

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-89

PROCEDURAL HISTORY

On December 4, 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 December 5, 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 December 21, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on December 22, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On January 2, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On January 10 and 16, 2018, OSPI requested additional information from the Parent and the Parent provided the requested information on January 16, 2018. OSPI forwarded the additional information to the District on January 16, 2018.

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

OVERVIEW

At the start of the 2016-2017 school year, the Student attended a District elementary school and was eligible for special education and related services under the category other health impairment. The Student's individualized education program (IEP) included a behavioral intervention plan (BIP) with numerous behavior interventions. In February 2017, the Student was placed at a District middle school, based on his behavioral needs. In June 2017, the Student's IEP team met and determined that the Student needed additional academic and nonacademic support and changed the Student's placement to a nonpublic agency (NPA). While at the NPA, the Student remained a resident of the District and the District retained responsibility over the Student's education program. Also, while at the NPA, the Student was restrained twice for exhibiting unsafe behaviors. Further, the Parent believed that the Student was restrained and isolated a third time that was not documented by the NPA. The Parent requested access to the Student's educational records to view video footage from when the Student was isolated, but the NPA denied this request. After the second documented incident in which the Student was restrained, the Parent pulled the Student out of school and asked the District to reevaluate the Student in order to determine a new placement.

The Parent alleged that the NPA failed to follow the procedures regarding the use and reporting of isolation and restraint required under WAC 392-172A-02110, and that the NPA failed to follow procedures for responding to the Parent's request to view the video of the Student being put in isolation. The District denied the allegations, although the District also proposed corrective actions to ensure clear communication between the District, the NPA, and parents.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the Student's placement at the NPA and the incidents in June 2017 that prompted this complaint. These references are included to add context to the issues under investigation and are not intended to identify other issues or potential violations, which occurred prior to the events at issue in this complaint.

ISSUES

1. Did the District follow procedures regarding the use and reporting of isolation and/or restraint consistent with the requirements of WAC 392-172A-02110 during the 2016-2017 school year?
2. Did the District follow procedures for responding to the Parent's request to review the Student's educational records consistent with the requirements of WAC 392-172A-05190?

LEGAL STANDARDS

OSPI Authority over Nonpublic Agencies: A school district must notify OSPI, in writing, of their intent to serve a student through contract with a nonpublic agency. The school district and the nonpublic agency must review the requirements for approval and complete the application for nonpublic agency approval. Upon review of the completed application, OSPI may conduct an independent on-site visit, if appropriate, and will determine whether the application will be approved or disapproved. School districts must ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student being placed at the nonpublic agency. WAC 392-172A-04090. OSPI may suspend, revoke or refuse to renew its approval of a nonpublic agency to contract with school districts for the provision of special education if the nonpublic agency: 1) fails to maintain the approval standards in WAC 392-172A-04090 through 392-172A-04100; 2) violates the rights of students eligible for special education; or, 3) refuses to implement any corrective actions ordered by OSPI. WAC 392-172A-04105. OSPI is also required, subject to implementing the nonpublic agency provisions of WAC 392-172A-04080 through 392-172A-04105, to monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires. WAC 392-172A-04110.

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.

Imminent: Imminent as defined in RCW 70.96B.010 means: the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. WAC 392-172A-01092.

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

Restraint Conditions: Restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the restraint must be discontinued as soon as the likelihood of serious harm has dissipated; b) the restraint shall not interfere with the student's breathing; and c) any staff member or other adults using a restraint must be trained and certified by a qualified provider in the use of such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. WAC 392-172A-02110.

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: a) the isolation must be discontinued as soon as the likelihood of serious harm has dissipated; b) the isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purpose of human occupancy; c) the isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure; d) an adult responsible for supervising the student shall remain in visual or auditory range of the student at all times; e) 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, f) 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.

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/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 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 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.

Educational Records: Under the Family Educational Rights and Privacy Act of 1974 (FERPA), "education records" are broadly defined as "those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 34 CFR §300.99.3; WAC 392-172A-05180(2). Education records are records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for or on behalf of the agency or institution. These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail. 34 CFR § 99.3. The term "educational records" does not include records of instructional, supervisory, administrative personnel, and educational personnel ancillary to those persons if those records are in the sole possession of the maker of the records, and are not accessible or revealed to any other individual except a temporary substitute of the record maker. 20 USC §1232g(a)(4).

