

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-33**

### **PROCEDURAL HISTORY**

On May 8, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Bethel School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On May 8, 2017, 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 May 30, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 7, 2017, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

Also on June 7, 2017, OSPI requested additional information from the District. OSPI received the additional information on June 8, 2017, and forwarded the additional information to the Parent on June 9, 2017.

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

### **OVERVIEW**

The Student attended a District elementary school and was eligible to receive special education services under the category of other health impairment. The Student's individualized education program (IEP) included a behavioral intervention plan (BIP) with numerous behavior interventions. The Parent alleged that the District improperly used isolation with the Student instead of implementing the Student's BIP. Additionally, the Parent alleged that the District repeatedly failed to notify her of the isolation, and provide required documentation. The District acknowledged that it did not use isolation or restraint with the Student in accordance with WAC 392-172A-02110 and that follow up procedures were not always completed.

### **ISSUE**

1. Did the District use restraint and isolation with the Student consistent with the requirements in WAC 392-172A-02110, including documentation and reporting requirements, during the 2016-2017 school year?

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

Likelihood of Serious Harm: Likelihood of serious harm as defined in RCW 70.96B.010 means: (1) A substantial risk that: (a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide, or inflict physical harm on oneself; (b) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or (c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or (2) The person has threatened the physical safety of another and has a history of one or more violent acts. WAC 392-172A-01109.

Follow-up and Reporting Requirements: 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 IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) ESY services, if necessary for the student to receive FAPE; (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090 (effective January 29, 2016).

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the

learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031 (effective January 29, 2016).

## **FINDINGS OF FACT**

1. At the beginning of the 2016-2017 school year, the Student attended fifth grade at a District elementary school and was eligible for special education services under the category of other health impairment. The Student's educational placement at the beginning of the school year was in a self-contained setting, and the Student participated in a general education classroom for science, social studies, and specialists.
2. The Student's reevaluation in place at the beginning of the 2016-2017 school year was completed on May 14, 2015. The May 2015 evaluation report stated the Student's prior educational placement was a self-contained classroom for students with educationally significant behavior problems. The evaluation report stated the Student was diagnosed with attention deficit disorder (ADHD), oppositional defiant disorder (ODD), and anger issues, and was prescribed medications to address his ADHD and anger. The report further stated that manifestations of these diagnoses interfered with the Student's and others' learning, and that the magnitude and frequency of his behavioral episodes hindered his ability to navigate the academic and social/behavioral aspects of the general education classroom. The report also stated the Parent had provided information saying, "[The Student] needs lots of reassurance he is doing okay."
3. The Student's individualized education program (IEP) in place at the beginning of the 2016-2017 school year was developed on March 30, 2016. The Student's IEP included four annual goals: two in reading, one in math, and one annual goal addressing social/emotional skills. The IEP also included several accommodations and/or modifications and provided for special transportation. The IEP stated the Student would receive 1,425 minutes per week of specially designed instruction in a special education setting, and 21.92% of this instructional time in a general education setting. The IEP provided for the following specially designed instruction in a special education setting:
  - Reading: 45 min/5 times weekly
  - Math: 45 min/5 times weekly
  - Social/Emotional: 195 min/5 times weekly

The IEP further stated that one of the Student's triggers for acting out was "being alone," without an adult or peer helper, and that the Student required constant and consistent supervision and prompting. The IEP did not include an emergency response protocol. The IEP team noted in the IEP that the Student's transition to middle school and the need for a 1:1 paraeducator could be discussed at the next meeting.

4. The Student's behavior intervention plan (BIP) in place at the beginning of the 2016-2017 school year was developed on May 20, 2013. The BIP stated the Student engaged in physical and verbal aggression almost daily, 1-3 times per day, lasting anywhere from 15 minutes to 2 hours. The behavior was noted as "significantly intense" and caused disruption to the entire class, as well as occasional injury to staff and students and property destruction. The BIP included the following information:

Hypothesis of behavior: The Student appears as if he is able to control his behavior depending on who is around him and what is being asked of him. High reward or high interest tasks often do not lead to a performance problem. When the task is challenging, the Student will engage in multiple behaviors to avoid having to do his work, or activities he does not want to do. The function of his behavior is to gain adult attention and work avoidance. He also seems to be attempting to gain control of the situation. He usually wants to be the center of attention. His triggers are adult requests/demands to do his work and attention being given to someone other than him. When his behavior does not get him what he wants, he wants to go home. If he is told "no" to a behavior, he will do it again. If another student is told not to do something, the Student will begin doing it, even if he wasn't doing it before.

Target behavior:

- Decrease physical aggression: hitting, kicking, pushing, spitting, pinching, poking, stomping on feet, etc.
- Decrease verbal aggression: swearing, cursing, foul language directed at peers and staff, name calling, instigating peers, etc.

Intervention Strategies:

- Alternate/Replacement behaviors to be taught/reinforced:  
Calming strategies: take a break, walk away, counting, deep breathing, listen to music, looking at pictures of family, holding his stuffed toy, visit the psychologist or other preferred adult, phone call to Parent, draw figure 8's.

Setting Change:

- Physical Aggression - alternative setting when he begins to escalate but before he exhibits physical aggression. Settings: Another teacher's classroom for breaks when he becomes agitated. Preferable a male teacher. Title I or resource group with male teacher. Provide opportunities for movement and setting change to break up his day into manageable sections with clear rewards for maintaining appropriate behavior. Be a helper to a preferred male staff as a reward midday.
- Verbal Aggression - toward staff and peers, the Student will be redirected by staff and staff will attempt to deescalate him by asking if he wants a break or to talk about it.

Reinforcers: Watch monster truck videos, candy/treats, morning reader, be first, points, sticker chart, verbal praise, student job, 1:1 time with staff, 1:1 game time with peer, Legos.

Consequences:

- When the Student engages in physical aggression, he will be sent to the office immediately. He will have in school suspension in the principal's office and the Parents will be notified.
- Verbal aggression:  
Room clear, then utilize the 10-R, after each time the Student uses inappropriate language, go through the following ten steps in order.

