

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-80

PROCEDURAL HISTORY

On June 23, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Marysville 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 June 24, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 27, 2022, the District requested an extension to respond to the complaint. OSPI granted the extension to July 18, 2022.

On July 18, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on July 19, 2022. OSPI invited the Parent to reply.

On August 8, 2022, the OSPI complaint investigator interviewed the Parent.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on June 24, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow procedures outlined in WAC 392-172A-05215 following the Parent's request to revise records in spring 2022?
2. Did the District properly respond to the Parent's request to reevaluate the Student and/or conduct a functional behavioral assessment and update the behavioral intervention plan (BIP)?
3. Did the District follow procedures when it restrained the Student in spring 2022, including using restraint only when there is an imminent likelihood of serious harm and following all reporting and documentation requirements in WAC 392-172A-02110 (referencing RCW 28A.600.485)?
4. Did the District follow procedures to implement the Student's BIP during the 2021-2022 school year?
5. Did the District follow special education discipline procedures, if applicable, including considering when the Student was sent home from school early?

LEGAL STANDARDS

Amendment of Records and Hearing Rights: A parent of a student who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request that the school district which maintains the information amend the information. The school district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request. If the school district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing, conducted by the school district, in accordance with school district procedures. The school district, on request, shall provide the parent an opportunity for a hearing to challenge information, in the educational records, to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the agency shall amend the information accordingly and so inform the parent in writing. If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the agency shall inform the parents of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district in the records it maintains on the student. Any explanation placed in the records of the student in compliance with this section shall: be maintained by the school district as part of the records of the student as long as the records or the contested portion is maintained by the educational agency; and be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed. 34 CFR §300.618; WAC 392-172A-05215.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. 34 CFR §300.303(a); WAC 392-172A-03015(1). A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303(b); WAC 392-172A-03015(2). When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. 34 CFR §300.304; WAC 392-172A-03020(2)(a). The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020(3).

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.

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.

Restraint Conditions: Restraint device 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.

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation or restraint consistent with RCW 28A.600.485. WAC 392-172A-02110. Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include: reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper

procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report must include, at a minimum, the following information: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

Disciplinary Removal that Result in a Change of Educational Placement: Students eligible for special education may not be improperly excluded from school for disciplinary reasons. 34 CFR §300.530; WAC 392-172A-05140. The procedural rules for the discipline of students who are eligible for special education are based on four general principles: (1) a student eligible for special education should not be disciplined for behavior that is a result of his or her disability; (2) a student eligible for special education may be disciplined for behavior that is not a result of his or her disability, but only in a manner that is consistent with the discipline imposed on nondisabled students; (3) during a period of discipline, a student eligible for special education should continue to receive services that will allow him or her to progress in his or her education after 10 days of removal; and (4) when a student's disciplinary removal from school is significant enough to amount to a change in their educational placement, additional procedural requirements apply. *See generally* WAC 392-172A-05140 through 05155.

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05145(5).

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment, unless the district had conducted a functional behavioral

assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05145(6).

When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student's disability, a district may apply the same relevant disciplinary procedures, in the same manner and for the same duration as it would to a student not eligible for special education, except that: the student must continue to receive services that provide a FAPE and enable the student to continue to participate in the general education curriculum and progress toward meeting annual IEP goals, even if services are provided in another setting; and receive, as appropriate, a functional behavioral assessment and behavioral intervention services that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(c)-(d); WAC 392-172A-05145(3)-(4).

IEP Implementation: A district ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

Background

1. The Student's grandmother has custody of the Student and will be referred to as "Parent" in these findings.
2. During the 2020–2021 school year, the Student, who is a six-year-old first grader, was reevaluated in March 2021 and the Student's eligibility was changed from developmental disorder to specific learning disability. In addition to academic deficits, the Student exhibit difficulty in "almost all social skill areas." The Student's individualized education program (IEP) provided annual goals in the areas of social/emotional, communication, math, reading, and written language. The IEP provided 14 accommodations, including adult proximity, positive behavior reinforcement, and teach and re-teach behavior expectations. The IEP provided the following specially designed to the Student:

Services 03/12/2021–03/11-2022

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	Communication	Speech Language Pathologist	Speech Language Pathologist	30 Minutes / 2 Times Weekly	Special Education	03/12/21	03/11/22
No	Social/Emotional	Special Education Teacher or Designee	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education	03/12/21	03/11/22
No	Mathematics	Special Education Teacher or Designee	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education	03/12/21	03/11/22
No	Reading	Special Education Teacher or Designee	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education	03/12/21	03/11/22
Yes	Written Language	Special Education Teacher or Designee	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education	03/12/21	03/11/22

Total minutes per week student spends in school: 1685 minutes per week

Total minutes per week student is served in a special education setting: 420 minutes per week

Percent of time in general education setting: 75.07% in general education setting

- On December 17, 2021, the District developed an "Individual Student Safety Plan" for the Student. The plan described the following "unsafe" behaviors:
 - [Student] has been physically aggressive towards staff, elopement risk, verbal statements of suicidal idealizations. He has made statements to his grandma, [Parent], and [Student's special education teacher] two separate times this year.
 - The Student threw tubs throughout the classroom. Took broken pieces and threw them at staff, threw books, scissors, and pens at staff. Knocked over chairs and bookshelves.

The "Crisis Response Plan" listed what to do when the Student was exhibiting these behaviors:

- Get the Student to safe place;
- Call staff, resource room teacher, Para 2, and administrator;
- Call Parent; and,
- Call School Resource Officer for last resort.

- On January 24, 2022, the District reevaluated the Student. The Student's eligibility changed from developmental disability to autism.
- On March 2, 2022, the team met to conduct a review of the Student's IEP. The IEP continued to provide annual goals in the areas of communication, social/emotional, math, reading, writing language, and added a behavior goal. The special education services were as follows:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date

Special Education							
No	Communication	Speech Language Pathologist	Speech Language Pathologist	30 Minutes / 2 Times Weekly	Special Education	03/04/2022	03/03/2023
No	Social/Emotional	Special Education Teacher or Designee	Special Education Teacher	30 Minutes / 5 Times Weekly	Special Education	03/04/2022	03/03/2023
No	Mathematics	Special Education Teacher or Designee	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education	03/04/2022	03/03/2023
No	Reading	Special Education Teacher or Designee	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education	03/04/2022	03/03/2023
No	Written Language	Special Education Teacher or Designee	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education	03/04/2022	03/03/2023
No	Behavior	Special Education Teacher or Designee	Special Education Teacher	30 Minutes / 5 Times Weekly	Special Education	03/04/2022	03/03/2023
No	Reading	Special Education Teacher or Designee	Special Education Teacher	20 Minutes / 1 Times Daily	Special Education	03/04/2022	03/03/2023
No	Written Language	Special Education Teacher or Designee	Special Education Teacher	20 Minutes / 1 Times Daily	Special Education	03/04/2022	03/03/2023
No	Mathematics	Special Education Teacher or Designee	Special Education Teacher	20 Minutes / 1 Times Daily	Special Education	03/04/2022	03/03/2023

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	OT Consult	Occupational Therapist	Occupational Therapist	15 Minutes / 1 Times	General Education	03/04/22	03/03/23

Total minutes per week student spends in school: 1685 minutes per week

Total minutes per week student is served in a special education setting: 1020 minutes per week

Percent of time in general education setting: 39.47% in General Education Setting

6. On March 2, 2022, the IEP team developed a behavioral intervention plan (BIP) for the Student. The BIP identified the following target behaviors:
 - [Student] is off task most of the school day, particularly in the general education setting. He leaves his seat without permission multiple times a school day. He walks around the classroom speaking aloud, answering questions, asking questions and making noises that interrupt instruction. [Student's] behaviors may escalate to him throwing items across the classroom and him becoming aggressive with adults in the building.

- [Student] completes little school work during the day. He often refuses to initiate and/or complete assignments given to him by his general education teacher. He is a bit more compliant when working with his special education teacher, however, when he finds the work challenging it is likely that his behavior will escalate.
- [Student] typically engages in aggressive behaviors towards those adults with whom he receives instruction. He has attempted to strike and/or kick both his general education and special education teacher when he is denied his way. [Student] will throw objects in the direction of the adults giving direction and attempt to destroy school materials. Tantrums of this intensity are reported to occur at least twice monthly.