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized

education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

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.
2. The District's 2016-2017 school year started on September 1, 2016.
3. 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 that the Student's prior educational placement was a "self-contained class for students with educationally significant behavioral problems" based on the Student's eligibility for special education services under the category of emotional behavioral disability. The evaluation report stated that the Student had now been diagnosed with attention deficit disorder (ADD), oppositional defiant disorder (ODD), and anger issues. The report further stated that the behavioral manifestations of these diagnoses have interfered with the Student's and others' learning, and that the "magnitude and frequency of his behavioral episodes hinder his ability to efficiently navigate the academic and social/behavioral aspects of the general education classroom." The Parent stated in the report that the Student "needs lots of reassurance that he is doing okay." Based on the evaluation report, the evaluation group determined the Student continued to be eligible to receive special education services, but that the Student's eligibility category would be changed to other health impairment.
4. The Student's individualized education program (IEP) initially in place at the beginning of the 2016-2017 school year was developed on March 30, 2016, and the Student's behavioral intervention plan (BIP) initially in place at the beginning of the 2016-2017 school year was developed on May 20, 2013.
5. In February 2017, the Student was placed at a District middle school.
6. On March 29, 2017, the Student's IEP team met to develop the Student's annual IEP. The Student's IEP included four goals: one in reading, one in mathematics, and two goals that addressed social/emotional skills. The IEP stated the Student would receive 1,775 minutes per week of specially designed instruction in a special education setting, and 1.39% of his

instructional time in a general education setting. The IEP further stated that the Student's "behavior impedes his learning and the learning of others due to non-compliance, disruptions, verbal and physical outbursts, and lack of work production." The IEP noted that a functional behavioral assessment (FBA) would be conducted and a BIP implemented once the Student had more time to settle into the middle school.

7. On May 1, 2017, the Student's IEP team met and discussed the FBA and then developed a BIP for the Student. The BIP stated that the Student engaged in verbal and physical aggression 4-5 times a week, 1-2 times a day, lasting anywhere from 20 to 90 minutes. The BIP stated that the team identified some triggers that led to the escalated behavior, but that at other times, there was no identifiable trigger. The BIP included target behaviors; intervention strategies for setting, antecedents, and teaching; consequence strategies; a reinforcement plan; a de-escalation plan; and a crisis and recovery plan.
8. On June 2, 2017, the Student's IEP team met and discussed changing the Student's placement from the District middle school to a placement at a nonpublic agency (NPA). According to the prior written notice, dated the same day, the team determined that this was the most appropriate placement because a "greater level of support is most appropriate to meet [the Student's] academic and nonacademic needs."
9. On June 5, 2017, prior to starting at the NPA, the Parent and the Student signed an emergency response protocol (ERP). The ERP stated that "physical restraint is always used as a last resort and used only in the following situations: 1. The student is a danger to self. 2. The student is a danger to others (staff, students). 3. Physical aggression on property." The ERP stated that in some occasions, physical management is necessary and staff will use the least amount of "physical guidance (not restraint)" necessary when a student is refusing to cooperate with staff, the student is disrupting programming, the student is interfering with the other students' ability to learn, and when the student is providing "extremely poor modeling for other students." According to the ERP, all staff members at the NPA are trained and certified through the "Handle with Care" training program in "Crisis Intervention, Behavior Management and Restraint." The Parent and Student signed under a statement that stated that they had read and understood the policy, and specifically that they understood that "physical management will only be used as a last resort for the safety of my child, as well as other students and staff." The ERP stated that the Parent would be notified after any physical management is required.
10. June 6, 2017 was the Student's first day in his new placement at the NPA.
11. The NPA's "Strategies Room Log" for June 6, 2017, indicated that the Student was in the strategies room from 10:15-10:35 a.m. The strategies room log provides a record of the date a student at the NPA is in the strategies room, the time in and out, a narrative of behaviors exhibited while in the room, and whether or not a student is restrained or isolated. According to the District, the strategies room is a separate classroom where students reflect on their behavior and are taught behavior management strategies; time in the room is used as part of a student's interventions to help the student avoid being restrained or isolated. The report

does not indicate that the Student was physically restrained or isolated, and the NPA did not complete a student action form on June 6, 2017 regarding the Student's behavior.