- Response cost – (penalty) remove predetermined amount of a reinforcement as the Student states which rules were broken.
- Relaxation – Have the Student go to a pre-assigned place and relax, summon adult when calmed. If tone is sarcastic or excited, or if muscles appear tense, tell him to attempt to become calm or relaxed.
- Rectify – Have the Student provide rectification for any physical/emotional damage done.
- Recognize – Help the Student recognize the cause of his misbehavior and identify more appropriate responses for that situation.
- Rehearsal – have the Student practice alternative behaviors practiced in step 4.
- Reinforce – reinforce, reward, or otherwise praise the Student for having demonstrated appropriate behavior.
- Reflect – Ask the Student to identify the consequences of his disruptive behavior and compare them with the possible consequences of the desired action<sup>1</sup>.

Persons Responsible: Special education teacher, paraeducators, administrators.

Data Collection: Point sheet data.

5. The first day of school at the District elementary school was September 1, 2016.
6. On September 12, 2016, the paraeducator's notes stated that the Student's classroom was cleared because the Student was off task and arguing with adults in the classroom. The notes further stated that the Student was in the isolation room on two separate occasions. The District's response to this complaint did not include documentation regarding the reason the Student was in the isolation room, the duration of time he spent in the isolation room, or whether the Parent was notified via phone or written report of the use of isolation.
7. On September 19, 2016, the paraeducator's notes stated the Student shut down, kicked, and swore, and that staff put him in the isolation room at 11:40 a.m. At 11:59 a.m., the paraeducator took the Student's temperature, and reported it was fine. The Student came out of isolation at 12:05 p.m. The District's documentation in this complaint does not show that the Parent was notified via phone or written report of the use of isolation.
8. On September 20, 2016, the paraeducator's notes stated the Student threw supplies, threw chairs, and went into the isolation room at 11:03 a.m. The District did not provide documentation regarding the duration of time the Student spent in the isolation room, and whether the Parent was notified via phone or written report.
9. On September 29, 2016, the paraeducator's notes stated (in relevant part):
  - 9:26 a.m. "[Student] stated he had a rough morning with mom, arguing with classmate, staff redirected him and went into [isolation room] on own at 9:26 [a.m.]. The notes further stated the Student said, "not writing [expletive] things down, you're

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<sup>1</sup> The 10-R technique is a prosocial response formation technique consisting of 10 steps. The Student's BIP only included the first 7 steps. The final 3 steps include Re-enter (Student returning to learning environment to ensure Student does not learn these sessions are a way to avoid certain schoolwork); Record (record data to assist in evaluating long term effectiveness of this intervention); and Repeat (use this technique as necessary to change behavior).

- an idiot, I don't want to be here, I shouldn't be here and shut up," and that the Student threw blankets in [isolation room] and picked on mat.
- 9:32 a.m. "[Student was] kicking door open, watch it you [expletive]<sup>2</sup>."
  - 9:35 a.m. "[Student was] kicking door, grunting."
  - 9:37 a.m. "[Student] stepped out of the [isolation room], sat on area, and put head down."
  - 9:44 a.m. Room clear, [Student] crying, kicking table, wanting to flip table over, "leave me the [expletive] alone."
  - 9:45 a.m. Staff called the office.

The District's response to this complaint did not include documentation regarding the duration of the Student's time in the isolation room or whether the Parent was notified via phone or written report of the use of isolation.

10. On October 3, 2016, the paraeducator's notes stated (in relevant part):

- 11:41 a.m. [Student] walked to [isolation room] and stated, "Oh my God, you need to leave me the [expletive] alone." Staff asked [Student] to take his shoes off and [the Student] said, "I want my [expletive] shoes on."

The paraeducator's notes further stated that although the Student entered the isolation room on his own, staff directed the Student to stay in the isolation room when the Student was climbing under tables and kicking open the door.

11. Also on October 3, 2016, the District completed a "Written Summary of Isolation and/or Restraint Use" form (written summary form). The summary stated the Student was "Crawling under the table, banging head on the table, walked to self-time out [in isolation room] and began kicking open the door<sup>3</sup>. Self-time out became staff directed." The summary stated the Student was in isolation from 11:41 a.m. – 1:06 p.m. The summary also noted that staff used "Right Response".<sup>4</sup> It is unclear from the District's documentation in this complaint if staff restrained the Student using "Right Response" techniques, or if staff used "Right Response" de-escalation protocols with the Student. The summary stated the Parent was called, and that having the Student complete his assignment instead of offering a break half way through could prevent future incidents. The summary also noted that the Student apologized.

12. On October 4, 2016, the paraeducator's notes stated (in relevant part):

- 3:46 p.m. Called Parent to pick up Student from class.

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<sup>2</sup> Based on the paraeducator's notes that the Student was kicking the door open, it is assumed that the door to the isolation room was closed for some duration of the Student's time in the isolation room.

<sup>3</sup> The written summary form issued by the District stated the isolation room door was ajar; however, the paraeducator's notes stated the Student was kicking the door, indicating the door was closed for some duration of the Student's time in the isolation room.

<sup>4</sup> Right Response is a training technique used to manage aggression or behavioral challenges through prevention, de-escalation, post event interaction, and/or physical safety. Right Response training is also used to teach proper restraint holds, though it is unclear how Right Response was bring used here, and if restraint was involved.

- 3:48 p.m. [Student was] making threats, kicking backpack.
- 3:50 p.m. Parent walked in.

13. On October 5, 2016, the paraeducator's notes stated the Student refused to come in to the classroom, attempted to flip a desk, was verbally aggressive, tipped a table, kicked a garbage can, kicked another student's chair across the room, and threatened staff. Also that day, the District completed a written summary form which stated the staff directed the Student to take a time out in the isolation room. The summary also stated the Student was in the isolation room from 1:47–2:25 p.m., that staff used "Right Response," and the Parent was called.

14. The District was on break October 7, 2016.

15. On October 11, 2016, the paraeducator's notes stated the Student shut down and went home early. It is unclear from the paraeducator's notes what time the Student left school.

16. On October 13, 2016, the paraeducator's notes stated (in relevant part):

- 10:27 a.m. [Student] told staff, "Shut up, you old windbag," arguing, was offered walk and refused. Asked to take a self-time out and went under table.
- 10:30 a.m. [Student] [in isolation room] talking to staff.

