

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-48

PROCEDURAL HISTORY

On March 31, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from an attorney (Complainant) representing the Parents of a student (Student) attending the Shoreline School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 31, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On April 17, 2023, OSPI received the District's response to the complaint and forwarded it to the Complainant on April 18, 2023. OSPI invited the Complainant to reply.

On April 17, 2023, OSPI requested additional information from the District. OSPI received that additional information on April 25, 2023, and forwarded it to the Complainant on the same day.

On April 25, 2023, OSPI received the Complainant's reply and forwarded it to the District on the same day.

On April 30, 2023, OSPI requested additional information from the Complainant. On May 1, 2023, the Complainant emailed that information to OSPI and the District.

On April 30, 2023, OSPI requested additional information from the District. OSPI received that additional information on May 1, 2023, and forwarded it to the Complainant on May 2, 2023.

On May 4, 2023, OSPI requested additional information from the District. OSPI received that additional information on May 8, 2023 and forwarded it to the Complainant on the same day.

OSPI considered all information provided by the Complainant 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 April 1, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Per WAC 392-172A-03105, was the Student's individualized education program (IEP) implemented properly from April 2022 through June 2022?

2. Per WAC 392-172A-01142, was the Student's behavioral intervention plan (BIP) implemented properly from April 2022 through June 2022?
3. Per WAC 321-172A-02110, did the District follow proper restraint and isolation procedures on the Student from April 2022 through June 2022, including using restraint only when there was an imminent likelihood of serious harm, and following all reporting, documentation, and other requirements?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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

Restraint Conditions: Restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the restraint must be discontinued as soon as the likelihood of serious harm has dissipated; b) The restraint shall not interfere with the student's breathing; and c) any staff member or other adults using a restraint must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention including de-escalation techniques) and such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. WAC 392-172A-02110.

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation or restraint consistent with RCW 28A.600.485. WAC 392-172A-02110. Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office.

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

The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

FINDINGS OF FACT

Background & 2021–2022 School Year

1. On February 10, 2021, a meeting was held for the Student's triennial evaluation. The Student was eligible for special education services under the category of health impairment based on his diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD). The reevaluation report included recommendations that the Student receive specially designed instruction (SDI) in social/behavior skills, reading, math, and writing.
2. On September 1, 2021, the District held its first day of instruction for the 2021–2022 school year. The Student attended a District elementary school as a second grader.

3. According to an email sent by the school's dean of students to the Parent, the dean detailed the following events in January 2022:
 - On January 5, 2022, the Student engaged in knocking objects off of surfaces and ripping things off the walls. Staff used their bodies as a barrier to prevent the Student from grabbing objects.
 - On January 6, 2022, the Student engaged in throwing chairs and knocking objects off of surfaces. The dean restrained the Student for about four minutes.
 - On January 7, 2022, the principal was called to a classroom the Student was in because the Student was being disruptive.
4. On January 11, 2022, teacher 1 attended a crisis prevention and intervention (CPI) training.
5. On February 1, 2022, the principal sent the Parent a report from an incident that occurred earlier in the day.
6. On February 17, 2022, the dean sent the Parent an email that detailed a restraint of the Student by the dean in a one-person hold, and other instances of restraint using a two-person hold.
7. On March 7, 2022, the Student's IEP team met. The Student's IEP provided the Student the following SDI, in a special education setting, provided by special education staff:
 - Reading: 100 minutes/Weekly
 - Written Expression: 45 minutes/Weekly
 - Math: 100 minutes/Weekly
 - Social-emotional/Behavioral: 90 minutes/Weekly

The Student's total minutes per week in school were 1,675 minutes and 335 minutes per week were spent in a special education setting. The percent of time in a general setting was 80% and LRE placement in general education classes was 80–100%. Transportation was marked "regular", and the emergency response protocol (ERP) was marked "no".

8. A prior written notice (PWN), dated March 7, 2022, stated, in part:

The IEP team met to discuss the functional behavioral analysis and proposed how to implement a new Behavioral intervention plan.

