throwing school tools at teachers and running around classroom."
- A 22-minute isolation after a student "entered safe room, then started pounding on door and screaming. Staff closed door."
- A restraint and 25-minute isolation after a student was "running around the room, jumping from table top to table top, over chair."
- A restraint and 44-minute isolation after a student "pushed and kicked teacher."
- A restraint and 28-minute isolation after the student "came up behind teacher and hit teacher."

There were examples of restraints and isolations for students who threw school supplies, such as a binder, books, markers, pencils, food, and a pencil sharpener; and restraints and isolations for students who kicked teachers, kicked "stuff around classroom," hit staff, and pushed staff.

There were also examples of incidents where students threw larger objects such as chairs, desks, and tables; and where restraint or isolation may have been appropriate. For example:

- A restraint and isolation after a student "threw a metal chair, striking staff."
- A 17-minute isolation after a student "attempted to push staff away from exit, then punched the wall and broke drywall."
- A three-person restraint and 44-minute isolation after student "began cussing, biting staff, and slammed teacher hand in door...urinated and defecated, smearing the walls, window and floor."
- A 15-minute two-person escort and isolation after a student "was standing on chairs, kicking walls, tried to elope from classroom, shoved and kicked teacher."
- A 6-minute restraint when a student "pushed staff, kicked staff, came at teacher punching and hitting."
- A 5-minute restraint after a student was "running around school, hitting and kicking staff."
- A restraint and 28-isolation after a student began "tipping over chairs, hitting self in the head with chair forcefully, leaving red marks."
- A restraint and 12-minute isolation after the student "eloped from classroom, pounding hole in the wall with hammer from fire extinguisher."

Self-Calming: There are examples of incidents where it appears the student chose to go into the isolation room or "safe room," potentially as choice to self-calm. For example:

- A student "entered safe room and closed the door" after the student "threw a container of pencils and shoved body into teacher."
- A student "placed self in safe room refused to let staff keep open the door" after the student "refused to follow direction."
- A student "ran into the safe room and closed the door" after the student "attempted to leave classroom and shoved staff backwards causing injury."
- A student "rolling on floor, yelling...slithered over to safe room and entered. He eventually closed the door after 10 minutes."

Continuous visual monitoring or capable of releasing self from isolation: There were isolation reports that indicted the isolation door was closed and reports that indicated the isolation door was open.

Review with parent, student, and staff: Based on the incident reports, there is no indication the incidents were reviewed with the parent or student to discuss and address the precipitating behavior and appropriateness of the response. There is also no indication the incidents were reviewed with staff members who administered the isolation or restraint to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.

Inform building administrator: Based on the incident reports, the building administrator or administrator's designee appears to have been informed.

Written report to District within two business days: Based on the incident reports, the incident report was entered into the District's data base the same day the incidents occurred. The written report contained the following information:

- Date and time of incident: Consistently included.

- Name and job title: Reports inconsistently included the staff persons job title.
- Description of activity that led to restraint or isolation: Consistently included.
- Type of restraint or isolation: Consistently included.
- Duration: Consistently included.
- Injury and medical care provided: Consistently included.¹²
- Recommendations for changing resources available to the student and staff: "Field not available until 1/8/19."

Inform the parent with 24 hours: Based on the incident reports, the District consistently called and spoke with, called and left a message, or spoke with parents in person to verbally notify them of an incident within 24 hours. Some incident reports noted that the notification calls were made to a "case manager."

Written notification to the parent within 5 business days: Based on the incident reports, the District sent the majority of the written notifications (form letter) to parents within 5 business days. There were a few reports that indicated written notification was sent more than 5 business days later.

73. Documentation in the complaint indicates that staff administering restraint or isolation were trained and certified by a qualified provider.

Middle School

74. In May 2018, the middle school had 15 reported incidents involving isolation and/or restraint and in October 2018 had 13 reported incidents involving isolation and/or restraint.
75. Upon reviewing the incident reports, the following patterns emerged:

Imminent likelihood of serious harm: There were examples of incidents in which isolation and/or restraint were used when there appeared to be no imminent likelihood of serious harm or where, based on the isolation report, the isolation appeared to last longer than was necessary based on the harm described. For example:

- A 4-minute restraint when a student "became escalated when working on his writing assignment. He physically aggressed towards staff and could not be redirected."
- A 10-minute restraint and isolation when a student was "disrespectful to one of the paras. When asked to come and talk about it, he became aggressive. He was unresponsive to redirection."
- A 4-minute restraint and 13-minute isolation after a student had a "behavioral outburst...tried to run away from the class. I stepped in front of [the student] and he punched me. [Staff] and I took [the student] to the floor using Right Response techniques and restrained [the student] from 1430-1434."
- A 17-minute isolation after a student "convinced another student that they 'didn't need to listen to staff' and the [sic] ran away from class. The SRO escorted them back to class, where [the student] went through my desk, and verbally provoked staff and students."

¹² There was one report for school 3 that indicated a staff person was injured, but does not describe the injury or whether medical care was provided.

- A 10-minute restraint and isolation after a student “put his lunch down in the classroom and ran away from class. [Staff] and I tracked him down and physically escorted him into the timeout room.”
- A restraint and 38-minute isolation after a student “ran away from the rest of the class. [Staff] tracked him down and put him in timeout in accordance with [the Student’s] BIP.”
- A 3-minute isolation after a student was redirected and “threw the iPad, his daily schedule, and other items. [The student] was verbally redirected into the timeout room to settle down and he started kicking people.”
- A 7-minute isolation after a student “became aggressive and was unresponsive to redirect. He was moved to isolation to calm.”

And, there were examples where restraint or isolation may have been appropriate:

- An 8-minute restraint when a student “became escalated when asked to play kickball during PE. He began headbutting, kicking, and scratching at staff.”
- A 2-minute restraint after a student “eloped across the street into a neighbors yard and was unresponsive to redirect. For safety reasons it was necessary to escort him back to campus.”
- A 6-minute isolation after staff “prompted [a Student] again to take a break in an appropriate area he began hitting, biting, scratching, and kicking at staff. Staff then escorted [the Student] back to the safety room for safety purposes. After 6 minutes the door was opened and contingencies were reset.”

Continuous visual monitoring or capable of releasing self from isolation: There were isolation reports that indicted the isolation door was closed and reports that indicated the isolation door was open.

Review with parent, student, and staff: Based on the incident reports, there is no indication the incidents were reviewed with the parent or student to discuss and address the precipitating behavior and appropriateness of the response. There is also no indication the incidents were reviewed with staff members who administered the isolation or restraint to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.

Inform building administrator: Based on the incident reports, the building administrator or administrator’s designee appears to have been informed.

Written report to District within two business days: Based on the incident reports, the incident report was entered into the District’s data base the same day the incidents occurred.