The BIP included antecedent strategies that included prior notice to transitions and classroom expectation given verbally. Teaching strategies were modeling, positive verbalizations and cues, visual cues, and shaping to increase positive reinforcement. Consequence strategies were opportunities for restorative practices and a hierarchical system of positive reinforcement for desired behavior. The response plan was to give the Student a break and remind him of expected behaviors. The de-escalation plan included an ice pack, ice cubes, and sleep when needed. Data would be collected by teacher observation, behavior charts, parent and team feedback.

ISSUE ONE: FINDINGS OF FACT

7. In regard to Issue One, the complaint stated, "School documents revision requests not taken into account by the school district. I requested revisions to documents including the threat assessment from 5/25/22, a school incident report from 5/18/22, and a safety plan revision after the threat assessment was completed..." The complaint further stated under "Facts about your allegations", "Misrepresentation of my student and events that occurred that were included in the threat assessment reports."
8. According to the District's response, the Parent never specifically requested a revision of the Student's records.
9. According to an interview with the Parent, the Parent requested the District change some of the language in the Student's records "at every meeting." But the Parent acknowledged she did not "specifically ask for particular records to be changed." The Parent was not aware of the process under WAC 392-172A-05215 to amend the records.
10. On May 31, 2022, after an incident involving isolation and restraint of the Student, the District conducted a threat assessment. The Parent did not specify to the District (or in the complaint) what information she wanted to amend.

ISSUE ONE: CONCLUSION

The complaint alleged the District failed to comply with the Parent's request for revisions of the records. A parent has a right to request a district to amend student information that is inaccurate or misleading and request a hearing to challenge information contained in the records.

Here, the Parent appeared to make general requests about changes to the information, but admittedly did not make any specific requests for changes. Although the District should have reminded her of the process under WAC 392-172A-05215 to amend student information, the Parent bears some responsibility for not reading the section in the procedural safeguards—Amendment of Records at Parent’s Request—that addresses the Parent’s concern.¹ Based on the Parent’s unspecific requests, no violation is found.

ISSUE TWO: FINDINGS OF FACT

11. The complaint stated, “Special education re-evaluation request and Functional/Behavior Intervention plan (BIP) revision request not taken into consideration by the school.”
12. On June 1, 2022, the District conducted an IEP meeting to “talk about next steps and plans for the rest of the 2021-2022 and the 2022-2023 school year.” According to the prior written notice, the District proposed the options of moving the Student to a behavior program and the Student attending school for half-days because of an increase in physical aggression towards staff. The Parent agreed with half-days but not the behavior program.
13. On June 2, 2022, the Parent emailed the school psychologist, requesting a reevaluation of the Student and a revision to the IEP and BIP, “due to changes in [Student] school year, half days, and discussion of a change in placement.” On June 3, 2022, the school psychologist responded:

Typically a new evaluation or an assessment revision is requested if there is new information to include in the evaluation or a concern with regards to a student’s eligibility category. At present [Student] is receiving special education services within the category of Autism Spectrum Disorder (ASD). Please let us know if there is any new information you would like to have considered or what concerns you may have about his present exceptional special education category...
14. On June 15, 2022, the IEP team reconvened to discuss possible school and program changes for the upcoming 2022–2023 school year. The prior written notice, dated June 16, 2022, stated the special education director “addressed the timeline for evaluation completion and that it was followed to be able to include the most recent medical information.” Other than this statement, there was no indication that the team addressed the Parent’s requests. There was also no record that the Parent brought up the reevaluation or BIP review at the meeting.
15. On June 22, 2022, the IEP team again reconvened to talk about placement options for the Student and providing behavior supports such as a 1:1 paraeducator for the Student. There was no indication the requests for a reevaluation and BIP review were discussed; there was also no indication that the Parent brought up the requests.
16. On June 23, 2022, the 2021–2022 school year ended in the District, which was 16 school days after the Parent’s request on June 2, 2022 for a reevaluation.

