

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-69

PROCEDURAL HISTORY

On October 6, 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 Battle Ground 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 October 10, 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 November 1, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on November 2, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

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 school in another Washington school district and was eligible to receive special education services under the category of autism. The previous school conducted a reevaluation and developed an annual individualized education program (IEP) for the Student. In addition, the previous district conducted a functional behavioral assessment and developed a behavioral intervention plan (BIP) to address the Student's significant behavior issues. At the beginning of the 2017-2018 school year, the Student enrolled in the District. The District sent the Parent a draft transfer review form for the Parent to sign and the District offered to meet with the Parent if she had questions. On September 5, 2017, the District received the unsigned form from the Parent and proceeded to hold an IEP meeting, without the Parent present, to determine whether the Student's IEP from the previous school district would be adopted. The IEP included a BIP, an emergency restraint protocol, and services to address issues with toileting. The District implemented the Student's IEP placement in a one-to-one setting with a paraeducator away from all peers. The Parent alleged in her complaint that the Student was being unnecessarily isolated from all peers. In addition, the complaint stated that the District did not implement interventions before restraining the Student, and failed to provide the Student services for toileting, because on four occasions, the Student arrived home with toileting accidents. The District denied the allegations.

ISSUES

1. Did the District follow special education intrastate transfer procedures for the Student, including but not limited to providing comparable services during the 2017-2018 school year?

2. Did the District implement the Student's individualized education program (IEP) in regards to the behavioral intervention plan (BIP), one-on-one paraeducator services, and toileting during the 2017-2018 school?
3. Did the District follow procedures regarding the use and reporting of isolation consistent with the requirements of WAC 392-172A-02110 during the 2017-2018 school year?

LEGAL STANDARDS

Transfer Students Who Transfer from an In-State School District: If a student eligible for special education transfers from one Washington State school district to another Washington State school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements in WACs 392-172A-03090 through 392-172A-03110. 34 CFR §300.323(e); WAC 392-172A-03105(4). "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. 71 Fed. Reg. 156, 46681 (August 14, 2006) (comments to the final regulations). Districts must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question A-4).

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 who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. 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.

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) Extended School Year (ESY) services, if

necessary for the student to receive a free and appropriate public education (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.

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.

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.

Prohibited Practices: Hygiene care. A student must not be denied or subjected to an unreasonable delay in the provision of common hygiene care. WAC 392-172A-02076.

FINDINGS OF FACT

2016-2017 School Year

1. During the 2016-2017 school year, the Student attended an elementary school in another Washington school district and was eligible to receive special education services under the category of autism.
2. On October 11, 2016, the Student's individualized education program (IEP) team in the previous school district met to develop the Student's annual IEP. The IEP indicated that the

Student had significant academic delays and displayed very challenging behaviors, including screaming, hitting, kicking, and hitting his head against chairs, walls, doors, and people. The IEP stated that the Student was nonverbal and communicated with others using a white board and computer. The Student had needs in the areas of fine motor/visual motor skills and sensory processing skills. According to the present levels of performance, the Student was able to successfully use the bathroom 80% of the time, but required assistance unbuttoning his pants and tearing off toilet paper. He was able to put on his clothes except for buttoning his pants. Academically, the Student could identify initial letter sounds and had a sight word vocabulary of fifty-four words. Regarding mathematics, the Student was able to count to one hundred using number cards and add single numbers with 97% accuracy. He was able to write upper case letters and had considerable difficulty with lower case letters. He could also identify eight different color crayons. The IEP provided for nine annual goals, along with accompanying instructional objectives or benchmarks, in the following areas:

- Social/Emotional
- Adaptive behavior (toileting)
- Behavior
- Reading (reading comprehension)
- Mathematics (facts-subtraction, time skills)
- Written expression (communication)
- Speech-language pathology
- Occupational therapy

The IEP provided for the following special designed instruction to be provided in the special education setting, which is a total of 1,145 minutes per week:

- Social/Emotional – 30 minutes weekly
- Adaptive behavior – 125 minutes weekly
- Reading – 75 minutes weekly
- Written expression – 150 minutes weekly
- Adaptive behavior – 60 minutes weekly
- Behavior – 150 minutes weekly
- Mathematics – 180 minutes weekly
- Reading – 120 minutes weekly
- Written expression – 60 minutes weekly

The IEP also provided for the following related services in a special education setting:

- Speech language pathology – 60 minutes weekly
- Occupational therapy – 30 minutes weekly
- Transportation – daily