The team believes that having everyone in tune with [Student's] strengths and triggers will help him be more successful in the classroom.

...

[T]eacher [2] and teacher [1] believe that [Student] benefits from support in the area of safe behaviors to ensure that he and his classmates are safe in the school setting.

...

The team rejected the plan to not support [Student] emotionally as his ADHD presents in ways that can make the classroom setting unsafe to himself and others.

...

In an effort to help [Student] access his general education curriculum.
9. On March 14, 2022, the IEP team proposed to initiate a behavioral intervention plan (BIP) for the Student to address, "1. Disruptive behaviors: pacing; yelling; taking/ripping student work

(i.e., dolphin awards, papers) 2. Unsafe behaviors: property damage; throwing objects toward others (i.e., water bottle, sensory tools); pushing over furniture; kicking/hitting at times.”

Complaint Investigation Time Period Began April 1, 2022

10. On April 4, 2022, the Student’s IEP team met. Notes from the IEP meeting provided as follows:

- Parent: Student doesn’t have a behavior problem. Academic issue, not up to grade level. Behavior exhibited in FBA (functional behavior assessment) is from frustration with academics. Not doing it to interrupt class. Most things happening during academics (math/phonics) (10 am-noon). When look (sic) at FBA process, feels like it happened based only on two days. For some of the language (i.e., pulling hair, sitting on peers), I want to know how often.
- Psych[ologist]: Data collected from multiple weeks; multiple reporters; not based on two isolated incidences.
- Team discussed reason for FBA (increase in behaviors after Winter Break, in crisis mode to support level of needs and need function-based plan of support addressing setting events, antecedents, target behavior teaching, and reinforcement strategies).
- [Parent] expressed dissent to FBA and BIP. Team discussed that she can submit letter to enclose with FBA and BIP to make sure her concerns are documented and part of Student’s file.

11. On April 21, 2022, the Parent sent an email with an attached letter to the District that stated, in part:

I do not agree with what has been proposed and suggested in FBA/BIP as it is not addressing my son's academic needs. I know my son. His needs aren't behavioral, they are academic. He has a learning deficit. It is clear from the FBA...that my son needs a lot of 1:1 from the teacher in a large classroom setting for Math and Phonics instruction . . . The behaviors documented in the BIP don't accurately reflect both my son's current behavior and prior behavior before staffing changes. I disagree with the proposed BIP, and I am requesting the BIP document not be part of my son’s academic record.

12. On May 11, 2022, an incident report drafted by the principal provided:

[Principal and intern] walk through Resource Room during routine classroom walkthroughs. [Teacher 1] was standing in doorway. [Principal] asked [teacher 1] what was wrong. [Teacher 1] tells [Principal] that [Student] left the Resource Room and is upset. [Teacher 1] asks [principal] to find [Student] because [Teacher 1] is worried that if she goes, it will escalate [Student]. She said she will follow [principal] in five minutes. [Principal and Intern] walk to [Student]’s classroom...Upon arrival, it looks like [Student] is walking out the hallway classroom door. When he sees [principal], he returns to the classroom and starts ripping up a pad of hall passes. [Principal] asks [Student] to take a break outside with her and he says, ‘No.’ [Teacher 1] then comes in the classroom and [Student] then rips work off the closet door and goes to a cart of books by teacher’s desk. He starts to pull books off the cart and [teacher 1] yells, ‘No.’ [Teacher 1] calmly tries to get [Student] to go with a student outside for a break. [Teacher 1] says something to [Student] to try to calm him. Then, he throws a water bottle off of the teacher’s desk not directed at anyone. [Teacher 1] puts [Student] in a hold and tries to escort him to the outside door. He gets loose from her hold when they reach the outside door. [Student] starts hitting [teacher 1’s] upper body and face

quickly to try to be released from hold. [Principal] was at the front of the room and goes to stop [Student]. [Teacher 2] quickly and calmly has the class evacuate the room through the hallway door. [Student] sees his class leaving and he falls in line following his class outside, pushing things in the hallway out of his way as he walks down the hallway. Once [Student] is outside, he calms down quickly.