¹ [Notice of Special Education Procedural Safeguards for Students and Their Families \(www.k12.wa.us\)](http://www.k12.wa.us)

17. On the same day, the Parent filed this complaint with OSPI.

ISSUE TWO: CONCLUSION

The complaint alleged the District did not address the Parent's request for a reevaluation and a review of the Student's BIP. If a parent or teacher requests a reevaluation, the district must determine if a reevaluation is necessary and provide the parent with prior written notice of its decision.

Here, the Parent requested a reevaluation in June 2022. The District responded it would reevaluate the Student if there was new information or if there was a question about the eligibility category. But the District provided no prior written notice regarding the Parent's requests for a reevaluation and a BIP review or brought it up at the later IEP meetings, as well as the Parent. Once the Parent requested the evaluation, the District should have considered the request, especially in light of the incidents of isolation and restraint that occurred in April and May 2022, and provided the Parent with prior written notice, accepting or rejecting the Parent's request within a reasonable time. A violation is found.

Regarding the Parent's request to review the Student's BIP, the District provided the Parent with an opportunity to bring it up at the two June IEP meetings.² But according to both prior written notices, the Parent did not bring up the BIP. Had the Parent brought up the BIP, the District would have been required to address her concern and document it on a prior written notice. However, the BIP was more directly relevant to the five incidents of isolation and restraint involving the Student that occurred in April and May 2022. The five incidents in a relatively short period of time should have been an indication that the BIP was not working as it should and triggered at least an expeditious review of the BIP. A violation is found.

(See Issue #3 below for more about addressing the BIP.)

ISSUE THREE: FINDINGS OF FACT

18. The complaint alleged the isolation and restraint used by the District on the Student were "excessive force" and the District did not provide the Parent with documentation of the incidents.

19. On April 25, 2022, a "Debrief Report – Restraint/Isolation Incident" (report) stated the following regarding a one-person chair hold involving the Student:

The student was in the calm down zone, ripping off the posters on the wall, kicking the heater, then putting his head down and running at me. I told the student safe hand, safe body, please. The student was throwing items at my head and other staff members in the room. He was climbing on the heater, bookcases, and bins in the room. He would stand/crawl on the heater, so I would lift him off and then place him on the ground. Then he hit me in my stomach; I escorted him to a chair and did a one person chair hold.

² There was another opportunity to bring the requests up at the June 28, 2022 IEP meeting. But the prior written notice did not indicate the reevaluation or BIP review was brought up by the Parent.

The report stated both yes and no to whether the incident was reviewed with the Student. The form lacked any indication that the incident was reviewed with the Parent. The recommendations/new strategies stated, "We have reached the 6 week data cycle for his BIP. The plan will be to email the team and set up a date for a meeting." The report was not signed by the "principal/designee."

20. April 26, 2022, an incident occurred with the Student that resulted in the use of isolation and restraint. The report, dated the same day, described what occurred prior to the isolation and restraint:

The student was in the calm down zone, when asked to put items away after break, he said no and then started to throw things at me [teacher]. He started to hit me and spit in my face, he was reminded again about having a safe, body and safe hands. He continued to hit and spit in my face 4 more times.

The report stated the Student was restrained by using a "2-person small child hold" and was isolated in the resource room for two hours. The report stated both yes and no to whether the incident was reviewed with the Student. The form did not indicate that the incident was reviewed with the Parent. The recommendations/new strategies stated, "Set up a team meeting to review BIP/FBA." The report was not signed by the "principal/designee."

21. On May 2, 2022, an incident occurred involving isolation and restraint with the Student. The report stated the following led to the isolation and restraint:

He was wandering around the room, getting into staff spaces, throwing balls/pencils/ and tools at staff. He was walking on tables and the heather. He ran out of the room 4 times when asked to sit in a chair. Destroying other students work and ripped apart a Library book.

The report stated the Student bit one of the school staff. The report stated the Student was isolated in the resource room for 90 minutes before being escorted to the Parent's car. The report stated both yes and no to whether the incident was reviewed with the Student. The form did not indicate that the incident was reviewed with the Parent. Recommendations/strategies stated, "Set up a SET team meeting."³ The report listed the principal as the "principal/designee" but was not signed.