The IEP provided for the following supplemental aides and services:

- 1:1 Paraeducator Support – 125 minutes/4 times weekly (general education)
- 1:1 Paraeducator Support – 265 minutes/4 times weekly (special education)
- 1:1 Paraeducator Support – 180 minutes/1 time weekly (special education)
- 1:1 Paraeducator Support – 90 minutes/1 time weekly (general education)
- 1:1 Paraeducator Support – 30 minutes/5 times weekly (general education – bus drop off to start of school and end of school to bus pickup)

The IEP's explanation of the extent to which the Student would not participate with nondisabled students in the general education setting stated the following:

[The Student] will be with his general education peers, for approximately 435 minutes per week, for non-academic activities including lunch in the cafeteria, assemblies, line up to go home, and recesses. [Student] will also join his general education peers for assemblies as well as art activities as appropriate. [Student] will be separated from his general education peers for approximately 1,185 minutes a week while he receives his specially designed instruction in an *alternative education setting*. During this time Bryan will also receive 60 minutes a week of specially designed instruction in speech/language services, and 30 minutes once a week for OT services.¹

Additionally, the October 2016 IEP provided for the following accommodations/modifications:

Accommodations/Modifications	Frequency	Location
Access to keyboard for tablet computer	Daily as needed	All settings as needed
Alternative area for coping and self-de-escalation	As needed	Quiet work area with low visual stimuli
Augmentative communication (high tech)	Daily	All settings
Augmentative communication (low tech)	Daily	Small white boards, visual supports, first/then cards
Preferential seating	Daily	SIS classroom – allow for added personal space
Sensory breaks	Daily as needed	Dorothy Fox, motor lab, or SIS classroom
Special transportation	Daily	Dorothy Fox Elementary School
Access/use of the following: manipulative materials	Daily	All school locations
Access/use of the following: augmentative communication	Daily	All school locations
Behaviorally related: 1:1 support to help regulate and address behavioral needs	Daily	All school locations
Visual supports	Daily	All school locations
All school personnel who will be supporting (Student) with his IEP goals will be given a copy of his IEP	As needed	All school locations
Consultation will be provided to all school personnel as necessary	As needed	All school locations
All school personnel who will be supporting (Student) with his IEP goals will be given a copy of his behavior intervention plan	As needed	All school locations
Textual supports	Daily as needed	All school locations
Incentives/positive reinforcement	Daily as needed	All school locations

- On November 15, 2016, the previous school district conducted a functional behavioral assessment (FBA) of the Student and developed a behavioral intervention plan (BIP) for the

¹ The IEP indicated a slight discrepancy between the above statement and the totals in the IEP. The IEP stated the total minutes per week the Student was being served in a special education setting was 1,145 minutes.

Student. The BIP included calming strategies that prompted the Student to use his computer, communication cards, or verbalizations to communicate his needs. The BIP also provided the following choices to the Student to calm down: bean bag chair, vest, headphones, weighted vest, to the motor lab, “wait a minute” time, and lying down. The BIP stated that staff would use praise and feedback with the Student through positive language, high fives, stickers, happy faces, checks, and incentive charts showing the beginning and end of an activity and when he would receive a break. The response plan (to target behaviors) stated:

First, [the Student] will be verbally and visually prompted to recognize his feelings and how to exercise calm down behavior. A quiet work place will be offered and redirections will be attempted. [The Student] will be offered choices regarding work and he will be able to choose what he would like to do during an earned break time.

The de-escalation plan stated:

“Hands waving, hands to ears, out of seat. Offer fidget, calm voice, state he looks frustrated and ask if he wants to go to break area. [The Student] has an emergency response protocol (ERP) in place which has been approved by [the Parent]. The ERP is to be used when [the Student] is not being safe or puts others including staff or peers at risk harm.”

In addition to the BIP, the District had an emergency response protocol to address the Student’s behavior when he would hit, kick, and head-butt staff, and throw objects at students and staff. The protocol called for a one-person hold, two-person hold escort, and a de-escalation room that was padded for safety.

