

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-77

PROCEDURAL HISTORY

On October 23, 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 Anacortes 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 24, 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 16, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on November 17, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On November 20, 2017, OSPI requested additional information from the District, and the District provided the requested information on November 20 and 21, 2017. OSPI forwarded the information to the Parent on November 21 and 22, 2017.

On December 1, 2017, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 4, 2017.

On December 6, 2017, OSPI received additional information from the District and forwarded it to the Parent on December 7, 2017.

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

OVERVIEW

During the 2017-2018 school year, the Student was a resident of the District but attended a special education program at a regional educational service district (ESD). The District retained legal responsibility over the Student's education program. The Student's individualized education program (IEP) included a behavioral intervention plan but did not include an emergency response protocol. In September 2017, the Student was restrained on two occasions when the Student became disruptive and would not respond to verbal redirection, and isolated once after the Student overturned desks and was throwing objects. The ESD attempted to contact the Parent about the incidents and provided a letter that served as notice under the restraint and isolation procedures. In October 2017, the Student was placed in isolation and the ESD notified the Parent by telephone and letter of the incident. The Parent alleged that there was no likelihood of danger when the Student was isolated and the isolation should have been discontinued when the Student calmed down. In addition, the Parent also alleged that she did not receive the required notice regarding the restraint and isolation incidents. The District denied the allegations.

ISSUES

1. Did the District follow the restraint and isolation procedures regarding notice to the parent as required by WAC 392-172A-02110?
2. Did the District's use of restraint and/or isolation of the Student on October 18, 2017 meet the conditions stated in WAC 392-172A-02110?

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.

FINDINGS OF FACT

1. During the 2017-2018 school year, the Student was a resident of the District but attended a special education program operated by a regional educational service district (ESD). The District contracted with the ESD to provide services to the Student who was eligible for special education under the category of other health impairment.
2. The Student's individualized education program (IEP) in place at the beginning of the 2017-2018 school year was developed on October 10, 2016. The October 2016 IEP indicated that along with other academic needs, the Student's behavior interfered with his learning or the learning of others. The IEP stated:

[Student] is currently placed in a full-day, self-contained special education program at [ESD] as determined by his IEP team, to address his needs as a special education student. He receives specially designed instruction in social/emotional skills throughout his school day. [Student] requires highly trained staff, access to a counselor, and a highly structured environment not available in the student's home school.

The IEP provided for two annual goals in the area of social/ emotional behavior. The IEP called for specially designed instruction in the area of social/emotional to be provided in special education for the entire day (1500 minutes per week). The IEP included the following accommodations/modifications:

- Presentation: Simplify test wording
- Presentation: Rephrase test questions and/or directions
- Presentation: Use of graphic organizers
- Setting: Preferential seating
- Setting: Take test in separation location

- Setting: Modify/repeat/model directions
 - Setting: Provide individualized/small group instruction
 - Timing/Scheduling: Extra time to complete assignments
3. The Student's October 2016 IEP also included a behavioral intervention plan (BIP), which addressed the Student's target behaviors of challenging other students and displaying tantrums when he did not get his way. The BIP provided for opportunities for the Student to learn social expectations using "thinking with your eyes" and "smart guess" intervention strategies. The de-escalation plan involved classroom structure, counseling, and allow the Student to return to the group with additional support. The crisis and recovery plan included the following:

When [Student] experiences difficulty utilizing his skills and strategies, staff will encourage him to Reset at his desk or in the Alcove outside the classroom door to readjust his thinking. The expected behavior is to come back into the classroom, and follow the group plan...The parent/guardian and school agree that further emergency response protocol is not needed.
 4. On September 26, 2017, according to the ESD incident reports, two behavior incidents involving the Student occurred. According to the first incident report, the Student sat at his desk and without apparent provocation, jumped out of his seat, and ran out of class. After being brought back to class, the Student ran between the desks screaming at other students. He then ran towards the outside doors but staff stopped the Student by restraining him in a "basket hold," which took less than three minutes. The Student calmed down and went back to class only to jump up and follow other students who ran out the back door without permission. The report did not indicate what occurred after the Student ran out the door. Later that morning, the Student, along with other students, were running outside the building and refused to return to the classroom. After the Student failed to respond to redirection, staff placed the Student in "gentle basket hold as per Right Response." After the Student was released, the Student, with the help of other students, climbed on the roof of a shed. The Student refused to climb down so the staff called the fire department. The Student climbed down on his own and was redirected back to the classroom for lunch. After lunch, the Student and other students attempted to run out of class and the Student climbed out of the window and would not respond to staff instructions. The Parent was called to pick him up and he was suspended for the remaining part of the day.
 5. The incident report form regarding the first incident on September 26, 2017 documented that a "teacher" from the ESD notified the Parent of the incident by telephone.
 6. Also on September 26, 2017, the ESD sent a suspension letter to the Parent regarding the second incident on September 26, 2017. The letter stated the Student was being suspended for causing a disruption on program grounds, assault to a student, and refusing to leave an area when instructed to do so.
 7. On October 6, 2017, the ESD program manager sent a letter to the Parent regarding the restraint that occurred on September 26, 2017. The letter stated:

According to our records, [Student] had an incident involving isolation or restraint in the last 5 school days. His teacher has called you after the incident. We will review his behavior plan at our monthly staffings, and provide you with a report on his plan quarterly with his report card.

Pursuant to [ESD] Policy 3246, and [Student's] IEP, this letter serves as the formal written notification that he has had incident involving restraint and/or isolation. If you have any questions, please feel free to contact us here at the school.

According to the Parent's complaint, she did not receive the October 6, 2017 letter.

8. On October 10, 2017, the Student's IEP team that included the District's special education director, the mental health specialist, the ESD program administrator, and the ESD teacher met to develop his annual IEP. The October 2017 IEP indicated the Student needs a high level of structure and that with structure, the Student was able to sustain focus on activities and self-regulate his behavior. The IEP stated that the Student's behavior also interfered with his learning or the learning of others by refusing to work, shutting down when frustrated, and displaying significant anxiety due to the inability to foresee consequences. When frustrated, the Student made disruptive noises, tore up assignments, threw pencils, hit, and kicked others. The IEP noted that academically, the Student had a strength in reading and weaknesses in mathematics and writing. The IEP included two annual goals in the area of social/emotional behavior and called for specially designed instruction in the area of social/emotional to be provided in special education for the entire day (1500 minutes per week). The IEP included the following accommodations/modifications:
 - Extended testing time
 - Individual/Small group administration
 - Timing and scheduling breaks
 - Presentation: Simplify test wording
 - Presentation: Rephrase test questions and/or directions
 - Presentation: Use of graphic organizers
 - Setting: Preferential seating
 - Setting: Take test in separation location
 - Setting: Modify/repeat/model directions
 - Setting: Provide individualized/small group instruction
 - Setting: Access to noise cancelling headphones
 - Setting: Access to bumpy seat and fidget
 - Testing: Timing and scheduling-discrete use of timer
 - Testing: Timing and scheduling-break testing into chunks
 - Timing/Scheduling: Extra time to complete assignments
9. The IEP team also updated the BIP. The BIP stated that the Student's target behaviors were "targets other peers verbally and engages in physical behaviors of laying on the floor, yelling, making loud noises, use of inappropriate language and throwing objects, hitting the walls or floor." The BIP provided strategies that included allowing time for positive peer interactions to help the Student determine social expectations, use of a visual timer, verbal prompts, visual schedules and reminders on the board, using social thinking language, time and space

away from other students to process, and use of a positive peer buddy to help the Student “emotionally center himself.” The BIP included consequence strategies, which were to teach intentions of peers in the moment, allowing a break from a frustrating activity, and “resetting” to his desk or quiet area for one minute and then encouraged to rejoin the activity. The BIP also included a crisis and recovery plan, which stated:

When [Student] experiences difficulty utilizing his skills and strategies, staff will encourage him to Reset at his desk or in the Alcove outside the classroom door to readjust his thinking. The expected behavior is to come back into the classroom, and follow the group plan...The parent/guardian and school agree that further emergency response protocol is not needed.

10. On October 13, 2017, the Parent emailed the ESD special education teacher, requesting specific documents, including the September 26, 2017 isolation/restraint reports. On October 16, 2017, the ESD special education teacher responded to the Parent that they would start collecting the documents. According to the Parent’s complaint, the Parent also asked the ESD for the reports in person.
11. October 18, 2017, according to the incident report, the Student was involved in a behavior incident that resulted in the Student being isolated. The Student, along with other students, knocked over desks, threw pencils, and ignored the teacher’s directions to clean up the room. The teacher instructed the Student to go to the “quiet room”¹, but the Student laid on the ground and began to play with toy cars rather than going to the quiet room. The Student was then given a choice to either clean up the room or go to the quiet room. The Student proceeded to the quiet room and staff closed the door. The Student continued to play with the toy cars and picked paint off the wall. After a toy car was removed by staff, the Student became upset and began screaming and crying. He threw the other toy car at staff and called the teacher an expletive. Eventually, the Student calmed down and returned to class after approximately 35 minutes in isolation. The Parent came and removed the Student from school.
12. Later on October 18, 2017, the Parent emailed the District special education director, stating she had not received the isolation/restraint reports that she had requested from the ESD. The Parent also expressed concern about the incident that occurred that day, stating, “[Student] was put into isolation with door closed due to playing with toy cars.” In response, the special education director stated she would contact the ESD to follow up on the request for the isolation and restraint reports.
13. On October 23, 2017, OSPI received this citizen complaint.
14. Also on October 23, 2017, the ESD sent a letter, informing the Parent that the Student was involved in an October 18, 2017 incident resulting in isolation. The letter stated that the letter would serve as formal written notice to the Parent and also stated:

¹ The ESD acknowledged that the use of the “quiet room” falls within the definition of isolation.

According to our records, [Student] had an incident involving isolation or restraint in the last 5 school days. His teacher has called you after the incident. We will review his behavior plan at our monthly staffings, and provide you with a report on his plan quarterly with his report card.

Pursuant to [ESD] Policy 3246, and [Student's] IEP, this letter serves as the formal written notification that he has had incident involving restraint and/or isolation. If you have any questions, please feel free to contact us here at the school.

CONCLUSIONS

Issue 1: October 18, 2017 Use of Isolation – Isolation shall be used only when a student's behavior poses an imminent likelihood of serious harm. Likelihood of serious harm as defined in WAC 392-172A-01109 means a substantial risk that a person will inflict physical harm upon himself, another person, or the property of others. Any use of isolation must be discontinued as soon as the likelihood of serious harm has dissipated. The ESD's documentation from October 18, 2017 shows that the Student went from overturning desks, throwing pencils, and being noncompliant to laying on the floor playing with toy cars before being placed in isolation. Thus, at the time isolation began, there was no likelihood of serious harm. The ESD staff failed to use isolation consistent with the requirements in WAC 392-172A-02110. Although the District did not have direct control over the Student and the actions of the ESD staff, that does not negate the District's responsibility to ensure that isolation and restraint procedures are being followed. The District, in contracting with the ESD to serve the Student, retains responsibility over the Student's education program, but the responsibility to comply with isolation and restraint procedures also extends to the ESD.

Issue 2: Notice Regarding the Use of Isolation and Restraint – Following the release of a student from isolation or restraint, the school, among other requirements, must review the incident with the student and parents about the appropriateness of the response and with staff to avoid similar incidents. Within two days of the incident, a written report must be submitted to the district office. The report must contain the following:

- 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.

In addition, the school must make a reasonable effort to verbally inform the parents within 24 hours of the incident and must send written notification, written notification being the same as written report, as soon as possible but postmarked no later than five business days after the isolation occurred. Again, the District retained the responsibility for meeting the reporting requirements under WAC 392-172A-02110 and RCW 28A.600.485. Here, the September 26, 2017 ESD incident reports both stated that the Student was restrained. Both

incident reports stated the ESD telephoned the Parent on the same day and sent a letter on October 6, 2017, although the Parent alleged that she did not receive notice. Nevertheless, the ESD's notification for the September 26, 2017 incidents did not meet the reporting requirements in WAC 392-172A-02110 and RCW 28A.600.485. The ESD's notification lacked all the information required on the written report and the notification to the Parent was not postmarked within five *business days* of the incident. Regarding the October 18, 2017 incident, the incident report stated that the Parent was notified on the same day ("picked up") and a letter was sent on October 23, 2017. Nevertheless, the ESD's October 23 "notice" also did not meet the reporting requirements.

CORRECTIVE ACTIONS

By or before **January 17, 2018, February 7, 2018, March 19, 2018, and April 2, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

1. By **March 14, 2018**, the District will ensure all District special education administrators and ESD special education staff, including certificated and non-certificated staff, involved in the Student's program receive training regarding the requirements of WAC 392-172A-02110, which includes the reporting requirements in RCW 28A.600.485. The trainer will not be an employee of the District or ESD. The training will include examples, and will reference the ESD's incident reporting form.
 - By **January 17, 2018**, the District will provide documentation that the trainer has been provided a copy of this decision for use in preparing training materials.
 - By **February 7, 2018**, 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 February 17, 2018 and additional dates for review, if needed.
 - By **March 19, 2018**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. *If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session(s) within the required timeframe.*
2. By **April 2, 2018**, the District and ESD will provide documentation that the required written notices under WAC 392-172A-02110 and RCW 28A.600.485 are being provided to parents by submitting to OSPI at least five isolation or restraint notices.

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.)