The written report contained the following information:

- Date and time of incident: Consistently included.
- Name and job title: Reports inconsistently included the staff persons job title.
- Description of activity that led to restraint or isolation: Consistently included.
- Type of restraint or isolation: Consistently included.
- Duration: Consistently included.
- Injury and medical care provided: Consistently included.
- Recommendations for changing resources available to the student and staff: “Field not available until 1/8/19.”

Inform the parent with 24 hours: Based on the incident reports, the District consistently called and spoke with, called and left a message, or spoke with parents in person to verbally notify them of an incident within 24 hours. Some incident reports noted that the notification calls were made to a “program manager.”

Written notification to the parent within 5 business days: Based on the incident reports, the District sent the majority of the written notifications (form letter) to parents within 5 business days. There were a few reports that indicated written notification was sent more than 5 business days later.

76. The restraint and isolation reports from the middle school indicate that staff administering restraint and isolation had receive “Right Response” training.

CONCLUSIONS

Issue 1: Isolation and Restraint – The Parent alleged the District improperly used isolation and restraint, in that the District: used isolation when there was no imminent likelihood of serious harm; because the District administered isolation in a manner that was harmful to students; and, because the District restrained or isolated Student 1 without the Parent’s written approval. The Parent also alleged that the District failed to follow the required follow-up and reporting procedures.

Isolation means restricting a student alone within a room or enclosure, from which the student may not leave. Restraint is the use of physical intervention or force used to control a student or restrict the student’s freedom of movement.

Appropriate Use of Isolation and Restraint

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

After reviewing isolation/restraint reports for several other schools in the District, OSPI notes several points of concern. Here, it appears the District is overusing isolation—both using isolation when there is no serious likelihood of harm and isolating students longer than necessary. All of the schools reviewed had incident reports where the description of what occurred did not support that there was an imminent likelihood of serious harm, for example:

- Vague descriptions of harm: targeting students, creating an unsafe environment, not being safe, being escalated, wandering, or posturing;

- Not a serious harm: spitting, destroying materials, hitting a table, instigating an argument, screaming, or non-compliance; and,
- Throwing items, materials, and smaller school supplies.

In many of the incident reports, it was difficult to tell whether the restraint or isolation was appropriate because the incident description was so vague or lacking in detail. All of the schools reviewed also had incident reports where the description of what occurred indicated the isolation lasted much longer than the described imminent likelihood of serious harm:

- An hour and 29 minutes isolation after repeatedly kicking staff;
- Restraints and isolations from 34 to 45 minutes for spitting;
- A 20-minute isolation for flipping a table;
- A 32-minutes isolation for trying to stab a teacher with a pencil;
- A 50-minutes isolation for throwing a shoe at another student's head; and,
- An hour and 16-minute isolation for "throwing school tools" and "running around classroom."

In these examples, the imminent likelihood of serious harm—as described—had likely passed as soon as the student was restrained and stopped kicking or spitting, or immediately after the table was flipped, immediately after the pencil was taken away from the student, etc. These restraints or isolations may have been appropriate initially, but lasted far too long. *The time to end isolation and restraint is as soon as the likelihood of serious harm has dissipated; this is not equivalent to waiting until the student has calmed.*

There were also examples where it appears the District's use of restraint and isolation was appropriate. These incident reports generally had a clear description of a serious harm and the duration of the restraint or isolation was reasonable—meaning, the restraint or isolation ended when the harm ended, even if a student was not fully calm. For example:

- A 2-minute restraint to escort a student back to campus after he eloped;
- A restraint after a student threw a metal chair, striking staff;
- Several 1-minutes restraints in response to attempts to elope or kicking, scratching, hitting; and,
- A 3-minute restraint when a student began to self-harm.

OSPI acknowledges that it is challenging to judge the imminent likelihood of serious harm from a restraint/isolation report—not having been present for the actual incidents. OSPI understands that during many of these incidents staff are required to make a challenging judgment call for the safety of the student, other students, and staff. However, overall, the documentation in this complaint indicates the District is overutilizing isolation—either using isolation when there is no imminent likelihood of serious harm or not ending an isolation when the harm has dissipated. OSPI finds a violation. The District is currently conducting trainings on restraint and isolation regulations, imminent likelihood of serious harm, follow-up/reporting procedures, and strategies to reduce the use of restraint and isolation per a training plan from a previous complaint and other trainings planned. All schools in the District will receive training—all schools will receive written training at minimum and teachers and staff in the District's ABLE classrooms and behavior programs will received additional in person training. Thus, while OSPI would normally order training for this and subsequent violations, the existing trainings address the scope of the violations identified in this complaint. OSPI will order no further training.

Imminent Likelihood of Serious Harm & Harm to Student 1: In the case of Student 1, the District maintained that the Student “had a well-documented history of aggression toward self and others” and that the District “does not believe there are any incidents where isolation was initiated that did not result from an imminent likelihood of serious harm.” The District also stated that the majority of the incidents involving Student 1 occurred when Student 1 chose to enter the isolation room and then escalated. Student 1’s special education documentation does reflect her tendency to exhibit self-injurious behavior and aggression when frustrated. Based on the isolation reports, it does appear that there was some likelihood of serious harm in many of the incidents as the Student is described as becoming agitated and attacking a paraeducator, punching staff, kicking staff, or the Student is self-harming by punching herself and hitting her head. Further, several of these isolations were limited in duration.

However, some of the isolations lasted longer than necessary even if they were initially appropriate (e.g., isolations on: September 19 lasting 29 minutes; November 27 lasting 21 minutes; December 5 lasting an hour and 20 minutes; December 7 lasting 42 minutes and ended when the Student “was calm;” and December 10, 2018 lasting 17 minutes and was again ended only when the Student was calm). OSPI reminds the District that the time to end isolation and restraint is as soon as the likelihood of serious harm has dissipated; this is not equivalent to waiting until a student has calmed.

Isolation and restraint must be closely monitored to prevent harm to the student. The isolation enclosure shall permit continuous visual monitoring of the student from the outside of the enclosure as a student must be continuously monitored or the student must be able to release him or herself from the enclosure. Here, tragically, there were several isolation incidents where the Student was injured while in isolation and had to be taken to the hospital for evaluation. On June 14, November 28, and December 13, 2018 the Student was isolated and during isolation she slammed/hit her head/face on the window and metal isolation room door. The Student was taken to the hospital on each occasion to be examined for head trauma. Additionally, after the isolation on December 5, 2018, paramedics examined the Student at school after she hit her face against the metal door and glass and spit blood on the window. On this occasion, the Student was not taken to the hospital. Staff did appear to be monitoring the Student while in the isolation room. However, the Student was injured because she was escalated and because isolation may have not been the appropriate behavior intervention for this Student. The Parent stated, “to the extent that restraint or isolation might have been warranted under the statute (which I also dispute), had restraint been used instead, that would have prevented the injuries caused by isolation.” While OSPI does not generally encourage the use of restraint or isolation, OSPI acknowledges the Parent has a point—if restraint *or some other form of behavior intervention* had been used the Student may not have been injured or needed to go to the hospital multiple times.