2017-2018 School Year

4. After moving into the District during the summer, the Student began attending a middle school on August 30, 2017.
5. Also on August 30, 2017, the Student would not follow staff directions, according to the District’s “physical intervention report,” which stated that the staff attempted to intervene when the Student was lying on the ground. Staff took his iPad so the Student would follow them. The Student began screaming and throwing objects at the staff. The Student then began kicking and head butting staff. Staff first attempted to use a “CPI Children’s Control Position” restraint but it was ineffective. Staff then attempted to use a gym mat to block hitting and kicking. When the Student’s behavior continued to escalate, the staff called the Parent who was able to calm down the Student. The Parent recommended that the staff use the Student’s white board to communicate with the Student when the Student’s behavior began to escalate.
6. On August 31, 2017, District staff that worked with the Student had a debriefing. The Student’s special education teacher then emailed the staff the recommendations from the debriefing. The list, among other things, included a gym mat to “confine-move and block” the Student and “implement a visual schedule with toileting every two hours...He is taken to the bathroom every two hours. Make sure it is on his schedule.”

7. Also on August 31, 2017, the District sent the Parent a transfer review form, which stated that the District was proposing to adopt the Student's October 2016 transfer IEP from the prior school district. The transfer review stated:

Discussion/Deliberations of IEP Committee: (Student) transferred to the District with a current eligibility and IEP from [his prior school district]. [Student's] current IEP includes placement in a self-contained special education program with additional one-on-one para support, an FBA/BIP, and an emergency response protocol. A comparable program and services will be provided at [a District] Middle School.

The form also stated that the recommendation of the IEP committee was to continue placement in accordance with the previous IEP.

8. The transfer review form had a place for the Parent to sign, indicating her agreement and stated an offer to meet with the Parent if there were any questions. There was no indication that a meeting date was proposed. The Parent wrote in her citizen complaint that she received the transfer review form, but said she did not receive an invitation to meet. According to the District's contact report, on September 5, the Parent returned the transfer review draft unsigned.
9. According to the District's contact report, on September 1, 2017, the school psychologist telephoned and emailed the Parent regarding the transfer review. In the email, the school psychologist stated that she was sending home a transfer review draft document for the Parent to review. The psychologist stated, "This is separate from the more in depth IEP meeting which we will schedule soon...This document is to ensure you that we have received the current records from [previous district] and are able to develop and provide a comparable program and appropriate services..." The school psychologist offered to meet if the Parent had any questions or preferred to hold a formal meeting. The contact record indicated that there was no response from the Parent.
10. The District's documentation in this complaint included an undated meeting notice, stating an IEP meeting was scheduled for September 1, 2017, and a prior written notice, dated September 1, 2017. The meeting notice stated the purpose of the meeting was to address the transfer review. The prior written notice stated that the District was proposing to "initiate the current IEP" and that "services as outlined in his IEP will be provided with an equivalent program placement and identified necessary services."²
11. On September 5, 2017, the District telephoned and sent a letter to the Parent to invite her to a transfer review meeting on the same date. According to the contact review sheet, on September 6, 2017, the Parent responded that she was unable to attend, but gave her permission for the meeting to proceed. The Parent later requested an IEP meeting, which was held on September 12, 2017.

² Both notices were dated September 1, 2017. However, there was no meeting on September 1, 2017. The meeting occurred on September 5, 2017. The District did not explain the discrepancy, but it is likely that the dates on the forms were incorrect.

12. Also on September 5, 2017, the District held an IEP meeting without the Parent to review the Student's IEP from the previous school district. The IEP team then completed a transfer review form that stated that the IEP team was recommending "to continue placement in accordance with previous IEP" and no referral to the eligibility committee for an evaluation was necessary. The IEP team revised the Least Restrictive Environment (LRE) justification statement in the Student's IEP to state:

[The Student's] current IEP indicates that he will participate in the general education setting 435 minutes per week for nonacademic activities including lunch, recess, assemblies, lining up to go home, and art activities as appropriate. [The Student] spends the remainder of his day receiving specially designed instruction in an *alternative educational setting* where he can be appropriately supported. Additional resources for [the Student] include speech/language therapy, occupational therapy, and one-on-one para educator support. An equivalent program will be designed for [the Student] in the current school setting at [the District] Middle School. A new IEP is due by October 11, 2017.

The transfer review form also stated that the Parent did not attend the meeting or respond to the information about comparable services that was sent to the Parent on September 1, 2017. According to the Parent, the Parent received the September 1, 2017 email, but did not receive an invitation to the September 5, 2017 meeting.

13. According to the District's response to this complaint, the Student received his special education services in a room by himself away from all peers with a paraeducator. This location provided the Student an opportunity to work in a quiet area with fewer distractions and less sensory overload. According to the District, the previous district informed the District that the Student received his special education services in a separate location "equivalent to the size of an office" with his paraeducator for the majority of his school day. The Parent claimed she was unaware that the previous district provided services in a separate room away from all peers. The Parent stated that the previous district would relocate the Student to a desk away from other students when the Student was having sensory problems, but the Student remained in the classroom with other students.