Additionally, the incident report provided that:

- The principal verbally reviewed the incident with the Parent on May 11, 2022, and verbally reviewed the incident with the Student on May 12, 2022.
- The principal reviewed the incident with teacher 1 on May 11, 2022.
- The teacher who administered the restraint on the Student never submitted an incident report because immediately after the incident, she left the building to go to the hospital to check on her injuries and never returned to District employment.
- The incident report was drafted and submitted by the principal who witnessed the incident. Although the incident report was thoroughly filled out, it was neither signed nor dated.
- It provided that on May 11, 2022 (first business day), the principal submitted the report. The report provided the date and time of the incident, the name and job title of the individual who restrained the Student, a description of the activity that led to the restraint, the type of restraint used on the Student, including the duration, and a recommendation for avoiding similar incidents.
- The District's incident report also suggested additional training for teacher 1.

13. On May 12, 2022, the Student's IEP team, including the Parent, met to discuss the Student's BIP and the incident that occurred on May 11, 2022. A PWN, dated May 12, 2022, stated, in part:

- ...team met to discuss [Parent's] request to remove [Student's] BIP. The...team is refusing to discontinue [Student's] BIP at this time as it is still necessary to best support [Student]...
- ...IEP team met on 3/14/2022 to review [Student's] draft FBA and BIP.
- Follow up meetings occurred on 4/4/2022 and 5/5/2022 to address mom's concerns with the FBA and BIP process before finalizing and submitting final documents.
- Mom and [Student's] outside therapist...submitted feedback for the FBA and BIP on 4/12/2022 for which updates to the description of target behaviors was completed and sent to parent for review along with an outline of steps to address parent concerns (see 'Description of any other options considered and rejected').
- Mom submitted a letter of dissent regarding the FBA and BIP documents on 4/21/2022.
- The team met with mom and [Student] on 5/12/2022 to discuss an incident that occurred on 5/11/2022 and re-entry back into class.
- ...While [Student] initially demonstrated a significant decrease in disruptive and unsafe behaviors at school since mid-February, [Student] has started to demonstrate an increase in similar behaviors at school which require ongoing positive behavior supports to best support [Student] academic and social progress at this time.
- ...Discontinuing the BIP was considered per mom's request and the team discussed moving forward if data continued to support the BIP was no longer necessary and not reflective of [Student's] current functioning at school.

Due to ongoing need for BIP, team proposed:

- 1) Make minor edits to FBA/BIP wording to make the academic link more clear and remove less relevant behaviors listed under disruptive and unsafe behaviors.
- 2) The team edited references to medication throughout documents per mom's concerns, but it was not completely removed from the FBA/BIP as it was determined important to include in understanding the whole picture of the last few months and the reduction in level of behavior since the change in early February. The updated documents were sent to mom for review.
- 3) The IEP team recommended convening for an IEP meeting in the Fall when...(Resource Room Teacher) returns to consider [Student's] needs at that time and consider the model of service delivery (pull out vs. push in support), and whether a BIP continues to be required for [Student].
- 4) [Student's] Teacher [2]...will continue to take data on [Student's] daily progress which will help us to determine any changes to his IEP or services in the Fall. The reasons we rejected those options were: While [Student] initially demonstrated a significant decrease in disruptive and unsafe behaviors at school since mid-February, [Student] has started to demonstrate an increase in these behaviors at school which require ongoing positive behavior supports to best support Michael's academic and social progress at school.