22. On May 18, 2022, the report stated the following involving a two-person escort and isolation for 30 minutes duration:

[Student] had returned from recess and was taking his 10- minute break. He had a great morning and had asked to stay with his class. He had a para with him; I said as long as he got his work done, yes, that would be fine. I got a radio call from the para asking for support. He was ignoring staff directions, refusing to do work, and walking around the classroom. [Student] was putting the putty (calm down tool) on items around the room and grunting at staff. [Student] then was walked to the resource room. He was lying on the mat, talking with the para and playing with the putty. He then got up and got into the teacher's items (stamp). When asked to look and put it down, he opened it up -and used it on the table.

³ It was not clear from the documentation what the "SET team" was.

He tried to hit me; I asked for a safe hand, safe body. Then he tried to hit me with closed fists. He would move away; he would climb on the heater and throw different items at my head. He would look at the item, look at me, and then throw the item at my head. Next, he would come after and swing with both hands (closed fists). I would say, "safe hands, safe body," he would come after trying to hit me. [Student] was able to make contact many times to my arms.

The report stated the Student was restrained for 10 minutes and then escorted to the resource room where the Student was isolated for 30 minutes. The form stated the teacher was "punched many times in the arms and there were bruises." The form did not indicate that the incident was reviewed with the Student or the Parent. Recommendations/new strategies were "re-entry with a safety plan." The report listed the principal as the principal/designee but was not signed.

23. On May 25, 2022, the report showed there was an incident involving a two-person escort. Regarding the Student's behavior, the report stated, "See notes," but notes were not included in the documentation. The report did not indicate the incident was reviewed with the Student and the Parent. Recommendations/new strategies stated, "Continue to help him be in control."
24. The District's response to the complaint stated, "The District's that applicable isolation and restraint reporting and documentation were not met with the Student..." But the use of isolation and restraint with the Student was justifiable.

ISSUE THREE: CONCLUSION

The complaint alleged the District failed to follow isolation and restraint procedures, as well as the reporting procedures. 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.

Here, the District used isolation and restraint five times with the Student in April and May 2022 for behavior that included hitting, kicking, and spitting on staff. The incident reports indicated staff attempted other interventions, such as verbal prompts, given options, and tangible rewards. There was no indication that the use of isolation and restraint was unreasonable or that excessive force was used. But even if the isolation and restraint were reasonable at the moment, their implementation is meant to be a "last resort" and a call for "urgent action" to avoid the need for them. The recommendation/new strategies in the incident reports called for having a meeting or "continue to help him be in control." These actions were not consistent with the need to address the Student's behavior that amounted to imminent harm more quickly than the June IEPs meetings. A violation is found.

ISSUE FOUR: FINDINGS OF FACT

25. Regarding the BIP, the complaint alleged the District failed to follow the BIP leading to the Student's isolation and restraint. In addition, the District failed to provide "daily behavior logs" to the Parent that were a part of the BIP. The District denied the allegation that the BIP was not implemented.

26. When the Parent was asked what parts of the BIP were not followed, the Parent was unable to identify any particular part. The Parent stated the isolation and restraint incidents were evidence that the BIP was not followed.

27. The March 2021 and March 2022 IEPs did not address providing copies of the daily behavior log to the Parent. The March 2, 2022 BIP stated, "The behavior logs and anecdotal records are extensive and will be included in his student file to the extent possible."

28. On March 2, 2022, the Student's general education teacher emailed the Parent copies of the daily behavior log from February 2, March 1, and March 2, 2022.

29. In an email, dated June 28, 2022, the Student's teacher emailed the interim special education director, stating:

The BIP was implemented 3/3/2022; the school psychologist completed an FBA. During our meeting and with input from the [school] SET team and [Student] appointed state team. We agreed upon 3 goals:

1. Work completion
2. Physical aggression toward adults
3. Paroxysm (expected behaviors in class)

At this time, the team also agreed that full-time in the general education setting was not his LRE. The classwork was not at his level, and being in there was a trigger as he could not complete the work. [Student] was in the resource room for 80% of the day (check-in/out with his general education teacher, lunch & recess with his peers that later changed to my room for lunch [Parent] said he did not like to eat in front of others), and going to 'specialist' with his class. Toward the end of the year per-team decision, I was asked not to push

academics and only focus on SEL (social/emotional learning)/behavior The BIP was used daily, and any time there was an escalation.