14. Also on September 5, 2017, staff restrained the Student on two occasions. According to the District's "physical intervention report", at 10:05 a.m., the Student was on his way to the bathroom with a visual toilet card when he hit his head against the doorway, entered and exited the bathroom, and hit his head again against the doorway. He began kicking staff and hitting his head against the wall. The staff attempted a "CPI Children's Control Position" to intervene, but after being unsuccessful redirecting the Student, the staff used a gym mat to block the Student from hitting and kicking staff. According to the District's response to this complaint, the gym mat was used only to block the Student's hitting and kicking, not to restrain the Student. After the Student stopped, he laid on the floor and then followed staff to the appropriate area. The report form included a section, which asked, "How did the behavior escalate? What strategies were used to de-escalate this situation?" No strategies were noted on the form.

15. At 2:25 p.m., on the same day, another behavior incident occurred when the Student transitioned from one classroom to another. According to the District's "physical intervention report", the Student dropped to the floor and began kicking students and staff. Staff again used the "CPI Children's Control Position" for three minutes and then released the Student after he calmed down. The intervention report stated that a "visual and physical structure" were implemented, along with a picture schedule. The form did not list any strategies that were used to de-escalate the situation, but recommended "continue visual/physical structure-implement social stories." According to the Parent's complaint, the District did not attempt any interventions in response to the behavior incidents because interventions were not mentioned in the intervention reports. The Parent stated each occurrence lasted more than three minutes without the Student being able to communicate with staff with his white board or iPad.
16. Also on September 5, September 9, September 7, and September 13, 2017, the Parent stated that the Student was sent home "with both wet and dried stool crusted on him." The Parent stated that staff did not check the Student during the day to see if he was soiled, and did not assist the Student to clean himself. The District responded by stating: "Services to address [Student's] adaptive behavior goal of gaining independence for the use of the toilet and following toileting routine were implemented." The District's response did not address the specific incidents.
17. On September 8, 2017, the Parent emailed the special education teacher regarding the prior behavior incidents, among other concerns. The email stated:

...These reports make it very clear that there were absolutely no strategies or tools used to communicate with [the Student], only states what was implemented after the occurrence was over. I know (the Student) very well and it is unlike him to go from nothing to being physical-there is always a point where intervention does work. He got upset and started acting out and he was placed in a three minute hold not once, but twice. No mention of white boards, iPads, social stories, PECS, notebooks-not one thing. Nothing at all was tried to de-escalate the situation. And it was witnessed without intervention. The strategies I showed you worked without ever touching him.
18. On September 12, 2017, the Parent, special education director, school psychologist, speech/language pathologist, special education teacher, principal, and assistant principal met to discuss the Parent's concerns about the Student being isolated from his peers, de-escalation strategies, and toileting issues. According to the Parent's notes from the meeting, District staff informed the Parent that no interventions were attempted prior to the restraints. The Parent's notes also indicated that the District staff told the Parent that the Student was an adolescent male and did not want staff's assistance in the bathroom and that the District provided no toileting wipes or visual schedules for the Student in the restroom. The District's documentation in this complaint does not show that a prior written notice was issued regarding this meeting.
19. Also on September 12, 2017, the Student's special education teacher emailed the Parent, stating in part: "He went to the bathroom 3 times today, once in the morning and twice in

the afternoon. I have visuals for him in the bathroom, as well as in his teaching notebook to review. I showed him where the wipes were, and showed and talked about the sequencing of using wipes with the visuals..." In its response to this complaint, the District provided copies of the visual schedules and social narratives used with the Student for toileting.

