

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-36**

### **PROCEDURAL HISTORY**

On May 16, 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 Medical Lake 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 17, 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 June 8, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on June 9, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 26, 2017, OSPI requested additional documents from the District. The District provided the documents on June 27, 2017, and OSPI forwarded the documents to the Parent on the same day.

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

### **OVERVIEW**

During the 2016-2017 school year, the Student attended a District high school and was eligible for special education under the category of other health impairment. The Student had an individualized education program (IEP) in place, along with a behavioral intervention plan (BIP). On February 10, 2017, the Student was escorted to the school office by the school resource officer (SRO), on suspicion of bringing marijuana to school in his backpack. The principal and the SRO spoke with the Student about checking his backpack, and when the SRO attempted to search the Student's bag, the Student tried to block him from accessing the bag and the SRO restrained the Student. The principal could not reach the Parent by phone during the incident, but was able to reach the Student's father, who spoke with the Student on speakerphone during the incident. The principal then drafted an incident report, and two days later, notified the Parent and the superintendent of the event in writing. The Parent alleged that the District failed to follow reporting requirements consistent with WAC 392-172A-02110, regarding the restraint of the Student. The District admitted that its report regarding the restraint was incomplete, and held a District wide training for administrators in May 2017, addressing reporting requirements.

## **ISSUE**

1. Did the District follow reporting requirements, consistent with WAC 392-172A-02110, regarding alleged restraint of the Student by a law enforcement officer on February 10, 2017 and April 12, 2017?

## **LEGAL STANDARDS**

Restraint/Isolation Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation 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**

1. During the 2016-2017 school year, the Student attended a District high school and was eligible to receive special education services under the category of other health impairment.
2. On January 24, 2017, the District completed a reevaluation of the Student and the Student's evaluation group determined that he continued to qualify for services under the eligibility category of other health impairment. The Student's evaluation report stated the Student was currently in the 10<sup>th</sup> grade and known to be a bright young man whose behavior often interfered with his ability to participate in the classroom,

complete academic tasks, and maintain positive adult and peer relationships. The Student's medical diagnoses include anxiety disorder, attention-deficit hyperactivity disorder (ADHD), and oppositional defiance disorder (ODD). The report further stated the Student frequently engaged in refusal behaviors, including refusal to follow directions, using inappropriate language, refusing to comply with school rules, cell phone use, and eloping. The report further stated the Student was being escorted between classes and was under lunch supervision to ensure he remained in school during school hours. The report stated the Student had a behavior intervention plan (BIP) in place to address these behaviors, and that the IEP team met frequently to update it as needed. At the time of this evaluation, the Student was eligible for specially designed instruction in reading, writing, math, and social emotional skills. Additionally, the report said that as of January 2017, the Student had 12 discipline incident reports, and during the 2015-16 school year, the Student had 31 incident reports.

3. On February 10, 2017, the Student was restrained by the school resource officer (SRO). Later that same day, the high school principal drafted an incident report regarding what occurred. The incident report stated:
  - The SRO escorted the Student to the office where the SRO informed the principal that he received information that the Student was in possession of marijuana.
  - The Student stated he had been in possession of marijuana before school, smoked it, and did not currently have any marijuana on him.
  - The principal stated that this was reasonable suspicion to search the Student's backpack and the Student became agitated.
  - The principal told the Student to remain calm and asked the SRO to search the Student's bag.
  - As the SRO reached for the bag the Student "aggressively moved out of his seat to cover up the back pack."
  - The SRO then restrained the Student and asked him to comply or he would have to handcuff him.
  - The principal then opened his office door and asked staff to call the Parent.
  - The Student began swearing and the SRO handcuffed him.
  - The SRO tried to calm the Student down and asked if he wanted to sit in a chair.
  - The Student became verbally aggressive and the principal directed the SRO to search his bag on suspicion of possession of marijuana.
  - The assistant principal came into the office and stated staff could not reach the Parent. The principal then asked the assistant principal to call the Student's father. The office staff reached the father and immediately transferred the call into the principal's office.
  - The principal put the father on speakerphone and let him speak to the Student. The Student continued to escalate and the SRO told the father he was going to place the Student under arrest. The father explained to the Student that being charged with possession of marijuana would eliminate the possibility of the Student getting into the military. The Student then screamed, told him he would be going to "juvenile often," and slammed his head against the wall.
  - Office staff stated she would continue to try to reach the Parent.
  - The principal ended the call with the father and again had staff call the Parent to come to the school.

- The principal asked his staff to prepare the emergency expulsion paper work regarding the possession of marijuana and then left for a doctor's appointment.
- On his way to his appointment, the principal exchanged messages with the father and also reported that the SRO and assistant principal took over with the Student until the Parent was able to take him home once he was released by the SRO.

The principal's incident report included the date, but not the time of day, the incident occurred. The report did not include the duration of the restraint used, whether medical care had been provided, or recommendations for changing the nature or amount of resources available to the Student and staff members in order to avoid similar incidents.