Further, OSPI agrees with the Parent that after the first time an isolation caused the Student to hit her head hard enough against the isolation room door and window to necessitate a hospital visit, the District should have seriously considered whether isolation was appropriate in the future. OSPI acknowledges that this situation is complicated by the fact that it does appear the Student would

voluntarily enter the isolation room to calm down and then become escalated while already in the room. However, there are other options the District could have explored, including: a different location for the Student to calm down, other positive behavior interventions, conducting a functional behavioral assessment, updating the Students BIP, holding an IEP team meeting, etc. Further, OSPI shares the Parent's concerns that the District did not add padding to the isolation room door until December 17, 2018; padding was warranted after the June 14, 2018 incident.

Overall, OSPI finds the District in violation related to isolations involving Student 1. There were instances when isolation was inappropriate because isolation lasted longer than the imminent likelihood of serious harm. The District also failed to address the Student's behaviors in other positive ways that may have avoided the need for isolation and avoided these tragic situations in which the Student was taken to the hospital multiple times as the result of isolation. As the Student is no longer enrolled in the District, no student specific corrective actions are required. As the District is already addressing these concerns at a District level through training, no further District corrective actions are required.

Self-Calming & Unreported Incidents: Isolation requires that a student is restricted alone within a room or enclosure, from which the student may not leave. Isolation does not include a student's voluntary use of a quiet space for self-calming, or a temporary removal of a student from the instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. For several of the schools reviewed, OSPI believes the District is overreporting because it is reporting incidents that appear to be voluntary use of the "isolation room" for self-calming or a break. For example:

- Students using the "safety room" per their "safety plan" to calm down;
- Students running into the room until calm; and,
- Students who "put self" into safety room.

In some of these instances, it appears teachers reminded students that the room was a choice, but that does not necessarily mean a student was isolated. OSPI reminds the District that a student's voluntary use of a quiet space for self-calming is not an isolation and does not need to be reported as such. Although, OSPI recommends the District make clear on other reporting forms (e.g., behavior observation forms) when a student is voluntarily using the isolation space to self-calm.

Conversely, it is possible that the District is also failing to report some incidents. The Parent provided documentation from Student 1's behavior observation forms that indicate a potential unreported restraint or isolation on the following dates:

- May 22, 2018: "3 person escort to safety room-door closed" and isolation for some period of time; and,
- June 1, 2018: "safety room w/ door locked."

However, some of the behavior observation forms were unclear as to whether the Student made a voluntary choice to use the room or if an isolation occurred:

- October 29, 2018: "went to quiet room...ask for break...cry...got time out;"

- November 6, 2018: form included another incident of isolation that was not reported in addition to the reported incident, according to the Parent;
- November 15, 2018: “went into safety room when asked at 7:50...self calming at 8:18” after being escalated, and later “went into safety room when asked;”
- November 16, 2018: form included another incident of isolation that was not reported in addition to the reported incident, according to the Parent; and,
- November 28, 2019: form included another incident of isolation that was not reported in addition to the reported incident, according to the Parent.

The behavior observation forms also included notes the Parent stated represented an unreported isolation, but OSPI finds that there is no evidence these incidents were isolations:

- May 22, 2018: form indicated Student 1 used safety room by choice;
- May 30, 2018: Student offered choices—“book, blue chair, safety room, cartoon;”
- November 13, 2018: “went into safety room voluntary at 10:05...self calming @ 10:19...10:40 crying, pounding with iPad;” and,
- November 19, 2018: “took a break in quiet room from 10:05 –.”

There is a lack of clarity around other incidents—for example, what does time out mean and does that represent an isolation? Does a student going into the safety room when asked represent a self-calming break or an isolation that did not necessitate a restraint to get the student to the isolation room? However, there are some incidents that OSPI believes an isolation or restraint occurred and for which the District failed to prepare a restraint/isolation report for Student 1. This is a violation of state regulations. The District will be required to review the above listed incidents, determine which were isolations, and prepare the proper written documentation.

Emergency Response Protocols: State law allows districts to restrain or isolate students in emergency situations when there is an imminent likelihood of serious harm. A district does not need a parent’s written approval prior to restrain or isolate a student in an emergency situation. However, if a parent and a 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. Emergency response protocols, if developed, must be incorporated into a student’s IEP. Emergency response protocols shall not replace the systematic use of a behavioral intervention plan. Emergency response protocols specify, among other things, the emergency conditions under which isolation or restraint may be used; the type of isolation or restraint; and the staff members or contracted positions permitted to use isolation or restraint with the student, updated annually.

The Parent alleged the District restrained or isolated Student 1 without the Parent’s written approval. In this case, Student 1’s October 2017 IEP noted the Student “displays behavior which requires a Behavior Intervention Plan and Emergency Response Protocol”; however, she does not appear to have had an emergency response protocol in place. However, the absence of an emergency response protocol does not prevent the District from using restraint or isolation. As discussed above, the District improperly used isolation with Student 1, but not because the Student did not have an emergency response protocol. OSPI finds no violation with respect to the District using isolation in the absence of the Parent’s written permission, because this permission

is not required in emergency situations. Because the Student's IEP indicated she needed an emergency response protocol the IEP should have, at minimum, discussed this; however, because the Student is no longer enrolled in the District no further action is required to correct the inconsistent IEP.

Follow-Up Procedures

Review the Incident with the Parent & Student: After an incident of restraint or isolation, a district is required to review the incident with the student and the parent/guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response.

The District's restraint/isolation reports do not reflect whether an incident was reviewed with a parent or student. But, the District stated these debriefs do occur, but because they are conversations there is not necessarily documentation. Staff are expected to discuss the incident with a student's parent either by phone or in person and discuss the incident, what occurred, and antecedent behavior consequence (ABC) information related to the incident. The District's associate director of special education stated that it is often more challenging to review with students for several reasons, including: a student may be non-verbal, or a student may go home after an incident and discussing the incident the following day would re-escalate the student. However, the associate director stated the expectation is that incidents are reviewed with students, with the specifics of the discussion depending on the specific needs of a student.

The Parent stated that none of the incidents involving Student 1 were reviewed with him or the Student. The District stated that the incidents were reviewed with the group home staff and the District's associate director of special education stated he was personally there for at least one of these conversations. The documentation in this complaint indicates there was a misunderstanding on the District's behalf regarding who was the Student's guardian. According to the District, for most—if not all—students living in the group home the group home manager served as the student's guardian for educational purposes. The District believed this was true for Student 1 and therefore reviewed incidents with the group home staff. This appears to have been a reasonable misunderstanding—although, OSPI encourages the District to ensure that for all similarly situated students living in group homes the District is clear on guardianship. However, despite the initial misunderstanding, after late September 2018 when the District was aware that the Parent was the guardian, there is no evidence the District consistently reviewed incidents with the Parent.