The District's response to this complaint did not include documentation regarding the reason the Student was in the isolation room, the duration of time he was in the isolation room, or whether the Parent was notified via phone or written report.

17. On October 17, 2016, the teacher's notes on the behavior-rating log stated the Student ripped a notebook, "made others feel unsafe," and took a self-directed time out resting for most of the morning. The paraeducator's notes stated (in relevant part) that in the afternoon, the Student went under a table at 2:03 p.m. and when staff talked to him, he swore at them. The District's response to this complaint did not include documentation regarding the reason the Student was in the isolation room, the duration of time he was in the isolation room, and whether the Parent was notified via phone or written report.

18. On October 19, 2016, the paraeducator's notes stated (in relevant part) that the Student threw his reading assignment off his desk and was punching his leg and desk.

19. On October 28, 2016, the paraeducator's notes stated (in relevant part):

- 10:57 a.m. Cleared room, [Student said] "I'm going to leave without permission," and "Shut up!"
- 11:00 a.m. [Student was] kicking desk.
- 11:02 a.m. [Student was] crawling around desk, throwing ball at staff.
- 11:05 a.m. [Student] kicked chair over.

20. On October 31, 2016, the Student became physically and verbally aggressive and took a self-directed time out. The paraeducator's notes stated (in relevant part):

- 9:15 a.m. [Student] punching head and arms, scribbling on notebook.



- 9:20 a.m. [Student] raised arms and snapped crayon overhead.
- 9:27 a.m. [Student] did not stand for the flag salute.
- 9:30 a.m. Staff offered strategies and [Student] refused.
- 9:32 a.m. Student was grunting.
- 9:34 a.m. Staff offered [isolation room] and [Student] took it.
- 9:48 a.m. [Student was] picking nose in [isolation room], staff asked [him] to clean up and sent [him] to the nurse.

21. Also on October 31, 2016, the District completed a written summary form. The summary stated that during lunch block, the Student asked, “[I]f he could cut out his scarecrow. He became physically and verbally aggressive with students and staff.” The summary stated the Student was in the isolation room from 1:00–2:05 p.m., and that staff used “Right Response.” The summary also stated that the Parent was called and the Student’s scarecrow and scissors were sent home with him. The summary further stated the Student said, “I want to come out and put my head down for 5 minutes and do my reset.”

22. On November 4, 2016, the paraeducator’s notes stated the Student was hurting himself and threatened others, and then staff directed the Student to take a time out in the isolation room. The District also completed a written summary form that day. The summary stated that during lunch block, the Student, “[A]sked to get a coloring sheet. His direction was to get a book. He then began to punch himself in the face, kick the table and threaten other students and staff. In the isolation room the Student threatened to cut the throats of staff and a particular student.” The summary stated the Student was in the isolation room with the door open from 1:17–2:19 p.m., and that staff used “Right Response”. The summary noted that the Parent was called, and the Student stated, “I’m sorry I assaulted you.”

23. On November 7, 2016, the paraeducator’s notes stated (in relevant part):

- 12:45 p.m. [Student was] hitting self on head, staff asked the Student to [go to isolation room] and Student refused and went under desk.
- 12:57 p.m. Student walked into isolation room.
- 1:00 p.m. Student swearing at staff and stating he did not do anything.
- 1:06 p.m. [Student] stated, “I’ll pull my pants down and pee all over this place and I’ll destroy everything in this classroom.” Staff suggested Student take time out in [isolation room] or he will owe the time in physical education.

Also that day, the District completed a written summary form. The summary stated the Student was, “Crawling under his table and yelling at staff. He took a self-time out when staff counted down. Once in [isolation room] he became physically and verbally aggressive. Kicking the door and shouting obscenities<sup>5</sup>.” The summary stated the Student was in isolation from 1:08–1:59 p.m., and that staff used Right Response.

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<sup>5</sup> The written summary also stated the isolation room door was ajar; however, the paraeducator’s notes stated the Student was kicking the door, indicating the door was closed for some duration of the Student’s time in the isolation room.

The summary stated the Parent was called, and that the Student had asked if he could rest a while longer.

24. On November 8, 2016, the paraeducator's notes stated (in relevant part):

- 10:15 a.m. [Student] shut down, did not want to start on spelling, staff offered to walk and talk. Student pulled shirt up and went under desk.
- 10:22 a.m. [Student] kicking desk.
- 10:23 a.m. Staff called Parent and the [Student] pulled and kicked chair and staff.
- 10:25 a.m. Took Student to [isolation room].
- 1:07 a.m. [Student said], "Yeah, you get the [expletive] away from me now."
- 1:08 a.m. [Student] kicked door<sup>6</sup>.

The District's response to this complaint did not include documentation regarding the reason the Student was in the isolation room, the duration of time he was in the isolation room, or whether the Parent was notified via phone or written report.

25. On November 9, 2016, the paraeducator's notes stated the Student was refusing to work and staff directed him to go into the isolation room and talk. The Student threatened, "I'm going to bite your [expletive] head off," kicked the door to the isolation room, and punched the windows<sup>7</sup>. Also that day, the District completed a written summary form. The summary stated the Student took a self-directed time out in the isolation room, where staff then directed him to stay after he began making threats, kicked the door, and punched the window. The summary stated the Student was in isolation from 2:10–2:38 p.m., and that staff used "Right Response". The summary stated the Parent was called, and that she agreed to send snacks to school to see if the Student's behavior was related to his blood sugar level.

26. On November 10, 2016, the paraeducator's notes stated that after recess, the Student went into the isolation room, where staff then directed him to stay when the Student kicked the door and yelled obscenities<sup>8</sup>. Also that day, the District completed a written summary form. The summary stated, "After recess the Student became angry because he did not want to do his reading. He took a self-directed time out [in the isolation room] where staff then directed him to stay when he began kicking the door into staff and screaming obscenities<sup>9</sup>." The summary stated the Student was in isolation from 11:16 a.m.–12:24 p.m., and that staff used "Right Response." The

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<sup>6</sup> The paraeducator's notes stated the Student kicked the door, indicating the door was closed for some duration of the Student's time in the isolation room.

<sup>7</sup> The written summary stated the isolation room door was ajar; however, the paraeducator's notes stated the Student was kicking the door and punching the windows, indicating the door was closed for some duration of the Student's time in the isolation room.