14. A June 15, 2022 progress report provided the following information about the Student's progress:

Date of Review	Goal Area	Progress
6/15/2022	Reading	Sufficient progress
6/15/2022	Written Expression	Emerging skill
6/15/2022	Written Expression (spelling)	Sufficient progress
6/15/2022	Math (adding/subtracting double digits)	Mastered
6/15/2022	Social-emotional/Behavioral	Emerging skill
6/15/2022	Math	Mastered

15. On March 31, 2023, the Complainant filed special education community complaint (SECC) 23-48 with OSPI. The complaint alleged, in part, that from March to June 2022:

- The District failed to implement the Student's BIP and IEP.
- The District restrained the Student even when his behavior did not pose an imminent likelihood of serious harm.
- And the District failed to implement the follow-up procedures following the release of the Student from restraint and isolation.

According to the complaint:

[Student] was doing well with school and making progress in his IEP goals until January 2022 when his regular teacher went on paternity leave. After [teacher 1] took over, the Parents immediately noticed that communication from the District severely decreased. The Parents had no information on what [Student] was working on in the Resource Room and therefore could not assist him with his schoolwork. When the Parents reached out to [Student's] general education teacher [teacher 2], she indicated that [Student] was not progressing academically and there had been a few behavior incidents.

By February 2022, the behaviors at school had escalated . . . Later the Parents learned that [Student] was being restrained and isolated at school by the [teacher 1]. She and other staff

engaging in restraint and isolation were not trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention...

...From March 2022 to June 2022 the pattern of frequent restraint and isolation continued. The Parents also learned that [Student's] IEP was not being implemented and he was spending half his school day in the resource room.

The complaint made no specific comment regarding the BIP.

The complaint requested the following remedies:

- Compensatory award for the District's material failure to implement Student IEP and BIP.
- Administrators should be mandated to receive additional training that equips them to oversee those who service children with disabilities, and corrective action to ensure that other students with disabilities are not put in this position.

16. On April 17, 2023, the District submitted its response. Regarding the first issue, the District denied the allegation and responded in part:

Student's March 2022 IEP included 335 minutes per week of specially designed instruction in the areas of reading, written expression, math, and social/emotional skills, all delivered in a special education setting. These minutes of service were delivered in the school's resource room. Student spent the remainder of the school week in a general education setting.

The team reviewed implementation of these minutes of SDI with Parent in spring 2022...Student was pulled out to receive specially designed instruction in the resource room from 1-1:55pm daily, adding up to 275 minutes per week. Student was also pulled out for small group instruction on Wednesdays and Fridays from 9:15-9:45, adding up to an additional 60 minutes per week, or a combined total of 335 minutes in a special education setting per week, consistent with the minutes of service in the IEP.

Student's IEP also included the accommodation of a designated de-escalation area. This was consistent with the [BIP], which specified that one of the replacement behaviors Student was to be taught was the skill of taking a break in a designated safe area rather than engaging in disruptive behavior. Under the response plan in the BIP, staff were to respond to disruptive behavior by prompting Student with a card showing options of safe choices he could engage in until feeling calm again. One option included on the card was 'taking a break in the designated area.' The resource room was one of Student's designated break areas. The BIP's de-escalation plan was also consistent with this strategy, specifying that staff would encourage Student to take a break in the resource room or upper playground. These provisions of the BIP were implemented throughout the time period identified in this issue, and consistent with the BIP, necessarily resulted in Student taking some breaks in the designated safe area of the resource room. However, at no point did these breaks amount to 'half his school day' as alleged in the complaint.

Regarding the second issue, the District responded in part:

The complaint does not contain any specific allegation that any of the provisions of Student's BIP were not implemented...

Although the incident report documents the use of some strategies that were part of the [BIP], including offering Student a break, [principal] felt that teacher [1] utilized a restraint when other interventions included in the BIP remained available. [Teacher 1] also disregarded the BIP's explicit warning to limit physical contact with Student due to trauma history. The District therefore admits that Student's BIP was not fully implemented during the May 11, 2022 incident.

Following the May 11, 2022, incident, [teacher 1] left the building and did not return to [the school] or to employment with the . . . District. Had [teacher 1] remained a District employee, the District would have taken corrective measures to address this lapse in implementation of Student's BIP. Because [teacher 1] had no further contact with the District after leaving [the school] in the immediate aftermath of the May 11, 2022, incident, the District has not had the option of doing so.