OSPI finds that for the most part, with the exception of Student 1, it is likely the District is reviewing incidents of restraint or isolation with parents. It is also not clear the District is consistently reviewing the incident—in some way to account for a student's unique needs and disability—with students. Therefore, OSPI finds the District in violation of this requirement. The District will be required to amend its restraint/isolation report database to include fields for staff to note when the review with parent and student was conducted. District training is already covering follow-up and reporting requirements, thus no further training will be ordered.

Review the Incident with Involved Staff: After an incident of restraint or isolation, a district is required to review the incident with the staff member(s) who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. The District's restraint/isolation reports do not reflect whether an incident was reviewed with the involved staff. The associate director stated staff debrief the incident, why it occurred, and what could have been done differently. There is not a set, planned time the staff debriefs occur, as it often depends on the incident, the needs of the student, and the needs of the other students in the classroom. Therefore, the associate director stated the timing of the debrief may often be in the moment, and there often is not necessarily documentation of the discussion.

The documentation in this complaint includes some email and text communications from staff working with Student 1 discussing scheduling time to review incidents or hold a "critical debrief" on September 19, 2018 and November 28, 2018. While this documentation is limited, it is likely that staff were reviewing incidents after they occurred. OSPI finds no violation with respect to this requirement. However, OSPI strongly recommends that the District amend its restraint/isolation report database to include fields for staff to note when the review with staff was conducted.

Reporting Procedures

Inform Administrator: After a restraint or isolation incident, the staff involved must inform the building administrator (or administrator's designee) as soon as possible. All the documentation in the complaint indicates staff informed their building administrator or designee, as often the author of the restraint/isolation report or the person contacting the parent was a different person than the staff who administered the restraint or isolation. OSPI finds no violation.

Written Report to District: Within 2 business days, a written report must be submitted to the District. The written report must include, at a minimum: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation used, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

After an incident of restraint or isolation, District staff enter a restraint or isolation report into a centralized District database. The associate director stated, for the purposes of the requirement that a written report be sent to the District within two business days, once the restraint/isolation report is entered into the database it is considered "sent" to the District. Unlike other districts, the school staff do not print out and send a paper copy of the report to the District office.

The Parent argued, in his complaint and documentation, that many reports were not "finalized" until much later based on emails generated by the reporting database. However, this appears to be a misunderstanding of how the database works. While some reports may have been "finalized" at a later date, the documentation indicates that reports were entered within 2 business days of

incidents. OSPI finds that because the database is a central District database, accessible by District administrators as soon as report is entered, the District met the requirement that reports were “sent” within 2 business days.

After a review of restraint/isolation incidents reports from several schools, OSPI finds that the District is consistently including the date and time of incident, name of involved staff, description of activity that led to the restraint or isolation, type of restraint or isolation, duration, and injury/medical care. The District is not consistently including the staff persons title and the District did not start including the recommendations for change requirement until January 8, 2019. While OSPI finds the District in violation of the requirement that the written report include the above listed elements, the District has already revised its report to include all required fields and will be providing training on reporting procedures per the corrective actions in a previous complaint. No further corrective actions are warranted.

Verbal Notification of Parent: A district must make a reasonable effort to verbally notify the parent within 24 hours of a restraint or isolation. In reviewing restraint/isolation reports from several schools, it appears the District was consistently speaking with or making a reasonable effort to verbally inform parents that a restraint or isolation occurred. Some reports indicated the District left a parent a voicemail and some reports indicated a guardian, other than a parent, was notified such as group home staff or a case manager.

In the case of Student 1, the Parent alleged he was not notified when Student 1 was isolated. As discussed above, the documentation in this complaint indicates there was a misunderstanding on the District’s behalf regarding the Student’s guardian. The District believed the group home was Student 1’s guardian and therefore notified group home staff after a restraint or isolation occurred. Based on the documentation, in late September 2018 the Parent notified the District that he was Student 1’s guardian and requested that he be informed of any incidents of isolation or restraint. However, based on the restraint/isolation reports this did not occur. Incident reports from November 6, 16, 21, 27, and 28, 2018 and December 5, 7, and 10, 2018 indicate a group home staff person was notified by phone the day of the incident, but nothing indicates the Parent was verbally notified. Following the isolation on September 19 the assistant principal called and notified the Parent of the incident the following day and after the isolation on December 13 the Parent spoke with the special education teacher while Student 1 was at the hospital.

OSPI finds that for almost all students after almost all incidents, the District is properly notifying or making reasonable efforts to notify the parent following the use of restraint or isolation. However, for Student 1 the District failed to meet this requirement. The District was initially notifying the group home staff; however, after the Parent requested that he be notified there were eight isolations where the Parent was not verbally notified—this represents a violation of the IDEA and state regulations. As Student 1 no longer attends school in the District, no student specific corrective actions are required. As this violation does not appear to be systemic and the District is already undergoing training related to a previous complaint, no further corrective actions are required.

Written Report to Parent: Within 5 business days, written notification must be sent to the Parent. OSPI has found that the “written notification” to parents is the same as the “written report” sent to the District—meaning, the written notification to the parent must include: date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation; duration; whether the student or staff was physically injured during the incident, any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff.

In reviewing restraint/isolation reports from several schools, the District sent written notification to parents within 5 business days for a majority of incidents. However, there were several incidents from several schools where written notification was sent more than 5 business days later. Further, the documentation in this complaint included a sample of the written notification sent to parents, which was a form template letter that stated: “this letter serves as written follow up to the verbal notification you received on [date] regarding the use of isolation and/or restraint which occurred on [date] at [time]. *This is not notification of another incident.*” The written notification to parents did not include the name and job title of the staff who administered the restraint or isolation, a description of the activity, the type of restraint or isolation, the duration, information about injury, or recommendations for change. The District’s written notification to parents is insufficient and does not meet the requirements set out in RCW 28A.600.485.

Further, as discussed above, for Student 1 the District was initially sending the written notification to the group home. Beginning after the November 6, 2018 isolation of Student 1, the special education teacher started emailing the Parent after each incident of isolation. The emails from the special education teacher included the same narrative found in the District’s restraint/isolation report. The emails did not include the other required elements of written notification and therefore OSPI finds these emails do not count as the required written notification to a parent. Beginning on November 27, 2018, the written notification letters included as documentation in this complaint indicated they were also sent to the Parent. As discussed, these letters were missing required elements.

Here, based on the documentation in the complaint, OSPI finds that the District was not consistently sending written notification to parents within 5 business days and the District’s written notification to parents did not contain all the required elements. OSPI finds the District in violation. The District will be required to update the letter template it uses to send written notification to parents after an incident of restraint or isolation. The District is already undergoing training; thus, no further training will be required.

ISSUE TWO

2. Did the District improperly dismiss Students eligible for special education at the identified high school’s Autism Behavior Learning Environment (ABLE) and Designed Instruction (DI) classrooms prior to the end of the school day?