12. On June 6, 2017, at 5:49 p.m., the Parent emailed the District director of special services (District director) and stated that according to the Student, he had a rough first day and was sent to the "P.T.O. room or the 'Strategies' room." According to the Parent, the Student was "forcefully (I'm guessing he wasn't listening to verbal commands since the security officer twisted his arm behind his back to make him walk) moved to the isolation room." The Parent stated that she was not notified by the NPA that the Student was sent to the strategies room or the isolation room. The Parent also stated that when she spoke with the Student's main teacher that day, that the teacher was not aware the Student had been placed in the isolation room.
13. In the documentation provided in the complaint, the Parent included photographs of bruises on the Student's arms that she believed came from the Student being forced into "the isolation room" on June 6.
14. On June 7, 2017, according to the Parent, the Student was sent to the strategies room twice. The Student stated that while in the strategies room, he was threatened by a staff member. The strategies room log does not list the Student as having been in the strategies room on June 7.
15. On June 8, 2017, according to the Parent, the Student was sent to the strategies room and restrained.
16. The NPA's strategies room log does not list the Student as having been in the strategies room or as having been restrained on June 8, 2017. However, according to the NPA's "Student Action Form," dated June 8, 2017, the Student was restrained for four minutes.¹ The student action form stated:

Toward the end of lunch, [the Student] began making repeated negative comments toward another student about his mother. He refused repeated polite requests to stop, completely ignoring and talking past staff to continue to call out [the] other student to fight. When [the Student] stop up [sic] and started to throw part of his lunch at the other student, staff stopped him and placed him in a child [physical restraint technique (PRT)] which he resisted slightly. [Behavioral Intervention Specialist (BIS)] staff were called to the room, but the other [student] remained angry and hit [the Student] with a foam pad. BIS staff arrived and took the other student, then [the Student] to Strategies.

The student action form stated that the Student's teacher reported the incident to the building administrator and notified the Parent that the Student was restrained, in person, when she picked the Student up from school that day.

¹ The District could not explain the discrepancy between the strategies log and the student action form for the incidents that occurred on June 8, 2017.

17. At 2:30 p.m., on June 8, 2017, the Student's teacher emailed the Parent a copy of the student action form. The form included the date, time, and duration of the incident; the behavior or activity that led to the restraint; and the type of restraint. The form did not indicate the name and title of the staff who administered the restraint; did not include whether the Student or staff was injured during the restraint; or, include any recommendations for changing the nature or amount of resources available to the Student and staff to avoid similar incidents.
18. Documentation from the District in response to this complaint did not include a copy of the June 8 student action form, and the District director stated that she never received a copy of the form from the NPA.²
19. Also on June 8, 2017, the Parent emailed the District director and stated that she still had not received any report regarding the Student's restraint and isolation on June 6, 2017.
20. Also on June 8, 2017, the Parent emailed the NPA's head behavior intervention specialist (behavior specialist) and the director of the NPA (NPA director). The Parent stated that "it is now the end of the school day on Thursday the 8th and I still have had no feedback, report, or communication at all that [the June 6 restraint and isolation] happened."
21. On Friday, June 9, 2017, the NPA's strategies room log stated that the Student was in the strategies room from 9:05-9:22 a.m., from 9:30-10:15 a.m., and then again from 1:36-2:25 p.m. In regard to the third time period that the Student was in the strategies room, the report stated, "threw desk, targeting kids in strategies, cursing and posturing at peers, threatening to break staff computer, knocked over garbage can, staff told him not to give out his number to peers but did it anyway."
22. Also on June 9, 2017, the Student was restrained for less than a minute. According to the NPA's student action form:

[The Student] went to sit at the teacher's desk, which is an area restricted for students. Staff politely requested and encouraged [the Student] to follow classroom procedures that he refused for several minutes. [The Student] did go to his desk when he was told [behavioral intervention specialist (BIS)] staff would be called if he continued to refuse to follow class rules. At his desk, [the Student] flipped his desk on the ground; BIS staff was then called. When another student suggested that [the Student] think about happy things when he was frustrated, [the Student] picked up his desk by the legs and began to swing it toward other students. Staff placed [the Student] in a PRT at the point he was swinging the desk, and escorted him to the hallway. BIS staff arrived and took [the Student] to Strategies.