<sup>8</sup> The written summary also stated the isolation room door was ajar; however, the paraeducator's notes stated the Student was kicking the door, indicating the door was closed for some duration of the Student's time in the isolation room.

<sup>9</sup> The written summary stated the isolation room door was ajar; however, the paraeducator's notes stated the Student was kicking the door, indicating the door was closed for some duration of the Student's time in the isolation room.

summary also stated the Parent was called, and the Parent suggested that having a planned down time after lunch might prevent future incidents. The summary noted the Student said he wanted to finish his work and eat lunch.

27. On November 14, 2016, the District issued a notice of short-term suspension for the Student. The notice stated the Student engaged in vulgar/lewd conduct in the classroom, and stated that, “[T]he Student was upset during his spelling assignment, he said he did not want to do it because it was too long. The Student chose to have a self-time out [in the isolation room]. During his self-time out, he became agitated, yelling profanities and hitting the walls and the door. The Student proceeded to pull his pants down and urinate on the floor during his time out; this exposed his groin region to staff.” The Student finished his day in the office, and was suspended for the following day, November 15, 2016.
28. On November 16, 2016, the paraeducator’s notes stated the Student became agitated after a group meeting, scribbled on desks, and made noises. Several students asked to be moved away from the Student. The paraeducator’s notes further stated:
- 10:19 a.m. Staff directed the Student to go into the isolation room to “Make as much noise as he wanted.” Once the Student was in time out he swore, kicked and punch the door.
  - 10:22 a.m. Student scribbled on desk and punched desk and staff.

Also that day, the District completed a written summary form. The summary stated, “Once the Student was in time out [in the isolation room] he was swearing, kicking the door and punching the door<sup>10</sup>.” The summary stated the Student was in isolation from 10:22–11:01 a.m., and that staff contacted the Parent.

29. On November 21, 2016, the Student threatened students in physical education class and was taken back to his classroom. The paraeducator’s notes stated (in relevant part) that the Student shut down after finding out he had no snack. Staff gave the Student strategies but he slapped staff on the leg and threw his chair. After walking into the [isolation room] the Student hit staff again. Also that day, the District completed a written summary form. The summary stated the Student was in isolation from 10:54–11:24 a.m., and that staff used “Right Response”. The summary also stated staff contacted the Parent.
30. On November 28, 2016, the paraeducator’s notes stated (in relevant part):
- 1:04 p.m. After lunch the Student put head down instead of finishing work and argued with classmates.
  - 1:06 p.m. [Student] kicking chair with heels, [the Student] stated, “I hate doing work.”
  - 1:08 p.m. [Student] glaring at student and picking fights.
  - 1:13 p.m. [Student] kicking table and grunting.

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<sup>10</sup> The written summary stated the isolation room door was ajar; however, the paraeducator’s notes stated the Student was kicking the door, indicating the door was closed for some duration of the Student’s time in the isolation room.

31. On December 5, 2016, the Student was working with an adult in the kitchen and became unsafe when he kicked the refrigerator, table, and chairs. The Student also swore and threatened staff. Also that day, the District complete a written summary form. The summary stated the Student was in isolation from 2:26–2:48 p.m., and that staff used “Right Response”. The summary also noted that staff contacted the Parent, and the Student had stated, “I want to be good for Santa.”
32. On December 12, 2016, the paraeducator’S notes stated (in relevant part):
- 9:30 a.m. The Student began to shut down, staff took him for a walk where he stated he did not want to do his work. The Student returned from the walk and did his work.
  - 10:15 a.m. The Student shut down again, became aggressive and asked to go to the isolation room where he then fell asleep.
  - 11:00 a.m. Student was still sleeping.
  - 12:30 p.m. Staff attempted to wake the Student for lunch, but Student fell back asleep.
  - 12:45 p.m. Staff asked the Student if he wanted more time, the Student stated he did, and staff let him sleep for 15 more minutes.
  - 1:00 p.m. Student got up and ate lunch.
33. On December 13, 2016, the paraeducator’S notes stated (in relevant part):
- 10:20 a.m. Student was given his spelling assignment and stated he was done with his work. “Everyone is stupid,” and stated he was in charge. Staff asked the Student if wanted 10 minutes in the isolation room and the Student said yes.
34. On December 20, 2016, the teacher’s notes on the behavior-rating log stated the Student was “[U]nsafe with his words and actions per a phone call.”
35. The District was on break from December 21, 2016 – January 3, 2017.
36. On January 9, 2017, the paraeducator’S notes stated (in relevant part):
- 10:30 a.m. “[Isolation room] for strategy, ripping paper until 11:00ish.”
  - 12:40 p.m. Student went to isolation room until 12:50, due to calling other students names.

The District’s response to this complaint did not include documentation regarding the reason the Student was in the isolation room, or whether the Parent was notified via phone or written report.

37. On January 11, 2017, documentation provided by the District stated the Student made threatening gestures, made himself bleed, and shut down during science. The paraeducator’s notes stated (in relevant part):
- 1:55 p.m. Staff asked the Student to go to the isolation room.
  - 1:59 p.m. Student verbally expressed frustration with family and teachers.
  - 2:01 p.m. Student was kicking wall.
  - 2:02 p.m. Student was punching wall and continued to verbalize his frustrations with family and school.
  - 2:05 p.m. Student yelled and threatened staff.
  - 2:08 p.m. Staff called health room because Student had picked his nose so that it bled.

- 2:13 p.m. Student was picking fingers and office staff came to assist. Staff asked why the Student picked and the Student stated, "To make me hurt."
- 2:19 p.m. Student went into bathroom to change pants due to blood from picking.
- 2:20 p.m. Staff cleaned isolation room.
- 2:32 p.m. Staff directed Student to go back into isolation.
- 2:33 p.m. Student was banging on the wall.
- 2:34 p.m. [Student was] mocking staff and grunting.
- 2:40 p.m. Staff gave him paper to rip up.

The District's response to this complaint did not include documentation regarding the reason the Student was in the isolation room, the duration of time he was in the isolation room, or whether the Parent was notified via phone or written report.