FINDINGS OF FACT

1. The District high school's day began at 8:00 am and went until 2:30 pm. The District's "student routing info sped" document indicated that students were dropped off at the high school at 7:40 am and were picked up between 2:30 and 2:35 pm.
2. The Parent, in his complaint, stated that students in the high school's Autism Behavior Learning Environment (ABLE) and Designed Instruction (DI)¹³ classes are dismissed from class five minutes early. According to the Parent, this is because the high school "does not have enough loading spaces to load all of the school buses at the same time" and so "the special education buses can leave the school before the buses for general education students arrive in the loading zone."
3. Upon review of the IEPs of several randomly selected students in high school's ABLE and DI classes, a few patterns emerged:
 - Most students had either specially designed instruction in behavior/social skills or adaptive/life skills, or both;
 - Not all students received special transportation;
 - Many of the students required 1:1 paraeducator support;
 - Several of the students had challenges with mobility or used wheelchairs;
 - One student had a transition goal related to "bus mobility training"; and,
 - All of the students' schedules had classes beginning at 8:00 am and ending at 2:30 pm.
4. The District stated that students in the high school's ABLE and DI classes arrive at school 20 minutes prior to the start of the regular school day, and leave their classroom approximately 5 minutes prior to the end of the regular school day. The District stated that buses do not leave the school campus prior to the end of the school day for these students.

The District stated students leave the classroom early to "improve the students' ability to navigate the building and improve student safety by allowing the students to transition within the environment with a smaller number of students...the transition time improves the students' ability to navigate their environment, while allowing teaching staff to provide instruction regarding transitions and other adaptive skills."

In a phone interview with the associate director, he stated after students arrive at 7:40 am they get and eat breakfast either in the cafeteria or the classroom. While he acknowledged that meal time does not count as part of the instructional day, the associate director stated that for students in the ABLE and DI classrooms they do work on social skills, appropriate interactions, and adaptive/mobility skills related to eating during this time. As soon as a student is done eating, often before 8:00 am, they begin instruction for the day in order to keep the students engaged. The instruction provided depends on the student and the day.

¹³ The District's DI classroom is generally made up of students with intellectual disabilities and/or autism. These students generally have a higher need for structure, are 5-6 years behind peers academically, and have lower behavior needs.

5. In his reply, the Parent stated the District's response was "misleading" because all buses arrived at the high school 20 minutes prior to the start of school so that all students can get and eat breakfast. The Parent provided Student 1's "transaction history report" for meals, which indicated she generally got her breakfast between 7:42 am and 7:52 am.

Further, the Parent provided GPS records from August 30, 2018 through October 18, 2018, which indicated Student 1's bus route left prior to 2:30 on 16 days. The Parent noted on one occasion that the bus left at 2:23 pm, "nearly seven minutes before closing bell...[which] would support a much greater likelihood that special education students are being dismissed at least 10 minutes (or more) before the 2:30 pm closing bell, instead of just five minutes early." The GPS records also indicated that on many days the bus left after 2:30 pm.

6. The documents submitted by the Parent regarding the bus GPS included emails from the District's associate director of special education and a transportation specialist. The transportation specialist wrote, "I have already addressed the timing issue with [bus company's] asst manager...and she will address it with the driver."

CONCLUSION

Issue 2: Early Dismissal – The complainant alleged that the District dismissed students in the Autism Behavior Learning Environment (ABLE) and Designed Instruction (DI) approximately five minutes prior to the end of the school day. According to the Parent, this is because the high school does not have enough space to load all of the buses at the same time therefore the special education busses leave first, so the general education busses can load. Students who receive special education services are entitled to participate in the district's educational programs and services to the same extent as their peers who do not have disabilities. Any decision to limit or restrict access and participation must be made by the individualized education program (IEP) team, and be based on a student's unique, disability-related needs.

The District stated that students in the ABLE and DI classes were dismissed five minutes prior to the end of the school day, but that students continued to receive special education services during this time because the students' needs for services and supports extend from shortly before "dismissal" from the classroom to boarding the bus. The District stated during this time students work on skills related to mobility, transitions, navigating their environment, and other adaptive skills. OSPI notes, of the randomly selected IEPs all of the students either required specially designed instruction in behavior/social skills or adaptive/life skills, or both. Further, many of the students required 1:1 paraeducator support or had mobility challenges that would necessitate additional time navigating the hallways.

Also, according to the District, students in the ABLE and DI classrooms arrive at school at 7:40 am, obtain and eat breakfast, and then begin instruction—often before 8:00 am. The District stated while meals are not counted as part of the instructional day, these students work on social skills, appropriate interactions, and adaptive/mobility skills related to eating during this time. The Parent

stated this was misleading because all students arrive at 7:40 am; however, OSPI saw nothing to indicate that general education students began instruction prior to 8:00 am, unlike students in the ABE and DI classrooms who begin instruction immediately after finishing breakfast.

While the instruction may have stopped in the classroom, the instruction and support by staff continued in the school hallway and other locations until students boarded the bus. While it is concerning that on some occasions a bus route left prior to 2:30 pm, the District has addressed this concern with the bus company. Additionally, it is likely that any dates students left several minutes before 2:30 were balanced by dates students began instruction prior to 8:00 am. The District is reminded that students eligible for special education should not be dismissed early for convenience or logistics (e.g., not enough room in the bus loading zone). Here, based on the documentation that services often began prior to 8:00 am and services continued to be provided during the time between dismissal from the classroom and bus loading, the District substantiated that it implemented the students' IEPs and did not improperly dismiss students when students left the classroom a few minutes early. OSPI finds no violation.

ISSUES THREE-SIX

3. Did the District follow procedures for including the District's procedures for notifying a parent regarding the use or isolation or restraint as required by RCW 28A.155.210 in Student 1's individualized education program (IEP), consistent with WAC 392-172A-03090(1)(m)?
4. Did the District follow procedures for responding to the Parent's safety concerns following the November 16, 2018 incident on the bus?
5. Did the District properly amend Student 1's October 2018 IEP to include a provision related to transportation?
6. Did the District follow procedures for implementing Student 1's October 2018 IEP, specifically with respect to Student 1's access to the general education setting?

FINDINGS OF FACT

Background

1. Student 1 is eligible for special education services under the category autism. Her most recent evaluation occurred in October 2017 in another district in Washington. The Student's evaluation report noted she is a non-verbal communicator and the health and developmental history noted Student 1 "exhibits self-injurious behavior, such as slapping herself in the face or biting her hand, especially when she gets frustrated and has difficulty communicating. The report stated that she continued to qualify for specially designed instruction in behavior, adaptive, math, reading, writing, and communication.
2. In October 2017, the other district also conducted a functional behavioral assessment (FBA), which described target behaviors, prior interventions, settings, and recommendations for the IEP team.