² The District director stated that she is the director assigned to work with the NPA and that she maintains a log of all District students placed at the NPA to track their progress. The District director stated that any student action forms are sent by the head behavioral intervention specialist (behavior specialist) at the NPA to her, and that she did not receive an email or a copy of the form from the behavior specialist regarding the June 8, 2017 restraint of the Student.

The student action form also stated that the Student's teacher reported the incident to the building administrator. According to the District's response, the Parent was informed of the incident at 3:00 p.m. on June 9, 2017, when she picked up the Student from school.

23. Also on June 9, 2017, at 3:09 p.m., the Student's teacher emailed the Parent a copy of the student action form. The student action form included the date, time, and duration of the incident; the behavior or activity that led to the restraint; and the type of restraint. The form also indicated that the Student's teacher reported the incident to the building administrator and that the incident was witnessed by another BIS staff person. However, the form did not clearly indicate the name and title of the staff who administered the restraint. Further, the form did not state whether the Student or staff was injured during the restraint, or include any recommendations for changing the nature or amount of resources available to the Student and staff to avoid similar incidents.
24. On June 9, 2017, the Parent emailed the NPA director and requested a "viewing of the video for when [the Student] went into the isolation room on Tuesday June 6th."³ The Parent stated that she was not sure what time of day the isolation occurred. The NPA director responded, the same day, and stated that the school's parent company does not allow the release of videos without a court order. The District's response to this complaint further stated that the NPA denied the Parent's request to release the video because "there was no record of [the Student] going to the Strategies room or the Isolation room...on that date."
25. On June 9, 2017, the District director responded to the Parent's June 6 email and stated that the Parent was correct that parents should be notified if an isolation occurred. The District director also stated that she did not usually receive any information from the NPA regarding when students went to the strategies room. The District director stated that she would follow up with the NPA director to ensure that all information was communicated to the Parent in a timely manner.
26. On June 11, 2017, the Parent emailed the District's executive director of special services (executive director) regarding her concerns over the Student's emotional and physical safety at the NPA, and whether the placement was appropriate for the Student. Further, the Parent stated that she "still [had] not been told the name of the staff member that put my son in the Isolation room, threatened to break his arm, told him the wrong name and gave him a message to relay to me."
27. On June 12, 2017, the executive director responded to the Parent's concerns and provided information about the NPA's policies. The executive director stated, in part:
Notifying parents when a student is sent to the **strategies room**: It is **their policy to contact parents when a student is sent to the strategies room**. [The behavior specialist]

³ It is unclear from the documentation provided whether the video footage is from the strategies room, a hallway, or the isolation room. The Parent did sign a photography/videotaping authorization giving permission to photograph or videotape the Student. The authorization stated that the NPA used photography and/or videotaping with the intent that it is "therapeutic, educational and supportive of the program." The authorization stated that photographs are used primarily for student projects and anonymous images could be used in promotional material.

is only aware of one incident when [the Student] was sent to the strategies room and he did contact [the Parent].⁴ The staff at [the NPA] have been trained on SHB 1240 the most recent legislation on Isolation and restraint. [The behavior specialist] shared that he will ask [the NPA director] to share with you their procedures when he returns.