ISSUE FOUR: CONCLUSION

The complaint alleged the District failed to follow the Student's BIP, including providing daily behavior logs to the Parent. A district is required to implement special education services in conformity with the IEP.

Here, the Student had a BIP that was developed in March 2022. The plan included target behaviors regarding being off-task, completing assignments, and being aggressive towards staff. The plan had behavior strategies to target behaviors. The District stated the BIP was implemented as written, although not perfectly. The Parent did not state what parts of the BIP were not implemented, but the BIP was not implemented because the District had to isolate and restrain the Student five times. But a BIP is no guarantee that the Student will not display any or all of his target behaviors, even if the BIP is implemented with fidelity. Likewise, just because the Student does exhibit inappropriate behavior does not mean the BIP was not implemented. Absent concrete evidence the BIP was not implemented, OSPI cannot infer that the BIP was not implemented because of the isolation and restraint incidents.

Regarding receiving daily behavior logs, the March 2022 BIP did not state that the Parent would receive daily behavior logs. The documentation referenced behavior logs that were kept by the District, but there was no indication that they were to be provided to the Parent. The District was required to provide the Parent with periodic progress reports on the progress the Student was making toward the annual goals, but the District was not required to provide the daily behavior logs. No violation is found.

ISSUE FIVE: FINDINGS OF FACT

30. The complaint stated, "Caregiver was asked to pick up from school several times, at least twice a week, without notifying team that it was suspension." In addition, the complaint stated, "The district did not conduct a functional behavior assessment (FBA), revise an exiting behavior intervention plan, as [Student's] behavior May 18, 2022 was determined to be related to his disability at the manifestation determination meeting."
31. On April 20, 2022, the Student's teacher emailed the Parent that the Student was having a difficult day. The teacher asked, "Are you able to call or come get him?"
32. On May 2, 2022, the Parent took the Student home early after there was an incident involving restraint.
33. On or around May 18, 2022, after an incident resulting in isolation and restraint, the Student was placed on "emergency expulsion" pending a threat assessment and a safety plan. A "safety meeting" was scheduled for May 25, 2022. However, the District's response stated, The building did not appear to either hold and/or document a Manifestation Determination Review with the Parent regarding the May 18, 2022."

After the incident on May 18, 2022, the Parent took the Student home before the end of school.

34. On or around May 25, 2022, the Student returned to school. On May 25, 2022, after the Student was isolated and restrained, the Student was picked up early to go home.

35. On May 31, 2022, the District conducted a threat assessment.

36. On June 6, 2022, the elementary director of special education emailed the school psychologist, stating:

I believe we are need of scheduling a manifestation for [Student] at [school]; he has been out 10 days this school year, yes? We can schedule for next Wednesday at same time as other discussions if works; although that may be past our 10 day window to schedule. As an fyi there is a PWN dated 6-1-2022 that is open for him, but blank.

37. According to the Student's attendance record, the Student missed 61 whole or part days during the 2021–2022 school year. No days were coded "out of school suspension." The Student's attendance report showed excused absences during the expulsion from May 19 to 31, 2022 during the emergency expulsion. The District stated, "It was therefore unclear if the team decided the incident was a manifestation of Student's disability and changed the coding of Student's absences from EX (emergency expulsion) to E-E (excused) following the incident."

38. The District's response stated:

Based upon the District's review of the records, the District admits that it did not follow the special education discipline procedures. Specifically, the District admits that if Student was sent home from school for behavioral violations, such decisions should have complied with the District's student discipline rules and requirements regarding the severity of such behaviors and the necessary documentation to Parent of the reasons for and Parent's right to appeal such decision. Further, due to the apparent absence of formal exclusionary discipline being imposed, the District did not complete a Manifestation Determination Review for the May 18, 2022 incident.

Although the District notes that it appears there may have been some agreement with Parent to voluntarily remove Student as a behavior management strategy in late April 2022, the District admits that any such agreement should have been memorialized by Student's IEP team in the IEP and/or via PWN.

Accordingly, the District is proposing both Student-Specific and Systemic Corrective Actions below related to this allegation.