2017-2018 School Year

3. On May 15, 2018, Student 1 transferred to the District.
4. On May 21, 2018 the District held a transfer review meeting. The Student transferred with an IEP from her previous school district that was developed on October 26, 2017. The District accepted Student 1's October 2017 IEP.

The October 2017 IEP stated the Student participates in the general education setting during electives (P.E. and horticulture), lunch, assemblies, and other school wide activities, and that Student 1's "special education classroom has many general education peers that come in throughout the day." The October 2017 IEP included annual goals in the areas of reading, math, written language, adaptive, behavior, and communication, and several accommodations and a modification. The IEP stated the Student received special transportation, which included "wear safety vest on school bus to and from school." The IEP provided the following specially designed instruction in the special education setting from October 27, 2017 through October 26, 2018:

- Adaptive: 50 minutes, 5 times per week (special education teacher)
- Communication: 20 minutes, 1 time per week (speech language pathologist)
- Math: 48 minutes, 5 times per week (special education teacher)
- Reading: 48 minutes, 5 times per week (special education teacher)
- Behavior: 48 minutes, 5 times per week (special education teacher)
- Writing: 48 minutes, 5 times per week (special education teacher)
- Communication (Concurrent): 15 minutes, 4 times per week (paraeducator)

The IEP also provided the following supplementary aids and services

- Additional Adult Support (Concurrent): 300 minutes weekly (paraeducator, general education setting) (...provided to latch and unlatch student safety vest to the bus seat and monitor behavior on the bus)
- 1:1 Paraeducator Support: 840 minutes weekly (general education setting)
- 1:1 Paraeducator Support: 1200 minutes weekly (special education setting)

The October IEP stated Student 1 would spend 32.7% of her time in the general education setting, which included "two general education classes per day." The IEP noted the Student required "1:1 para support during all school hours and beyond the 1837 instructional minutes to support her in all activities due to physical aggression and safety."

5. Student 1 was placed in the Autism Behavior Learning Environment (ABLE) classroom, which is a self-contained classroom.
6. During May and June 2018, Student 1 was enrolled in the following courses: Literacy practical level 1B, math practical 1B, social skills B, independent living transition B, and reading fundamentals.

7. The District's 2017-2018 school year ended on June 14, 2018.
8. In August 2018, the Parent filed a request for a due process hearing, 2018-SE-0081. The due process was resolved in October 2018 and addressed, among other things, the Student's least restrictive environment and implementation issues regarding Student 1's October 2017 transfer IEP.

2018-2019 School Year

9. On August 30, 2018, the District's 2018-2019 school year began. The Student's October 2017 transfer IEP continued to be in place and the Student was enrolled in the following courses: basic personal choices/organization, literacy practical level 1A, practical health and fitness A, independent living transition A, reading fundamentals 1A.
10. On October 12, 2018, Student 1's IEP team met and developed her annual IEP. The IEP stated, "the District has procedures for notifying parents regarding the use of restraint or isolation." The IEP included annual goals in communication, adaptive, writing, math, and reading. The October 2018 IEP provided the Student with the following specially designed instruction:
 - Reading: 260 minutes per week (special education setting, special education staff)
 - Writing: 250 minutes per week (special education setting, special education staff)
 - Math: 250 minutes per week (special education setting, special education staff)
 - Adaptive: 250 minutes per week (special education setting, special education staff)
 - Behavior/Social: 200 minutes per week (special education setting, special education staff)
 - Communication: 30 minutes per week (special education setting, speech language pathologist)
 - Adaptive/Life Skills: 275 minutes per week (general education setting, PE, general education teacher)
 - Adaptive/Life Skills: 275 minutes per week (general education setting, elective, general education teacher)

The IEP stated the Student would spend 31% of her time in the general education setting and that the Student would receive 1,800 minutes of 1:1 paraeducator support per week. The IEP further stated special education staff would receive right response training annually and that special education staff would "consult with regular general education teacher to assess progress within the general education curriculum...[and] create activities and opportunities for the student to practice adaptive behavior within the general education curriculum."

The IEP stated the Student required special transportation and the IEP stated the Student's behavior did not negatively impact her learning or the learning of others.

11. Regarding Student 1's IEP and IEP meeting, the Parent stated the District "promised to use its best efforts to have [Student 1] eat her meals in the school cafeteria." The Parent also stated that the only provision in Student 1's IEP that referenced isolation or restraint was the following statement: "The district has procedures for notifying parents regarding the use of restraint or isolation." The Parent also alleged that Student 1's IEP did not "contain a single

word about transportation services.” The Parent stated, by contrast, the Student’s transfer IEP provided for transportation services.

12. The District stated, in its response, that at the October 12, 2018 IEP meeting the District notified the Parent “that the District has procedures for notifying a parent regarding the use of isolation or restraint.” The District acknowledged that it did not actually provide the Parent with a copy of the procedures and stated:

The District will train staff to provide the parents/guardians with a copy of the District’s policy and procedure regarding isolation and restraint when the IEP is created, and will also revise the information on the IEP documentation to include more detailed information regarding the timeline and notification methodology. Specifically, the District proposes to amend the IEP language that currently states: ‘The district has procedures for notifying parents regarding the use of restraint or isolation’ to state: ‘Within 24 hours following the use of restraint, isolation, or other forms of reasonable physical force with the student, the administrative designee will make a reasonable effort to verbally inform the student’s parent or guardian of the incident. The administrative designee will also send written notification of the incident to the student’s parent or guardian as soon as practical, and no later than 5 business days after restraint, isolation, or other forms of reasonable physical force has been used with the student.’

13. Following the October 12, 2018 IEP meeting, Student 1’s class schedule was modified to include two courses in the general education setting—period 1 “Foods and Nutrition” and period 4 “Lifetime Fitness.” The District stated Student 1 had a 1:1 paraeducator who supported her in these courses to maintain safety and that there “were times when it was not safe for Student 1 to attend these classes due to presenting behavioral conditions.” The District’s associate director also stated he believed the Student generally ate meals in the ABLE classroom.

14. According to the Parent’s complaint, the Parent stated “I doubt she ate much (if at all) in the school cafeteria. This is because pretty much all the other ABLE students were eating their meals in the classroom. While school staff were supposed to be giving [Student 1] discretion where she wanted to eat her meal, she most certainly went along with what all the other students were doing. Also, school staff would have little incentive to take [Student 1] to the cafeteria to be eating by herself.” The Parent stated in his reply that in Student 1’s previous school district she ate breakfast and lunch in the school cafeteria, and when she returned to her prior school district in December 2018, she resumed eating breakfast and lunch in the school cafeteria “with all the other students.”