Further, the executive director stated that the behavior specialist spoke with the staff member who restrained the Student and placed him in the strategies room on June 9, 2017, and that the staff member denied making any threatening statements.⁵

28. Also on June 12, 2017, the Parent emailed the NPA director and District director and stated that she was keeping the Student home until there was a plan in place and her questions were answered.
29. Additionally, on June 12, 2017, the behavior specialist at the NPA emailed the District director and attached a copy of the student action form regarding the Student being restrained on June 9, 2017.
30. On June 13, 2017, the NPA director responded to the Parent's email from the previous day and stated "based on my discussions with my supervisor he is recommending [the Student] not return to our school as it appears we are not meeting your expectations. We would welcome a meeting on our end to figure out another placement."
31. Also on June 13, 2017, the District director emailed the Parent and attached the June 9 student action form. The District director stated, "I was not sure if you had received this, or not, so wanted to make sure you had a copy." The Parent responded that she had already received a copy of the form.
32. Also on June 13, 2017, the District sent a prior written notice to the Parent, which stated that the Student's placement at the NPA would be discontinued based on the following Parent concerns:
 1. There was an incident of isolation. [The Parent] wanted information about the isolation and staff member names that were involved;
 2. [The Student] reported that the person that placed him into isolation threatened to break his arm;
 3. [The Parent] stated that she thought the person that placed [the Student] into isolation had given a false name;
 4. [The Parent] reported concerns that other students were hassling [the Student] for their phone number. This information was shared by [the Student] in the Strategies room.

⁴ It is unclear why the behavior specialist told the District he was only aware of one incident in which the Student was sent to the strategies room, because based on the NPA's student action forms and strategies log, the Student was in the strategies room at least five times on three of the four days he attended school at the NPA. It is also unclear why the email stated that the behavior specialist contacted the Parent. According to the documentation provided, after both instances of restraint, the Student's teacher, not the behavior specialist, notified the Parent in person and emailed her the student action forms.

⁵ Based on the documentation provided in this complaint, it is unclear who the staff person is that restrained the Student. The Parent stated that she was never told his name and the District director stated that she also was not told who restrained the Student.

Texts were received by [the Parent] from a student; and, 5. [The Parent] shared that she was concerned for [the Student's] safety with peers and staff.

The prior written notice also stated that the NPA director informed the Parent in an email that "his supervisor was terminating placement...as it did not appear that the program was meeting [the Parent's] expectations."

33. Finally, on June 13, 2017, the Parent emailed the District director and requested that the Student be reevaluated and that they meet to discuss the areas of evaluation and future placement.

CONCLUSIONS

Issue 1: Restraint and/or Isolation – The Parent alleged that the NPA failed to use restraint and isolation consistent with the requirements of WAC 392-172A-02110 in June 2017, when the Student was restrained and allegedly isolated.

Conditions for the Use of Isolation and Restraint: Restraint, as defined in WAC 392-172A-01162 and RCW 28A.600.485, means physical intervention or force used to control a student, including the use of a restraint device, to restrict a student's freedom of movement. Isolation, as defined in WAC 392-172A-01107 and 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. A district may only use restraint or isolation when a student's behavior poses an imminent likelihood of serious harm. Imminent means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. Likelihood of serious harm, as defined in WAC 392-172A-01109, means that there is substantial risk that the person will inflict physical harm upon him or herself, another person, or the property of others. Once the likelihood of serious harm has dissipated, any use of restraint or isolation must be discontinued.

June 6, 2017 Incident: Based on the Parent's email, the Student had a difficult first day at the NPA and was sent to the strategies room and then forcefully moved to the isolation room, by a behavior specialist who did not tell the Student his real name. According to the documentation provided by the District, the Student was sent to the strategies room for approximately twenty minutes, but he was not isolated. Based on the fact that the NPA completed student action forms for the other incidents of restraint and notified the Parent after each restraint, the documentation in this complaint does not indicate that the Student was restrained or isolated on June 6, 2017.

June 8, 2017 Incident: According to the NPA's student action form, the Student was restrained by staff for four minutes after he made negative comments, ignored requests to stop, and then began to throw part of his lunch at another student. After the restraint, BIS staff took the Student to the strategies room. The documentation provided in this complaint does not indicate that staff were concerned for the safety of the Student or other students, nor does it indicate that there was a substantial risk of harm to school property. Thus, at the time the restraint began, there is no indication in the documentation that there was imminent likelihood of serious harm.