38. On January 12, 2017, the Student made farting noises during lunch, moved around the room without permission, and refused to follow directions when asked to put his lunch box away. The paraeducator's notes stated (in relevant part):

- 12:58 p.m. Staff directed Student to go into isolation room.
- 1:03 p.m. Student yelled at staff, stated, "I'll stick a thorn branch up your butt!"

Also that day, the District completed a written summary form. The summary stated staff used "Right Response" and the Student was in isolation from 12:58–1:40 p.m. The summary stated staff contacted the Parent, and the Student apologized.

39. On January 13, 2017, the paraeducator's notes stated (in relevant part):

- 1:00 p.m. Student was directed to go to the isolation room due to being angry and rude to staff.
- 1:05 p.m. Staff removed mat from isolation room due to Student picking at it.
- 2:00 p.m. Staff directed Student to isolation room again due to glaring at staff and hand gestures. Student punched himself on the upper left leg and yelled. "I'm calling my mom and telling her everything," "I want to break my wrist!" "I've had enough of you," "No, don't call my mom!" Student was crying, "I told you not to call my mom," "I'm sick of it," "You need to listen, listen to me, don't call my mom or else I won't go to Monster Jam. I hate [teacher], she never listens to me."
- 2:26 p.m. Student picked nose, staff gave hand sanitizer.
- 2:28 p.m. Student yelled, "Let me out! Let me out now!"
- 2:23 p.m. District social worker entered isolation room to speak to Student.

The District's response to this complaint did not include documentation regarding the duration of time the Student spent in the isolation room, or whether the Parent was notified via phone or written report.

40. On January 17, 2017, the paraeducator's notes stated (in relevant part):

- 11:38 a.m. Student asked to go to isolation room, wherein he picked his nose until it bled. The Student's daily behavior sheet stated the Student also spoke with the social worker, had lunch, rested and turned it around.

41. On January 18, 2017, the paraeducator's notes stated (in relevant part):

- 10:35 a.m. Staff asked Student to go to isolation room because Student refused to do his spelling work. Student flipped off staff and made angry face but then sat with his head down on his arms in isolation.
- 10:41 a.m. Student flipped off staff.
- 10:43 a.m. [Student was] grunting.
- 10:45 a.m. [Student] called staff a “ding dong.”
- 10:48 a.m. [Student] flipping staff off and gesturing with fist.
- 10:50 a.m. [Student] kicking mat. Staff asked why the Student was angry and the Student replied, “I don’t know!” Student expressed frustration verbally, made a tent with the mat and rested.
- 12:20 p.m. Student came out of isolation room and began working on spelling.

The District’s response to this complaint did not include documentation regarding whether the Parent was notified of the Student’s time in isolation via phone or written report.

42. On January 19, 2017, the paraeducator’s notes stated (in relevant part) that the Student was hitting himself in the head during reading, and when staff asked that he not hurt himself, he replied that he did not care.

43. On January 20, 2017, the Student had issues with behavior and inappropriate language, shut down during spelling, made threats, and was asked to take a time out [in the isolation room]. The Student went on his own and then frightened staff, punched the wall, and was crying and yelling. The school counselor spoke with the Student and gave a mini lesson on manners. The paraeducator’s notes stated (in relevant part):

- 11:23 a.m. Student shut down during spelling, staff directed him to go to the isolation room. Student escalated in isolation, yelling and threatening to break items, and punch staff in the face.
- 11:31 a.m. Student punched the wall with his left hand.
- 11:32 a.m. Student biting right hand.
- 11:33 a.m. Student kicked the door to isolation room, crying and yelling, “No!”<sup>11</sup>
- 11:35 a.m. District social worker entered the isolation room to talk to Student.
- 11:58 a.m. Student let out of isolation.

The District’s response to this complaint did not include documentation regarding the duration of the Student’s time in isolation, or whether the Parent was notified via phone or written report.

44. On January 23, 2017, the paraeducator’s notes stated (in relevant part) the Student shut down during spelling and stated he wanted easier work. Staff directed the Student to go to the isolation room to cool down.

- 10:20 a.m. Student walked into isolation room.
- 10:30 a.m. Student came out to do work.
- 10:53 a.m. No work has been done, Student flicking crayon around desk.

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<sup>11</sup> The paraeducator’s notes stated the Student kicked the door, indicating the door was closed for some duration of the Student’s time in the isolation room.

45. On January 24, 2017, the Student became unsafe and crawled under his table and then threatened staff. Two people escorted the Student to isolation and his shoes were removed. Also that day, the District completed a written summary form. The summary stated the Student was in isolation from 1:13–1:14 p.m.<sup>12</sup>, but also stated the Student remained in isolation until the Parent arrived.

46. On January 30, 2017, the paraeducator's notes stated (in relevant part) that during spelling, the Student appeared to be angry so staff took him for a walk. The Student stated he was tired when he came back to class from the walk. The notes also stated:

- 11:12 a.m. Student went into isolation room to rest.
- 11:20 a.m. Parent called. Staff checked on the Student twice but he was still very tired.
- 12:20 p.m. Paraeducator had Student wash up for lunch.

47. On January 31, 2017, the Parent emailed the District director of special services and requested a copy of all the logs from the Student's time in the isolation room during the current school year. The Parent also asked to schedule an IEP meeting to have use of the isolation room removed from the Student's behavior plan due to its misuse. The Parent stated that having the Student sit quietly in the isolation room for three hours was not beneficial to him. The Parent requested a 1:1 paraeducator for the Student. In response, the director of special services stated he would get back to the Parent with some dates to hold the meeting.

48. Also on January 31, 2017, documentation provided by the District stated that the Student threatened staff, punched windows, and swore while he was in isolation, stating, "I'm going to put you in the [expletive] hospital" the Student then bit himself. The paraeducator's notes from this day stated:

- 1:10 p.m. Student started to get mad due to not getting an answer for work. Started to demand answers, kicked table, and called teacher name. Student then wanted his coat and said he was going to get it.

Also that day, the District completed a written summary form. The summary stated the Student was in isolation from 10:26 a.m.–12:55 p.m., that staff used "Right Response", and that the Student was injured. The summary further stated the Student bit his right hand and picked the back of his hand and cuticles, making them bleed. The summary noted that staff contacted the Parent.