20. On September 14, 2017, the Student began throwing a ball at staff, according to the District's "physical intervention report". The Student's behavior then escalated to screaming, kicking, and throwing objects at staff. According to the incident report, the staff attempted to intervene by showing the Student the white board and provided verbal prompts, but the Student threw the board at staff and began to hit his head against the door. He then "back crawled" into the hallway. As other students entered the bathroom, the Student followed and lunged at them. Staff interceded by placing themselves between the Student and others. The incident report stated that a gym mat was used as a barrier between staff and the Student. The incident was eventually resolved when staff entered the bathroom and verbally prompted the Student to stand up, walk to the classroom, get the iPad, and take a break.
21. On September 15, 2017, the Student became aggressive towards staff and self. According to the District's "physical intervention report", staff attempted to intervene by verbally prompting the Student to use his white board, offering ice, and other visual prompts, but eventually used the gym mat to block the Student's hitting and kicking. The Student continued to throw objects at staff and began hitting his head against the iPad, wall, and bookshelf. The staff attempted to apply deep pressure using a ball with the Student, but the Student kicked it away. After twenty minutes, the Student returned to participating in classroom activities.
22. According to the Parent, on September 15, 2017, the Parent was walking with the Student and an administrator to the Student's classroom and found the other students in the classroom unattended. The Student proceeded to another classroom with apparently no teacher present. According to the Parent, she was told that the teachers were in a meeting and the administrator served as the paraprofessional for the moment. The District's response did not address this account other than to claim that a paraeducator was provided at all times.
23. Also according to the Parent, on September 15, 2017, she received the completed September 5, 2017 transfer review from the District. The Parent subsequently contacted the school psychologist regarding questions about the transfer review. In response, the school psychologist emailed the Parent later that day regarding the transfer review meeting and stated:

I thought responding via email might be easier than trying to call you during work hours. First, I apologize for the confusion regarding the paperwork aspect of the transfer review, hopefully I can clarify a bit better for you. The purpose of a Transfer Review is to ensure an incoming student and their family that we have received the current IEP and evaluation records for a student, and are able to create and implement a comparable program. Sometimes during a transfer, a particular type of program is not available at the new school, and the transfer review team may need to meet with the parent and IEP team members, to document agreed upon changes to the IEP or make recommendations to

begin a reevaluation. As we discussed previously when he first registered, we were able to design and implement a comparable program with equivalent services here at [the District middle school], so no changes were proposed in this transfer. A formal meeting was not held since one was not requested, but I allowed a few days from sending the packet home to you, before finalizing the transfer record, in case you did want to hold a meeting. When I received my transfer review envelope back with the boundary request form enclosed, I proceeded with locking the transfer records, and sent the boundary form on to the appropriate department. Below (in this email chain) is the original email I sent regarding the transfer review process...³

24. On September 20, 2017, the special education teacher emailed the Parent, stating, “We have not been able to hire a 1:1 person yet. [The paraeducator], who you met, has been working this position.” According to the District’s response to this complaint, it was not able to hire a paraeducator specifically assigned to the Student because of the short timeline between receiving the Student’s transfer records and the start of the school year. Two “floating” paraeducators provided the 1:1 service to the Student until a dedicated paraeducator could be hired. The District’s documentation included a copy of the paraeducators’ schedule that showed which paraeducator was on duty for each day.
25. On September 26, 2017, the District held an IEP meeting, with the Parent, to review the Student’s October 2016 IEP. The District’s September 26, 2017 prior written notice stated, “A review of the transfer record was part of this meeting, however no changes were recommended so no changes to the transfer were made.” The notice stated that this decision was made in consideration that an annual review of the IEP was due by October 11, 2017.
26. On October 6, 2017, the Parent filed this citizen complaint.

CONCLUSIONS

Issue 1: Transfer Procedures – The Parent alleged that the District failed to provide the Student with comparable services by providing special education services in a room away from all peers under the supervision of a paraeducator. In the event of an intrastate transfer, the new district is required to provide comparable services, in consultation with the parent, until the new district either adopts the transfer IEP or develops a new IEP for the student. Comparable services means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student’s new district. The documentation in this complaint shows the location of services on the Student’s October 2016 transfer IEP stated special education and the LRE explanation in the IEP indicated that the Student received his services in an “alternative education setting.” The IEP did not describe the alternative education setting, but based on a conversation with the Student’s prior school district, the District interpreted this to be a room located away from all peers where the Student was supervised by a paraeducator. While the Parent may have disagreed with the Student’s placement, the documentation shows the District was acting in good faith based on the information it received from the Student’s prior school

³ According to the documentation, the email chain consisted of one other email from the school psychologist. It was the September 1, 2017 email that was referred to in Finding of Fact #8.

district. The documentation in this complaint substantiates that the District provided comparable services from August 30 – September 5, 2017, until it adopted the Student's October 2016 transfer IEP. However, it is noted that had the District more clearly explained the transfer process to the Parent and scheduled an IEP meeting to review the Student's transfer IEP at a mutually agreed upon time, it could have avoided the confusion regarding the Student's placement. Additionally, given the confusion and disagreement regarding the Student's placement and the vagueness in the Student's transfer IEP regarding what was meant by an alternative educational setting, the District should have developed a new IEP for the Student which clarified his placement. The District is reminded that when it adopts a transfer IEP, it becomes responsible for implementing all aspects of the IEP. Therefore, the District should carefully review transfer IEPs to determine if the provisions of the IEP are clear and can be implemented. If the District has not already done so, the District will hold an IEP meeting to develop an IEP which clearly states where the Student will receive his services throughout his school day.