Regarding the third issue, the District responded, in part:

The District admits that the proper isolation and restraint procedures were not followed with regard to the incident on May 11, 2022.

...

Because the May 11, 2022, incident did not prevent Student from making appropriate educational progress over the annual term of his March 2022 IEP, compensatory services are not necessary to address the violations associated with this incident.

The incident on May 11, 2022, involved the unsanctioned actions of an employee who, despite being appropriately certificated for her role and well-versed in the contents of Student's behavior plan, opted to disregard that plan and respond to an incident in a manner that was inconsistent with the BIP and unauthorized by the District. This employee is no longer employed by or in contact with the District and therefore cannot be remediated with corrective action. Corrective action pertaining to current employees, who have not committed similar violations, is unnecessary to address the events that are the subject of the complaint. Student's IEP and BIP were otherwise appropriately implemented and resulted in meaningful progress in all areas of SDI over the course of his annual IEP. While acknowledging the violations noted above, the District requests that this complaint be closed without further corrective action.

17. On April 30, 2023, OSPI sent the Complainant the following email, "[Complainant] do you have any documents or specific allegations regarding restraint and isolation other than the May 11, 2022 incident?"

On May 1, 2023, the Complainant responded with three emails, referring to incidents that occurred in January and February of 2022, but no additional facts regarding April through June of 2022, which is the time period being reviewed in this complaint.

CONCLUSIONS

Issue One – The Complainant alleged the District materially failed to implement the Student's IEP from April through June 2022.

When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

The complaint puts forth two specific allegations that deal with the Student's education and the implementation of his special education services. The first allegation is that the Parents reached out to the Student's general education teacher (teacher 2), and she indicated that the Student "was not progressing academically." The Student's progress report from June 2022 shows that the Student had mastered both his math goals, was making sufficient progress in reading and one of his writing goals (spelling), and that skills were emerging in his other writing goal and his SEL goals. Based on this information, it does appear that the Student was making progress academically in the April through June 2022 time period.

The second allegation is that the Student's IEP was not being implemented and he was spending half his school day in the resource room. In the documents reviewed for this case, the records do not support this allegation. The Student's March 7, 2022 IEP stated that the Student's total minutes per week in school were 1,675 minutes and 335 of those minutes per week were spent in a special education setting. The District described how the Student received pull out services and small group instruction and SDI was provided in the resource room for 335 minutes per week, consistent with the Student's IEP. Additionally, as provided in the District's response, the resource room was one of the designated de-escalation areas the Student could use to try to calm down when he was becoming escalated. According to the District, the Student did take breaks in the resource room, but "at no point did these breaks amount to 'half his school day' as alleged in the complaint." For the reasons just provided, OSPI does not find a violation as to the first issue.

Issue Two – The complaint alleged that from March to June 2022, the District materially failed to implement the Student's BIP.

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. 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.

Other than the general allegation made regarding the BIP in the complaint, the complaint provides no additional specific facts on how the District materially failed to implement the BIP. In fact, the documentation showed that the Parent did not agree with the BIP or want it implemented. However, the District members of the IEP team believed the Student needed a BIP and continued to implement one. Based on the documentation in the complaint, the May 11, 2022 incident in which teacher 1 restrained the Student appears to be the only incident before OSPI in which the Student's BIP was inappropriately implemented. The District acknowledged that the BIP was not fully implemented on May 11, 2022, stating:

Although the incident report documents the use of some strategies that were part of the behavior intervention plan, including offering Student a break, [principal] felt that [teacher 1] utilized a restraint when other interventions included in the BIP remained available. [Teacher 1] also disregarded the BIP's explicit warning to limit physical contact with Student due to trauma history.