49. On February 1, 2017, the paraeducator's notes stated (in relevant part):

- 10:08 a.m. At the end of group meeting, the Student refused to work, argued, and was shutting down.
- 10:10 a.m. Student refused to do tune up, head down in hands, the Student began clenching his fists.
- 10:21 a.m. Head down and refused to start spelling.
- 10:30 a.m. Threw paper on the floor.
- 10:33 a.m. Student walked into isolation room stating he was going to do "strategies."

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<sup>12</sup> OSPI notes this may be an error as the report stated the Student remained in isolation until the Parent arrived, which likely took more than 1 minute.

- 10:34 a.m. Phone call to Parent.
- 10:40 a.m. [Student] spoke to Parent for a few minutes.
- 11:28 a.m. Student colored on shoes.
- 11:34 a.m. Student colored on his hand and refused to stop. Staff suggested doing “strategies” and Student replied it did not matter.
- 11:36 a.m. Student came out of isolation.
- 11:37 a.m. Parent called room, spoke with Student.

50. Based on the paraeducator’s notes provided by the District, the following occurred on a school day between February 3 and February 8, 2017:<sup>13</sup>

- 9:24 a.m. The Student got up quietly and went to the isolation room. Staff asked him if he was tired and he stated he was sad because his aunt died. Staff emailed Parent regarding this statement.
- 9:32 a.m. Parent called and stated the Student had taken two antipsychotic medications.
- 9:48 a.m. Student sleeping in isolation room.
- 10:12 a.m. No change.
- 10:55 a.m. No change.
- 11:04 a.m. Student awake. Staff asked if he wanted a drink or to use the restroom and Student replied, “No, thank you!”
- 11:13 a.m. Student came out of isolation room and started on morning work.
- 11:43 a.m. Parent called.

51. On February 9, 2017, the paraeducator’s notes stated (in relevant part):

- 11:20 a.m. Parent called, Student shut down during reading, threw a pencil.
- 11:57 a.m. [Student] shut down not wanting to do math homework.
- 12:00 p.m. Staff called Parent.
- 12:03 p.m. Staff called Parent again, Student spoke with her. After call, Student put his head down and refused work.
- 12:43 p.m. Student began picking at scab. Staff asked him to stop and he stated he did not care.
- 12:46 p.m. Staff called the nurse.
- 12:50 p.m. Nurse entered room.
- 12:52 p.m. Student was speaking to staff with threatening manner.
- 12:53 p.m. Staff asked Student to wash up for lunch.
- 1:03 p.m. Student glared at classmates, staff called Parent, yelled and threatened a student.
- 1:13 p.m. Administrative staff from the office came to get Student and take him to the office.
- 1:31 p.m. Parent returned staff phone call and stated she was waiting for her husband and she would come pick up the Student.

52. On February 10, 2017, the Parent emailed the director of special services for the District elementary school and stated the Student would not be attending school due to the events that occurred the previous day. The Parent further stated that changes needed to be made immediately and that she would be coming in to the District at 10

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<sup>13</sup> Page in paraeducator’s journal is not dated but is between February 2, 2017 and February 9, 2017.



a.m. The Parent also stated she had not yet received the isolation log she requested on January 31, 2017.

53. On February 13, 2017, the Parent, the Student's father, and the Student visited a District middle school to observe the school's self-contained special education program for students with behavioral disabilities. Following the visit, the Parent and the District agreed to move the Student to the middle school program.

54. On February 14, 2017, the Parent emailed the elementary school director of special services and stated that she never received copies of the isolation logs she requested on January 31, 2017. She requested that the director provide the logs to her by the end of school on February 15, 2017.

55. On February 15, 2017, the paraeducator's notes stated (in relevant part) that the Student ripped posters off the wall and yelled at staff, threatening to throw a chair at the wall. Staff asked the Student if he was ready to walk to the office and the Student stated "no." The Student continued to yell and threaten to run away and hit the window. The paraeducator's notes stated:

- 9:51 a.m. Student was offered last choice, office, or time out. He declined. Staff encouraged the Student to self-reflect.
- 10:40 a.m. Staff called the Parent.
- 10:55 a.m. Staff called Parent from classroom; Student talked to the Parent until 11:05 and then had a drink of water.
- 11:07 a.m. Walked to office with principal, where he will stay until Parent comes to get him.

56. Also on February 15, 2017, the Parent sent the District middle school education specialist a text message, stating she had just picked up the Student from the District elementary school and that today, and the prior day, were very bad. The Parent stated there was no benefit to the Student being at the District elementary school and she would not be sending him back there. The education specialist responded that she would confirm the intake meeting with the District middle school when she took the Student's enrollment forms over that afternoon.

57. On February 16, 2017, the Student began attending the District middle school program. Also that day, the middle school principal emailed the Student's middle school special education teacher and the education specialist, stating the contents of her email should be copied into a prior written notice regarding that day's meeting. The principal noted the members of the Student's middle school IEP team in attendance at the meeting, and stated the most noticed behaviors from the Student are explosions resulting from hearing "no," which lead to kicking and punching. The Student most likely would hit a teacher, and yesterday, the Student elbowed his elementary school teacher in the stomach. The principal explained that the District middle school did not restrain students to enforce compliant behaviors, but instead used voice redirection or cleared the room, as well as gave options to keep a student safe. The principal further stated the Student is not able to verbalize when angry, and can go from zero to angry. At home, the Parent does not have a specific reward

system. The Parent has given permission for the District to call the Student's father if the Student is explosive; this can help. Academically, the Student has low comprehensive skills and is interested in monster trucks, hockey, drawing, and coloring. In math and reading, the Student is estimated to be around a 2nd grade comprehension. The principal further stated that email would be a regular form of communication with the Parent and that the Parent will check in with the special education teacher at drop off and pick up. The principal stated that the Student's "behavior plan and FBA are not completed/locked in the system," and listed the Student's current medications.