And, given that the Student had a BIP that outlined intervention strategies, a response plan, and a de-escalation plan, there is no indication that staff utilized the steps or interventions identified in the BIP. Further, it is not clear that the NPA followed its own policy to use physical restraint as a last resort as set out in the ERP that the Student and Parent signed. On June 8, 2017, the NPA failed to use restraint consistent with the requirements in WAC 392-172A-02110.

June 9, 2017 Incident: According to the documentation provided in this complaint, the Student was in the strategies room three times and restrained once for less than a minute on June 9, 2017. As stated on the student action form, the Student was sitting behind the teacher's desk and resisted directions to return to his own desk. The Student returned to his desk when he was told that BIS staff would be called. When the Student returned to his desk, he escalated again, flipped his desk on the ground, and then picked the desk up by the legs and began to swing it towards other students. At that point, staff placed the Student in a restraint hold and BIS staff escorted the Student to the strategies room. In this instance, the documentation provided does indicate that there was an imminent risk of harm to both the Student and other students in the classroom. Further, the restraint lasted less than a minute, which indicates that it was discontinued as soon as the harm dissipated. The NPA properly used restraint on June 9, 2017.

Follow-up Procedures: Following the release of a student from restraint or isolation, a school must implement follow-up procedures. These procedures must include reviewing the incident with the student and the parent to address the behavior that precipitated the restraint and the appropriateness of the response. The school must also review the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. According to the District and the Parent, the Parent was informed, in person, by the Student's teacher when the two incidents (June 8 incident and June 9 incident) of restraint occurred. However, there is no indication in the documentation provided in response to this complaint that the NPA reviewed either incident with the Student or the Parent to address the behavior and the appropriateness of the restraint. Further, there is no indication that the NPA reviewed the incident with the staff involved. The documentation in this complaint substantiates that the NPA failed to follow the required follow-up procedures. No student specific corrective action is required because the Student no longer attends the NPA or a school in the District. The District proposed that it provide guidance to the NPA that encourages the school to clearly define the difference between the strategies room and the isolation room. OSPI accepts the proposed corrective action, with the additional guidance topics and modifications noted below.

Reporting Procedures: Any school employee who uses restraint or isolation on a student must inform the building administrator as soon as possible, and submit a written report of the incident to the district office within two business days. The written report must include, at 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 NPA's student action forms for both incidents state that the Student's teacher reported the incident to the building administrator. After the June 9 restraint, the behavior specialist emailed the student action form to the District within two business days. However, the District never received a copy of the June 8 student action form. The NPA's student action form states the date and time of the incident; provides a description of the activity that led to the restraint; and indicates the type of restraint used and the duration. However, the form does not clearly indicate the name and job title of the individual who administered the restraint; state whether the student or any staff were physically injured during the restraint and medical care provided; or provide a space to note any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. The NPA failed to provide the District with a written report that met the requirements of RCW 28A.600.485.

Additionally, RCW 28A.600.485 requires that a school principal or principal's designee make a reasonable effort to verbally inform the student's parents within twenty-four hours of the incident and must send written notification, written notification being the same as the written report, as soon as is practical, but postmarked no later than five business days after the restraint or isolation occurred. The documentation provided in this complaint shows that the Student's teacher informed the Parent that the Student had been restrained on both occasions the day each incident occurred, when the Parent picked the Student up from school. Further, the Student's teacher emailed the Parent a copy of the student action form for both incidents the day each incident occurred. However, as noted above, the student action form is missing elements required by RCW 28A.600.485; thus, the NPA failed to provide the Parent with proper written notification of the restraints. No student specific corrective action is required because the Student no longer attends the NPA or a school in the District. The District proposed that it require the NPA to use the District's "Isolation and Restraint" form for all District students placed at the NPA, and to include District staff in the follow-up procedures with the parent and student to ensure proper procedures are followed. OSPI accepts the proposed corrective actions, with the additions and modifications noted below.