Issue 2: IEP Implementation –

Behavioral Intervention Plan (BIP) – The Parent's complaint included an allegation that behavior interventions were not used prior to restraining the Student. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP, which includes implementing a BIP. The Student's BIP included a number of strategies, supports, and interventions to facilitate communication and mitigate aggressive behavior. The intervention strategies in the BIP included positive reinforcement, a response plan, de-escalation plan, and crisis and recovery plan.

Out of the five intervention reports that were received in this investigation, three reports did not describe any de-escalation strategies used during the restraint incidents. The other two intervention reports provided more detailed information about the incidents, including specific interventions to de-escalate the Student's behavior. Based on the documentation, the District failed to follow the BIP and provide de-escalation interventions. In addition, staff used interventions that were not part of the BIP or emergency response protocol. For example, staff used a gym mat to control the Student on at least two occasions but neither plan mentioned using a gym mat. Since the gym mat was being routinely used, the gym mat should have been addressed in the BIP.

One-on-One Paraeducator Services – The Parent alleged that the District failed to provide the services of a one-on-one paraeducator per the Student's October 2016 IEP. The October 2016 IEP provided for the Student to receive one-on-one paraeducator support throughout the school day. The Parent based her complaint on the September 15, 2017 incident when no staff was in a classroom and the September 20, 2017 email that stated a 1:1 paraeducator had not been hired to date. In its response to this complaint, the District denied the allegation and provided the schedules for the paraeducators assigned to work the Student, which showed a paraeducator was assigned to be with the Student at all times. While there may have been a lapse of service on September 15, 2017, there was insufficient documentation to substantiate the allegation. Additionally, there is no requirement that only one paraeducator provide the Student's support

throughout his school day. Therefore, the fact that the District did not have a dedicated 1:1 paraeducator for the Student at the beginning of the school year is not a failure to implement his IEP, as the District has substantiated that other paraeducators provided the support during that time period.

Toileting – The Parent stated in her complaint that the District failed to provide the services in the IEP that addressed toileting. According to the Parent, the Student was both wet and soiled when he came home on September 5, September 7, September 9, and September 13, 2017. The District denied toileting services were not implemented, but did not dispute the four “accidents.” According to the District, visual schedules, social stories, visuals, and planned bathroom breaks were used in working with the Student on toileting. District emails to the Parent also indicated that services were being provided. The fact that no further accidents occurred after September 13, 2017 was an indication that the services were eventually meeting the Student’s unique needs. Nevertheless, the Student’s IEP should have included some provision for addressing toileting accidents, given that the Student was only proficient in using the restroom 80% of the time.

Issue 3: Restraint and/or Isolation Procedures – The complaint alleged that the District unnecessarily isolated the Student from all his peers.⁴ According to WAC 392-172A-01107, isolation means restricting the student *alone* within a room or any other form of enclosure, from which the student may not leave. The definition of isolation does not include the Student being in a room away from his peers with a paraprofessional. Thus, the District did not unnecessarily isolate the Student from his peers.

CORRECTIVE ACTIONS

By or before **January 12, 2018** and **February 9, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

If the District has not already done so, the District will hold an IEP meeting to review the Student’s placement, BIP, and emergency response protocol to ensure the Student’s unique needs are being addressed. The IEP team must also review toileting services to determine if more comprehensive services are required to maintain hygiene. By **January 12, 2018**, the District will provide: 1) a copy of any meeting invitations; 2) a copy of the new or amended IEP; 3) a copy of a prior written notice; and, 4) any other related documentation.

DISTRICT SPECIFIC:

The District will develop written guidance to be provided to all District certificated special education staff, including educational staff associates (ESAs), District special education administrators, and principals, which addresses special education transfer procedures. The guidance will include examples.

⁴ This allegation was also addressed in #1 above regarding comparable services.

By **January 12, 2018**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by January 26, 2018 and provide additional dates for review, if needed. The District will provide OSPI with documentation showing it provided all District certificated special education staff, including ESAs, and principals with the written guidance by **February 9, 2018**. This will include a roster of all staff members who were required to receive the written guidance, 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 December, 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.)