ISSUE FIVE: CONCLUSION

The complaint alleged the District repeatedly sent the Student home early because of behavior concerns and failed to conduct a manifestation determination review (MDR) after the emergency expulsion and other disciplinary removals. The complaint also alleged the District failed to conduct an FBA and review the BIP as a result of finding the behavior was a manifestation of the Student's disability. A district is required to conduct an MDR after 10 consecutive days of suspension or a

pattern of removals that constituted a change of placement. Regarding shortened school days, a school district is required to count days when a parent is asked to pick up a student for behavior reasons as a disciplinary removal.

Here, the documentation showed the Student was sent home early from school five times, although the Parent alleged there were more occasions when the school requested the Student be picked up early. The attendance record does not reflect that these removals were disciplinary removals. In addition, the emergency expulsion of the Student for seven school days in May 2022 was not indicated in the attendance record. The Parent's complaint refers to an MDR and there was a District email that refers to an MDR, but there was no documentation that an MDR was completed. The District acknowledged that an MDR was not completed as required given the Student's pattern of suspensions. Based on the failure to conduct an MDR, a violation is found.

CORRECTIVE ACTIONS

By or before **September 16, 2022, September 23, 2022, and September 15, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

The District proposed the following corrective actions:

Student-Specific

The District proposes that Student's IEP team to reconvene at a mutually-agreed date and time to review Student's attendance report from the 2021-22 school year, discuss the amount of instruction missed due to alleged behavioral violations, and consider and decide appropriate, individualized compensatory education related to Student's missed instruction. Such compensatory education services would then be provided to Student by the District at a duration and frequency agreed-upon by Parent and documented in a schedule of services to be provided to Parent and OSPI.

Systemic Correction Action

a. Prior Written Notice – This training would review the requirements of WAC 392-172A-05010 regarding the purpose and contents of an adequate prior written notice, including the need to describe and explain the reasons for any actions refused by the school district, as well as sources for parents or guardians to contact to obtain assistance in understanding their procedural safeguards and the contents of such notice. In addition, this training on prior written notice will also separately address how to respond to parent or guardian requests for education record amendments under WAC 392-172A-05215, including their right to hearing to contest the contents of the disputed education record.

b. Restraint and Isolation – This training would review the follow-up procedures for restraint and isolation, as specified in RCW 28A.600.485 (4)-(6), including the requirement to submit a written report meeting the requirements of subparagraph (5), and the need for the building principal or designee to verbally inform a student's parent or guardian and send written notification, as required in subparagraph (6).

c. Student Discipline Procedures – This training would review the requirements of WAC 392-172A-05140 through -05175 regarding student discipline procedures for students eligible for special education services and students who may be deemed to be eligible for special education services, including the requirement that administrators are knowledgeable of the rules and procedures contained in chapter 392-400 WAC governing discipline for all students. Particular attention would be focused on the limits on the use of exclusionary discipline and the importance of the manifestation determination process in further limiting exclusions from school based upon a student's disability.

STUDENT SPECIFIC:

OSPI accepts the District's recommendation for the Student-specific corrective action. By **September 16, 2022**, the District will convene the Student's IEP team and provide OSPI with a plan to implement compensatory education for the Student's missed instruction, along with a rationale for the frequency, amount, and duration of the proposed compensatory education. OSPI must approve the plan. The plan must also include regular updates on the implementation of the compensatory education and the Student's progress. OSPI will provide feedback as necessary.

The compensatory education will be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **September 15, 2023**, including those needing to be rescheduled.*

DISTRICT SPECIFIC:

OSPI accepts the proposed District-specific corrective action by the District, in part.

By **September 23, 2022**, the District, in collaboration with the Northwest Educational Service District 189, will develop a training schedule for the District to address violations in the areas of prior written notice, restraint and isolation, student disciplinary procedures, and reevaluations for all special education certificated staff, including general education principals, unless the plan calls for other staff to be trained. The plan must include monitoring the implementation of these procedures to ensure compliance with the requirements and maintaining compliance over time. The training and monitoring plan must be approved by OSPI. OSPI will provide feedback as needed and will set further timelines as required.

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 August, 2022

Dr. Tania May
Assistant Superintendent of 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.)