Issue 2: Access to Student Educational Records – The Parent alleged that the NPA failed to follow procedures for responding to the Parent's request to review the Student's educational records as required under WAC 392-172A-05190, when the NPA denied the Parent's request to view the video from when the Student was allegedly put in the isolation room on June 6, 2017. Districts must allow the parents of a student eligible for special education to inspect and review any educational records collected, maintained, or used by the district. The Family Educational Rights and Privacy Act (FERPA) broadly defines educational records as files, documents, and other materials that contain information directly related to a student and are maintained by an educational agency. A record includes media, videotape, audiotape, film, and microfilm. A school district must comply with a request to review records promptly and the district must respond in no more than forty-five calendar days after the request has been made.

On June 9, 2017, the Parent requested access to the Student's educational records, specifically the video footage of the Student being restrained and placed in the isolation room on June 6, 2017. The NPA director responded the same day and stated that the school's parent company does not allow the release of videos without a court order. The NPA's response is inconsistent with FERPA regulations, as parents are not required to get a court order to review video footage of their own child. However, the District's response to this complaint clarified that the NPA denied the request to release the video because the Student was not restrained and isolated on the day in question; thus, the requested record does not exist. The District proposed that it provide the NPA with guidance to ensure that the NPA understands that, the District and the parents have a right to access all records kept on the NPA's site related to students the District has placed at the NPA. OSPI accepts this proposed corrective action with, the additions and modifications noted below.

CORRECTIVE ACTIONS

If the District continues to contract with the NPA, the District will need to provide evidence that the NPA is meeting the requirements outlined in WAC 392-172A-02110 for the proper use and reporting of isolation and restraint, and is meeting the requirements outlined in WAC 392-172A-05190, regarding responding to parent requests to access student records.

By or before **March 5, 2018** and **March 30, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

1. By **March 2, 2018**, the District will develop written guidance to be provided to the NPA, which will address the requirements under WAC 392-172A-02110, for the use of restraint and isolation. The guidance should address, but is not limited to, the following topics: the definition of "imminent likelihood of serious harm"; the required follow up procedures with staff, parents, and students; the required reporting procedures; and, how the NPA should include District staff in these processes and procedures. OSPI recommends that the District provide a copy of its "Isolation/Restraint Report" as an example of a reporting form that meets the requirements of RCW 28A.600.485.⁶ Additionally, as proposed by the District, the guidance should encourage the NPA to clearly define the difference between the strategies room and isolation room for parents and students. By **March 5, 2018**, the District will provide OSPI with a copy of the draft guidance. OSPI will approve the written guidance or provide comments by March 16, 2018, and provide additional dates for review if needed.
2. By **March 2, 2018**, the District will develop written guidance to be provided to the NPA, which will address the definition of student educational records and the requirements for

⁶ As proposed in the District response to this complaint, the District may require that the NPA use the District's isolation and restraint report form for all District students placed at the NPA.

responding to a parent's request to access student records under WAC 392-172A-05190. By **March 5, 2018**, the District will provide OSPI with a copy of the draft guidance. OSPI will approve the written guidance or provide comments by March 16, 2018, and provide additional dates for review if needed.

3. By **March 23, 2018**, the District will send the NPA the written guidance as it pertains to the District students currently placed at the NPA. By **March 30, 2018**, the District will confirm with OSPI that the NPA received and is implementing the District guidance with all students with disabilities placed by the District in the NPA.
4. Between January 31, 2018 and January 23, 2019, if any additional District students are placed at the NPA, the District will include the above written guidance with the written contract between the District and the NPA for each student. Within one week of the student's enrollment at the NPA, the District will provide OSPI with confirmation that the guidance was sent to the NPA.

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.

OSPI MONITORING

Under WAC 392-172A-04105, OSPI may suspend, revoke, or refuse to renew its approval of a nonpublic agency to contract with school districts for the provision of special education, if the nonpublic agency: 1) fails to maintain the approval standards in WAC 392-172A-04090 through 392-172A-04100; 2) violates the rights of students eligible for special education; or, 3) refuses to implement any corrective actions ordered by OSPI. Further, OSPI is required to monitor NPA compliance through procedures such as written reports, on-site visits, and parent questionnaires. WAC 392-172A-04110. In accordance with this authority, the Special Education Section of OSPI is engaging in ongoing monitoring of the NPA. This complaint will be added to the monitoring file for review when the NPA submits its application for renewal.

Dated this ____ day of January, 2018

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.)