15. On November 16, 2018, based on the documentation in this complaint, there was an incident between another student and Student 1 on the bus. According to the incident report written by the company contracted to provide bus services in the District:

[Another student] had become extremely upset and was starting to physically lash out at [Student 1], who was getting more agitated herself. My attendant was verbally trying to calm them down and had positioned her body to restrict and safeguard each student. I also was trying to get [other student] at first to stop lashing out with kicks toward [Student 1]

and trying claw at her. Very quickly [Student 1] began to kick back and also reaching across the aisle...escalated to the point where myself and attendant...were both trying to get one of either student to exit the bus to a safe area and also defend them and ourselves with deflecting blocks, body positions to block each other...[got other students off the bus]...I unclipped [Student 1] from the safety vest seat strap then staff was able to start calming her down, got her to sit on floor until school nurse would arrive...We will be moving seats for [other student] and [Student 1] until we're notified of some other decision or change of status.

The bus attendant also wrote a description of the incident in an incident report, and at the end suggested: "It would be a good idea, in the future, to have these two students on different buses, even on a full special needs bus they can still see the other while getting on or off."

16. According to the Parent, in his complaint, another student "while the bus was still waiting to leave from school...got up went over to [Student 1's] seat, and started attacking her. [Student 1] was unable to leave her seat, and defended herself. Various staff intervened..." The Parent further stated, the District's notification to the Parent of this incident "in which [Student 1] was helpless and was physically assaulted – needless to say fell far below any reasonable or acceptable standards. I only received a perfunctory email from [assistant principal] the next school day, which severely minimized the serious nature of the incident and failed to point out that [other student] was the aggressor and [Student 1] was unable to get away from the assault due to the restraining harness."

In his complaint, the Parent stated the bus company's report of the incident very strongly recommended, among other things, the student and Student 1 ride on different buses. The Parent stated the District failed to follow the recommendations and kept Student 1 and the student on the same bus.

17. On November 19, 2018, the assistant principal emailed the Parent and stated that following being escalated and in isolation "for about 9 minutes before the end of school," Student 1:
Calmed down and we were able to get her on the bus. However, the student who she'd been frustrated with rides the same bus. They both re-escalated on the bus. Following Right Response, we protected the two girls from each other (stood between them and redirected to ensure they didn't strike each other). We were able to calm them and removed the other student from the bus for pick-up. [the Student] remained on the bus and went home.

The Parent responded and stated that he thought he knew who the other student was, and that the following year it would be better to have Student 1 in a different classroom than the other student.

18. In its response, the District stated it was unaware of the Parent's concerns regarding transportation and safety following the November 16, 2018 incident, and thus did not respond to those safety concerns. The District stated it was not aware of the bus attendant's recommendations until the exhibits were received as part of this complaint.

19. December 13, 2018 was Student 1's last day of school in the District and on December 17 the Student was officially unenrolled.

CONCLUSIONS

Issue 3: IEP Provision Regarding Restraint/Isolation – The Parent alleged that he was not provided a copy of the District's policy on the use of isolation and restraint, nor did Student 1's individualized education program (IEP) include the District's procedures for notifying a parent regarding the use of isolation and restraint. An IEP must contain a district's procedures for notifying a parent regarding the use of isolation, restraint, or a restrain device; and a district is required to provide parents of students with IEPs a copy of the district's policy on the use of isolation and restraint at the time the IEP is created.

The Student's October 2018 IEP included the following statement: "the District has procedures for notifying parents regarding the use of restraint or isolation." The District stated it notified the Parent, during the October 2018 IEP meeting, that the District has procedures for notifying a parent regarding the use of isolation or restraint—i.e., that procedures exist, but not what those procedures are—but the District did not but did not provide the Parent with a copy of those procedures.

The District stated it will provide training to staff to provide parents with a copy of the District's isolation and restraint policy and procedure when the IEP is created. The District also stated it will amend the standard IEP language to read: "Within 24 hours following the use of restraint, isolation, or other forms of reasonable physical force with the student, the administrative designee will make a reasonable effort to verbally inform the student's parent or guardian of the incident. The administrative designee will also send written notification of the incident to the student's parent or guardian as soon as practical, and no later than 5 business days after restraint, isolation, or other forms of reasonable physical force has been used with the student."

Based on the District's admission regarding the issue, OSPI finds the District in violation. OSPI accepts the District's proposed corrective actions.

Issue 4: Response to Parent Safety Concerns – The Parent alleged that the District failed to appropriately respond or respond to his concerns regarding Student 1's safety on the bus after an incident where another student "attacked" the Student on the bus. When a parent or district believes that a component of a student's IEP should be changed, the district must schedule an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). If the district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student.

On November 16, 2018, an incident occurred on the bus where another student escalated and lashed out (kicking and clawing) at Student 1. Ultimately, the bus driver and bus attendant

separated and calmed the student and Student 1. The incident report stated they would move seats for the other student and Student 1, and the bus attendant recommended that in future the students be on separate bus routes. The next school day, the assistant principal emailed the Parent regarding the incident.

In its response, the District stated it was unaware of the Parent's concerns regarding transportation and safety following the November 16, 2018 incident, and thus did not respond to those safety concerns. The District stated it was not aware of the bus attendant's recommendations until the exhibits were received as part of this complaint.

Here, the Parent did not clearly express concern or request an IEP meeting immediately following the incident on the bus. His email in response to the assistant principal stated he thought he knew who the other student was, and that the following year it would be better to have Student 1 in a different classroom than the other student. It appears the Parent developed concerns about the bus incident, the District's response to the incident, and the assistant principal's email later—perhaps when viewed in context of the other incidents involving Student 1 (isolation incidents). Therefore, OSPI finds that as the Parent did not clearly articulate concerns, the District did not fail to respond to the Parent.

However, despite the fact that the Parent did not initially articulate a concern or request a meeting, OSPI finds it concerning that the District stated it was not aware of the recommendations from the bus attendant until receipt of the Parent's complaint. Here, it likely would have been appropriate to attempt to separate the other student and Student 1 (based on the incident on the bus and incidents in the classroom)—although, this is a discussion that both the other student and Student 1's IEP team should have had. Further, the assistant principal was clearly aware of the details of the incident, so it is unclear why the assistant principal was not aware of the incident report or why he took no further action. OSPI recommends that the District ensure it has a procedure for receiving and reviewing incident reports from the bus company, and then communicating recommendations to the appropriate District staff for potential action.

Issue 5: IEP Amendment Regarding Transportation – The Parent alleged that while Student 1's transfer IEP (October 2017 IEP) included special transportation, the District's October 2018 IEP did not include "a single word about transportation services." The Parent stated, regardless of the alleged failure to amend the IEP, the District did provide transportation services. If an IEP team determines a student needs transportation as a related service, a student's IEP must describe the "special transportation" arrangements.

The Student's October 2017 transfer IEP stated the Student received special transportation, which included "wear safety vest on school bus to and from school" and provided 300 minutes weekly "additional adult support (paraeducator, general education setting) (...provided to latch and unlatch student safety vest to the bus seat and monitor behavior on the bus)" The Student's October 2018 IEP stated the Student "required special transportation" and provided the Student with 1800 minutes of 1:1 paraeducator support per week.