Based on the present case's facts and the District's admission, OSPI finds a violation regarding the second issue. The employee whose actions resulted in the May 11, 2022 incident left District employment immediately after the incident and no facts indicate that other District personnel have engaged in similar actions with the Student or other students within the time frame covered by the present case. Despite this violation, no additional corrective action is warranted for the second issue.

Issue Three – The complaint alleged that from March to June 2022, the District engaged in a pattern of frequent restraint and isolation of the Student. In additional information, the Complainant provided information on incidents that occurred in January and February of 2022, but no additional facts regarding April through June of 2022, which is the time period being reviewed in this complaint.

Restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm. A restraint 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 currently certified by a qualified provider in the use of trauma-informed crisis intervention, including de-escalation techniques and 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.

On May 11, 2022, a District incident report provided that teacher 1 engaged in a restraint of the Student. In their response, the District admitted that teacher 1's actions were inappropriate because the Student's behavior did not pose an imminent likelihood of serious harm to himself or another person at the time of the restraint.

Incident Review Requirements

Parent/Student Review: Upon release of a student from restraint or isolation, the school must review the incident with the student and the parent to address the behavior that precipitated the restraint or isolation and the appropriateness of the response. In the present case, the incident report provided that the principal verbally reviewed the incident with the Parent on May 11, 2022, and verbally reviewed the incident with the Student on May 12, 2022.

Staff Review: Upon release of a student from restraint or isolation, the school must review 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.

In the present case, the incident report provided that the principal reviewed the incident with teacher 1 on May 11, 2022. After teacher 1 left the building on May 11, 2022, she never returned to work for the District so no further action could be taken with teacher 1.

Reporting Requirements

Staff Reporting: Any school employee who uses isolation or restraint on a student during school-sponsored activities must inform the building administrator, and within two business days, submit a written report of the incident to the district office that must include, at a minimum:

1. The date and time of the incident;
2. The name and job title of the individual who administered the restraint or isolation;
3. A description of the activity that led to the restraint or isolation;
4. 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,
5. Any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

Regarding the May 11, 2022 incident, the teacher who administered the restraint on the Student never submitted an incident report because immediately after the incident, she left the building to go to the hospital to check on her injuries and never returned to District employment. The report for the May 11, 2022 incident was drafted and submitted by the principal who witnessed the incident. Although the incident report was thoroughly filled out, it was neither signed nor dated. It provided that on May 11, 2022 (first business day), the principal submitted the report. The report provided the date and time of the incident, the name and job title of the individual who restrained the Student, a description of the activity that led to the restraint, the type of restraint used on the Student, including the duration, and a recommendation for avoiding similar incidents. The District's incident report also suggested additional training for teacher 1, but that never occurred because teacher 1 quit immediately after the incident.

Based on the facts above, OSPI finds that the District did submit the May 11, 2022 incident report in a timely manner and thoroughly filled out, thus, there is no violation established regarding the incident report.

Communicating with Parent: The principal or principal's designee must:

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

According to the incident report, the principal informed the Parent about the incident on May 11, 2022, and on May 12, 2022 (two business days), the principal sent the Parent a copy of the report through the United States Postal Service. Thus, based on these facts, the District satisfied its responsibilities to contact the Parent for this incident.

In the present case, for the May 11, 2022 incident, there was a violation regarding how the Student's BIP (second issue) was implemented and the use of restraint on the Student (third issue). Based on these violations, the Student may have experienced trauma and the employee no longer working for the District does not fully address this concern. For this reason, OSPI will require the IEP team to meet to discuss any impact on the Student and the need for additional counseling or supports for the Student.

CORRECTIVE ACTION

By or before **June 23, 2023**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By or before **June 16, 2023**, the District will meet with the Parent to discuss the need for additional counseling or supports for the Student. The District will provide OSPI with a prior written notice, by or before **June 23, 2023**, explaining what the parties agreed to at the meeting.

DISTRICT SPECIFIC:

None.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 25th day of May, 2023

Dr. Tania May
Assistant Superintendent of Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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