58. The District was on break February 17-21, 2017.

59. According to an "investigation form" from the District middle school, on March 14, 2017, the Student became upset when it was time to be done using an iPad. The Student escalated, began throwing things, and yelling. The Student threw two mac books, a staff member's purse, a package that broke, the classroom phone (broke), another student's bag, composition notebooks, and then ripped the school springboard book into multiple pieces. The Student threw the book at the lights, pulled plugs from the wall, and used the cord to swing around the room. He then turned over a desk, threw the document camera on the floor, threw over a bookcase, hit the door with a chair, and threw the chair across the classroom. He also threw the teacher's books across the classroom and pounded on the glass in the doors. The Student finally sat in his desk and began to cry, then went to the phone, tried to put it back together, and was able call the Parent. After hanging up with the Parent, the Student began to clean up his mess. Classroom teacher, paraeducators, and campus safety followed the classroom management plan for the safety of the Student and other students and staff in the classroom. The document camera and springboard were damaged.

60. On March 28, 2017, the District sent the Parent an invitation to review the Student's March 2016 IEP and May 2013 BIP, and to discuss the Student's annual goal progress.

61. Also on March 28, 2017, the Student, with help from the education specialist, emailed the director of special services and stated that he received 94% of his points yesterday and that his goal is to get 80% of his points and stay calm and safe all week, based on a contract he signed with the education specialist and his special education teacher. The Student stated the reward he wanted to work for was a visit from the director to have lunch on Friday afternoon. That same day, the director responded and stated he would be there on Friday to have lunch with the Student and that he was looking forward to it.

62. On March 29, 2017, the Student's IEP team met, including the Parent and the Student, to develop the Student's annual IEP. The March 2017 IEP continued to include the same goals from the March 2016 IEP, and provided for special transportation and the following specially designed instruction in a special education setting:

- Reading: 55 min/5 times weekly

- Math: 55 min/5 times weekly
- Social/Emotional: 245 min/5 times weekly

Under “Team Considerations” in the IEP, the Parent stated that she did not believe the Student’s IEP had been followed at previous schools, and that she was concerned that the IEP would not be followed now and in the future. The Parent further stated she was concerned that the Student’s BIP needed to be developed and followed across environments, including at home. The Parent also stated she was concerned that the Student’s academic skills were severely delayed and impacted by his behaviors. The IEP team considered the findings of the Student’s May 2015 evaluation, and set a date by which the team would revise the Student’s FBA and BIP after the Student had more time to settle into the District middle school and further develop relationships.

63. Also on March 29, 2017, the District sent the Parent a prior written notice, proposing to continue the Student’s IEP. The notice stated, “[T]he IEP team is proposing to continue the current placement in the EBD program at [District] middle school with the IEP developed on March 29, 2017.” The notice stated:

Procedural safeguards and rights and restraint and isolation policies were reviewed and that Parents were given a pamphlet. Parents strongly asserted their belief that [Student] needed a one-on-one paraeducator due to his problematic behaviors and delayed academic skills. They expressed frustration that they had asked for a one-on-one paraeducator for [Student] repeatedly over several years. The education specialist explained the negative impact of having a one-on-one paraeducator, as well as the inability to find employees to fill the positions. She also explained that the director of special education would also respond to their request. The team reviewed behavior data and discussed possible patterns of behavior. The team decided that it was most appropriate to wait another month to give [Student] more time to settle in to his new placement and then meet again to revise the Functional Behavioral Assessment (FBA) and BIP. A meeting was set for April 26, 2017 at 2:30 p.m. The Parents expressed concern that they believe a new evaluation or more areas of evaluation may be needed. The Parents agreed that it would be best to wait until [Student] has more established relationships before any evaluation should be attempted. Parents stated that they do not agree with the statement in the planning section of the IEP, ‘[Student] does not demonstrate a need for assistive technology devices or services at this time beyond what is available for same age peers.’ They believe this is an area that needs further consideration and discussion in a team meeting (IEP or evaluation).

64. The District was on break April 3-7, 2017.

65. On April 09, 2017, the District sent the Parent a prior written notice, refusing to initiate a 1:1 paraeducator for the Student. The notice stated the District was refusing to provide a 1:1 paraeducator because:

- The Student is enrolled in the EBD program, taught by a special education teacher and supported by a District behavior specialist, and the classroom is currently staffed to provide students requiring a self-contained program with all of their instruction in that setting.

- The District is concerned, because the student received specially designed instruction in reading and math, with research that found that 1:1 paraeducators negatively correlated with student achievement in math, English and science, likely due to relying on relatively untrained staff to deliver academic instruction.
- Paraeducators assigned to individual students tend to decrease the social interaction between the student and peers, which is not in the Student's best interest.

The notice also stated:

Since a follow-up meeting is scheduled for April 26, 2017, to give [Student] time to settle into the routine at the District middle school before visiting the FBA and BIP, it is proposed that the team take specific data on the Student's ability to initiate, continue and complete work without constant supervision as well as accurately ascertain his current skill levels in reading and math via star testing. If the District is saying that a one-on-one para educator is not the answer to solving the Student's behavioral and academic challenges, the District must present an alternative plan to the parents and collecting this proposed will help determine that plan. It is also recommended that the parents consider having the Student participate in the four-week summer program (transportation and lunch provided) to strengthen his academic skills and build upon any behavioral momentum that has occurred by the end of the school year.

66. On May 1, 2017, the Parent received and signed the consent for the FBA. The Student's IEP team also met to develop the Student's FBA and BIP.

67. On May 8, 2017, the Parent filed this complaint.

68. On May 16, 2017, the Student's special education teacher emailed the principal and stated, "[The Student] has only used the quiet room a couple of times to sleep. It is not a place he likes to go when upset."

## **CONCLUSIONS**

The District acknowledges that it did not use isolation or restraint with the Student in accordance with WAC 392-172A-02110. Districts are permitted to use isolation with a student only when the student's behavior poses an imminent likelihood of serious harm to self or others, or poses an imminent likelihood of substantial loss of or damage to property. Any use of isolation must be discontinued as soon as the risk of harm to self, others, or property has dissipated. If isolation and restraint are used, their use is strictly limited. Here, the District routinely used isolation with the Student when the Student's behavior did not pose an imminent risk of serious harm to himself, others, or property, and did not always discontinue the use of isolation as soon as the likelihood of serious harm had dissipated.

The District also acknowledges that follow-up procedures were not always completed. Following the release of a student from the use of 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; 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. Here, the District failed to

consistently review incidents of the Student's isolation with the Student, Parent, and/or the staff members who administered the isolation, to discuss whether proper procedures were followed and what training or support would be needed to help the Student avoid similar incidents.