Here, the Student's October 2018 provided the Student with special transportation, and there is no disagreement that the Student received special transportation. While the Student's October 2018 IEP did contain less detail than the October 2017, the District did not fail to include special transportation in the IEP nor did the District fail to provide transportation. OSPI finds no violation.

Issue 6: IEP Implementation in Least Restrictive Environment – The Parent alleged the District failed to ensure Student 1 was educated in her least restrictive environment (LRE). The Parent's complaint and reply largely focused on whether the Student ate in the cafeteria with other students. He stated that most of the students in the ABLE classroom ate in the classroom and while the District was "supposed to be giving [Student 1] discretion where she wanted to eat her meal, she most certainly went along with what all the other students were doing. Also, school staff would have little incentive to take [Student 1] to the cafeteria to be eating by herself."¹⁴

A district shall ensure students are provided services in the LRE—in other words, students should be educated, to the maximum extent appropriate, in the general education environment with students who are nondisabled. Special classes, separate schooling, or other removal from the general education setting should only occur if the nature or severity of a student's disability is such that education in general education classes with the use of supplementary aids and services cannot be satisfactorily achieved. A student's IEP should state the extent to which a student will not participate in the general education setting for instruction, extracurricular, and nonacademic activities.

The Student's October 2017 transfer IEP stated the Student participated in the general education setting for two elective classes, lunch, assemblies, and other school wide activities, and stated the Student would spend 32.7% of her time in the general education setting. When she transferred into and enrolled in the District in May 2018, the District adopted and implemented her transfer IEP and placed her in a self-contained ABLE classroom.¹⁵ The Student's October 2018 IEP stated the Student would spend 31% of her time in the general education setting and that special education staff would "consult with regular general education teacher to assess progress within the general education curriculum...[and] create activities and opportunities for the student to practice adaptive behavior within the general education curriculum." At the October 2018 IEP meeting, the Parent stated the District "promised to use its best efforts to have [Student 1] eat her meals in the school cafeteria." Following the IEP meeting, the Student's schedule was modified to include two general education courses and the Student had 1:1 paraeducator support in these

¹⁴ Parent also alleged that the District's "segregated meals arrangements for ABLE students" is discriminatory. As explained in OSPI's March 13, 2019 opening letter, OSPI does not have the authority to investigate allegations of discrimination through the special education citizen complaint process. As such, this decision will not discuss these allegations further.

¹⁵ The documentation indicates that at the end of the 2017-2018 school year and the beginning of the 2018-2019 school year the Student was not enrolled in any general education classes. In August 2018, the Parent filed a request for a due process hearing, which was resolved in October 2018, and included issues related to the Student's LRE and implementation of the October 2017 transfer IEP.

classes. According to the District, there were times when it was not safe for Student 1 to attend these classes due to behaviors.

It does appear that while enrolled in the District Student 1 had less interaction with general education peers than in her former school district (e.g., there is no documentation that supports special education staff consulted with general education staff to create activities and opportunities for the Student to access the general education setting to a greater extent). However, the Student's LRE did not change significantly (32.7% to 31%), and upon creation of the October 2018 IEP the Student was enrolled in two general education elective courses. Further, there is nothing in the IEP that stated the Student would eat meals in the cafeteria, despite the Parent's statements that the District made a promise. If the IEP team, which includes the Parent, wanted the Student to eat meals in the cafeteria the team could have included this in the IEP or included a goal to encourage the Student to exercise independence and eat in the cafeteria. It is not clear that this was brought up or discussed at the IEP meeting. Therefore, there is no failure to implement the IEP as written with respect to the Student's LRE.

Overall, the documentation supports the District's assertion that the Student was educated in her LRE. While OSPI believes the District could have made more of an effort to ensure access to the general education setting for nonacademic times (e.g., meals), the District did not fail to consider the Student's LRE or fail to implement her IEP. OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **June 7, 2019 and June 21, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **May 31, 2019**, the District will review all of the Parent's alleged unreported incidents of isolation that were noted in the behavior observation forms and discussed in this decision. The District will determine which of these incidents were actual incidents of isolation. Then the District will create official restraint/isolation reports for the incidents.

By or before **June 7, 2019**, the District will send the Parent a copy of these reports. The District will copy OSPI on the communication they send to the Parent, ensuring OSPI receives a copy of the communication and the reports.

DISTRICT SPECIFIC:

Training

As discussed in this decision, no further training is ordered. The District proposed, and per this decision, OSPI accepts the proposal to provide training to staff on providing parents with a copy of the District's restraint and isolation policy and procedure when IEPs are created. This training

material will be included in the written training required in SECC 19-05. Please refer to OSPI's letter dated May 10, 2019, regarding the SECC 19-05 training plan and required reporting dates.

Reporting Database & Parent Letter

By or before **June 14, 2019**, the District will update its restraint/isolation reporting database to include a field(s) for staff to note in the database that the required review with parent and student has occurred, per the requirement to review the incident with the student and the parent/guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response. OSPI strongly recommends that the database also include a field to note that the review with staff has also occurred, per the requirement to review the incident with the staff member(s) who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.

The database should allow staff to note when the review discussions occurred, who participated, and any notes. For example, notes from the discussion could be included in the existing "recommendations for change" section.

By or before **June 21, 2019**, the District will provide OSPI with an example of an incident report showing the new reporting fields.

By or before **June 14, 2019**, the District will update its parent written notification letter template to include all of the elements required in RCW 28A.600.485. The District may also choose to retain the existing cover letter template and also include a copy of the report from the District's restraint/isolation database containing all the required elements with each letter sent to parents.

By or before **June 21, 2019**, the District will provide OSPI with a copy of the District's new parent written notification letter, or letter and report.

IEP Language

By or before **June 14, 2019**, as proposed by the District, the District will amend its template IEP language as follows:

Within 24 hours following the use of restraint, isolation, or other forms of reasonable physical force with the student, the administrative designee will make a reasonable effort to verbally inform the student's parent or guardian of the incident. The administrative designee will also send written notification of the incident to the student's parent or guardian as soon as practical, and no later than 5 business days after restraint, isolation, or other forms of reasonable physical force has been used with the student.

By or before **June 21, 2019**, the District will provide OSPI with a copy of one student's IEP *per school* in the District (the District may select the student at each school) reflecting the inclusion of this new language. The District will also provide documentation from each student's IEP meeting

reflecting that the parent was provided a copy of the District's restraint and isolation policy and procedures.

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.

RECOMMENDATION

Based on the incident that occurred on the bus between Student 1 and another student, it is concerning that the District did not know about the incident report and recommendations made by the bus company. It is also concerning that the District took no further action to address the conflict between Student 1 and the other student on the bus, including positive behavior interventions. OSPI strongly recommends that the District ensure it has a procedure for receiving and reviewing incident reports from the bus company, and then communicating recommendations to the appropriate District staff for potential action.

Dated this ____ day of May 2019

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.)