4. On February 14, 2017, the Student's individualized education program (IEP) team developed his annual IEP. The February 2017 IEP included annual goals in the areas of reading, writing, math, and social/emotional skills, and provided for specially designed instruction to address these goals. The IEP also provided multiple accommodations and modifications, including preferential seating, extra time to respond, provision of study notes, etc.
5. Also on February 14, 2017, the principal emailed the District superintendent a copy of the February 10, 2017 incident report. That same day, the principal also emailed the Parent and the District education support services director and stated, "See attached per your request (incident report). Please let us know what works for you to have [Student's] IEP meeting."
6. On February 16, 2017, the District held a manifestation determination meeting. Based on the February 16, 2017 prior written notice, the meeting was attended by the principal, education specialist, special education teacher, school psychologist, and the Student's father participated via speaker phone. The IEP team reviewed the February 10, 2017 discipline incident and determined that the Student's behavior had a direct and substantial relationship to the Student's disability and it was not the result of a failure to implement the Student's IEP; therefore, the behavior at issue was a manifestation of the Student's disability. The team discussed that possession of a controlled substance at school is considered a special circumstance, but recommended the Student return to school. Additionally, the team discussed a reentry plan, and decided to have the Student return to school on February 21, 2017, with changes to his BIP to address "the morning bus, his backpack, and supervision at lunch."
7. Also on February 16, 2017, the District conducted a functional behavioral assessment (FBA) of the Student. The FBA considered the following factors in developing the Student's BIP:
  - Outside influences being brought to school via backpack
  - Student leaving building at lunch
  - Transition between transportation and drop off at school and after school

Target behaviors include:

- When the Student wants to escape from school or receive peer attention, he will bring inappropriate items to school (marijuana, tobacco, e-cig)
- During lunch time the Student will leave campus
- After riding bus to school in the morning, the Student will leave campus instead of attending school

Antecedent Behaviors include:

- Allowing for short rests after chunk of work have been done
- Do not power struggle with Student
- Put Student in leadership or helping role that is positive
- Provide support for academic work

Consequence Modifications include:

- Provide support for difficult tasks
- Break tasks into smaller chunks
- Give breaks when needed
- Teach social skills at opportune moments

The Student's BIP also included a crisis plan if the Student engaged in behaviors that were dangerous to him or others or if he eloped. The plan stated school district policy would be followed regarding eloping and physical contact and drugs:

- Immediately notify the front office, remove other student and staff from the area, call to parents, school resource office notified, and police called

8. On April 12, 2017, based on documentation provided by the Parent in this complaint, the Parent arrived at the District high school after having been notified by District administrators that the Student was found to be in possession of an electronic cigarette. The District SRO confiscated the electronic cigarette. The Parent then met with the principal and the SRO regarding the incident.
9. On May 16, 2017, the Parent filed this complaint.

## **CONCLUSIONS**

The District failed to follow reporting requirements for the use of restraint as required by WAC 392-172A-02110. Following the release of a student from the use of restraint, the school employee or resource officer who used the restraint must submit a written report to the building administrator 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. The principal must make a reasonable effort to verbally inform the parent within twenty-four hours of the incident, and must send written notification no later than five business days after the restraint occurred.

Here, the SRO restrained the Student on February 10, 2017, but he did not complete a written report as required under WAC 392-172A-02110 and RCW 28A.600.485. While the high school principal drafted and emailed his restraint report to the Parent within five business days, on Tuesday, February 14, 2017, the report was not written by the individual who performed the restraint. It is also noted that the principal left before the SRO released the Student from the restraint, and the principal's incident report did not include information about what occurred after he left.

Additionally, the principal's report failed to include the time of the incident, stating only that it occurred at the end of the school day. The report also did not indicate the duration of the restraint or whether the Student or staff had been physically injured or if any medical care had been provided. Lastly, the report did not include any recommendations for changing the nature, or amount of resources available to the student and staff members in order to avoid similar incidents. The District admitted in its response to this complaint that the principal's report was missing some of the components required under WAC 392-172A-02110 and RCW 28A.600.485, and provided information that it held a training on May 31, 2017 where District administrators received training regarding the reporting requirements. The District will expand this training to include school resource officers, certificated staff, including educational staff associates (ESAs), and paraeducators.

In her complaint, the Parent also alleged that the Student was restrained on April 12, 2017. The information provided by the Parent and the District in this complaint does not substantiate that the Student was restrained on April 12, 2017.

### **CORRECTIVE ACTIONS**

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

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

1. By **August 18, 2017**, the District will review its restraint/isolation reporting form to ensure that it addresses the reporting requirements in RCW 28A.600.485, and provide OSPI with a copy of the form. OSPI will review the material and provide feedback, if necessary, by September 1, 2017.
2. By **September 15, 2017**, the District will provide training for administrators, school resource officers, certificated staff, including educational staff associates (ESAs), and paraeducators regarding the requirements of WAC 392-172A-02110(4), which includes the reporting requirements in RCW 28A.600.485. The training will also include a review of the District's updated restraint/isolation form. By **September 29, 2017**, the District will provide OSPI with a copy of the training materials and documentation that all required staff have attended the training. The documentation will include: 1) a sign-in sheet showing who attended the training, and 2) a roster of

all staff members who were required to receive the training, so OSPI can cross-reference the list with the actual recipients.

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 July, 2017

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

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

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