The District also failed to follow current reporting requirements for the use of isolation and restraint. Following the release of a student from isolation and/or the use of restraint, a school employee or resource officer who used the isolation or restraint must submit a written report to the building administrator or administrator's designee within two business days. The report must include: 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; 5) whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and, 6) any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

In addition, following an isolation, the building administrator or the building administrator's designee must send written notification to the parents as soon as practical, but postmarked no later than five business days after the restraint occurred. Following the use of the isolation with the Student, the special education teacher inconsistently completed written summaries of the isolation incidents. It is also unclear if the special education teacher submitted copies of the written summaries she completed to the building administrator or designee. The Student's daily behavior chart indicated that on the days a written summary had been drafted, it was sent home to the Parent. However, the summary did not always include information about the reason for or duration of the isolation. In fact, the summary frequently stated the door to the isolation room had remained ajar, when it was clear from the consistent paraeducator's notes that the door was often shut for some duration of the Student's time in isolation. Additionally, the summaries did not clearly indicate if staff used restraint with the Student and did not include recommendations for changing the nature or amount of resources available to the Student and staff members in order to avoid similar incidents. Here, the District inconsistently documented the Student's isolation, often not drafting a summary and therefore, failed to regularly provide summaries to the Parent.

OSPI also notes that prior to development of the May 1, 2017 BIP, the Student's IEP team had not met to develop or amend a BIP for the Student since May 20, 2013. OSPI reminds the District that a student's BIP must be developed annually as part of a student's annual IEP. While the May 2013 BIP reflected the Student's target behaviors and also identified replacement behaviors, documentation provided by the District fails to show that staff utilized the steps or interventions identified in the BIP regarding setting changes. The District's failure to implement the behavioral interventions in the Student's BIP, failure to update and annually review the Student's BIP, and the District's seemingly excessive use of the isolation room resulted in a pattern of escalation for the Student. The Student's IEP team should have been aware that repeatedly putting the Student in the isolation room with the door shut would cause the Student to escalate since the Student's March 2016 IEP stated one of the Student's triggers seemed to be "being alone." Had the

Student's IEP team reviewed the Student's data and developed and/or revised the Student's BIP annually, the IEP team could have recognized that the District was substantially failing to implement the Student's BIP, and could have put steps into place to reduce the Student's escalations, which periodically resulted in self-injurious behavior.

Prior to this complaint being filed, the District held a mandatory training on restraint and isolation on February 21, 2017, which was provided by an outside trainer for all special education staff and paraeducators. The District also proposed that it would modify its current isolation and restraint summary form to include a monitoring tool for the parent debrief, and train all special education staff and administrators on the use of the form. In its response to this complaint, the District proposed providing additional training to staff on the use of this section of the form. The District also proposed that a private board certified behavior analyst (BCBA), with which the District currently contracts, provide 5 hours of observation and feedback to the District middle school to help the Student's IEP team in developing strategies to support the Student, to participate in the review and revision of the Student's current FBA and BIP, and train District staff, including modeling, on the strategies included in the BIP. The District also proposed to provide follow up training to the District elementary school staff on the use of the "Time out" room.

OSPI accepts the proposed corrective actions, with the additions and modifications noted below.

### **CORRECTIVE ACTIONS**

By or before **July 28, 2017, August 18, 2017, September 15, 2017, September 22, 2017, September 29, 2017, and October 20, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

The District will extend its contract with its current private BCBA to include the BCBA observing the Student for 5 hours, and providing feedback to the staff at the District middle school to support the Student's IEP team in developing strategies and structures to support the Student. By **September 29, 2017**, the District will submit a copy of the contract for services and documentation that the BCBA has completed the observations. At the completion of a cumulative 5-hour observation, the BCBA will participate in a meeting with the Student's IEP team to review and revise the Student's current FBA and BIP, and will provide training, including modeling, for District staff at the Student's current middle school on the strategies included in the BIP. By **October 20, 2017**, the District will provide a copy of: 1) the IEP meeting invitation; 2) the FBA; 3) a new or amended BIP; 4) a prior written notice; and, 5) documentation that staff have received training from the BCBA, which indicates the date(s) and times of the training.

#### **DISTRICT SPECIFIC:**

1. By **September 15, 2017**, the District will provide training regarding the requirement to develop a BIP as part of an IEP, when necessary, how to implement BIPs, and the process for reviewing and revising BIPs to address student need. The training will also include a discussion of using positive behavioral interventions with students. The

training will be provided by a qualified person who is not an employee of the District, and will include specific examples. The training will be provided to District building principals and assistant principals, and certificated special education staff, including educational staff associates (ESAs), at the Student's current middle school and former elementary school. Also by **September 15, 2017**, the District will provide training to the principal and assistant principal(s), certificated special education staff, and ESAs at the Student's former elementary school on the distinction between an isolation room and a quiet space a student may use voluntarily for the purpose of carrying out an appropriate BIP in accordance with RCW 28A.600.485 and WAC 392-172A-01107.

By **July 28, 2017**, the District will notify OSPI of the name of the outside trainer, and provide the trainer with a copy of this decision for use in preparing training materials. By **August 18, 2017**, the District will submit a draft of the outside trainer's training materials to OSPI for review. OSPI will approve the materials or provide comments by September 1, 2017, as well as additional dates for review, if needed. The training will occur by **September 15, 2017**. By **September 22, 2017**, the District will submit documentation that staff participated in the training. This will include a sign-in sheet of staff that participated in the training and a roster of who should have attended so OSPI can verify staff participation. If any of the staff are unable to attend, the District will contract with the trainer for a follow-up session within the required timeframe.

2. In addition to the District's proposed changes to its written summary form for isolation and restraint, OSPI orders the District to review and revise the form to ensure it includes all of the information required under RCW 28A.600.485 as it pertains to the documentation of isolation *and* restraint. By **August 18, 2017**, the District will submit a draft of its revised written summary for isolation and restraint to OSPI for review. OSPI will approve the materials or provide comments by September 1, 2017, as well as additional dates for review, if needed. By **September 15, 2017**, the principals will review the OSPI approved form with their respective building staff, and provide a written assurance to OSPI that this was done.

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

Dated this \_\_\_\_ day of June, 2017

Douglas H. Gill, Ed. D.  
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.)