

after lunch [and Student] was still there when I arrived [at] 2:30 pm...so [Student] was in the isolation room for two hours [with] no games or toys that I could see.”

In the investigation of this complaint, OSPI’s investigator asked the District’s special education director questions concerning what transpired on September 9, 2019. In response, the District submitted the following statements:

- On this date, “the Student was experiencing dysregulation and spent some time throughout the day in the sensory room.”
- The Student’s 2019-2020 elementary school contained only one sensory room. The District provided OSPI with a picture of this sensory room during the course of this investigation.
- The sensory room was ventilated, lighted, and temperature controlled.
- “The sensory room has a window in the door that allows someone to look into the room.¹² A paraeducator or the special education teacher was with the Student at all times he was in the sensory room [on September 9, 2019].”
- “The sensory room has the same door as all classrooms at [that] elementary [school]. The lock on the door can only restrict entry to the room, not exiting. The teacher confirmed the Student is able to exit on [his] own.”
- “The Student was in the sensory room 2 x after lunch for a maximum of 20 minutes.” (The special education teacher provided the following clarification: “This Student was in and out throughout the day, never staying in the room very long. The total minutes would be less than 40 minutes for the entire day.”)

The Parent’s reply read, in part:

When I arrived at the school [on September 9, 2019], I believe the aide was outside the door and then opened the door to let Student out. I did not see any adult in the room. Someone else walked quickly up the hallway when they saw me coming. Student came out and looked sad.

The District’s response included the following, general information on sensory rooms:

The room is supplied with sensory items such as Kinetic sand, play dough, trapeze swing, sensory pea pod, tent, stability balls and ball pit. Sensory rooms may also be used for OT sessions. Student is always accompanied by a paraeducator or teacher [and] the Student may choose to leave at anytime. The room has not been used for isolation for Student.

55. According to the District, “beginning on September 10, 2019, [Parent] withheld [Student] from attending school.”

56. According to the District, on September 11, 2019, both the District social worker and the principal called the Parent to encourage her to allow the Student to attend school.

57. On September 12, 2019, a representative from CPS emailed the special education director and the principal, stating, in part:

I work for CPS. I am the assigned worker for Student’s family. I have been in contact with the mother and am a bit concerned as to what is being reported...It was reported to me that Student was being restrained last year by being strapped to a chair. I am concerned as

¹² The Parent’s reply also stated the sensory room had “a tiny window on the door with blinds.”

the child is trying to communicate that he is not feeling safe at school and Parent has not been able to get him on the bus. I am not sure as to whole story of the restraints, but we did receive a report at the end of the year and I am concerned if this is true.

Parent has expressed that since this occurred last year, his behaviors got worse and now going to school, he is clearly fearful. She has not been able to get him on the bus the last two days. I'm reaching out as I received a call from someone at Student's school the other day and I believe [it was] the special education teacher.¹³ I'm a little concerned about my conversation with her and some comments she made...she shared that they have not been able to manage him and are sending him home every day after lunch...I am hoping we can get a meeting in the next day or so we can address the child's needs and issues and how we can get him to go to school and feel safe.

58. On September 13, 2019, the principal responded to the CPS representative's email, stating, in part:

There is a meeting set up next Tuesday...you are welcome to attend this meeting to support mom and listen to the supports in place for Student. I appreciate you encouraging Parent to call as we have also been calling encouraging her to send Student to school. Student is in a very nurturing classroom with an expert teacher and paraeducators that tailor a program to meet his unique needs...Student had a difficult transition back to school. When prompted to do learning activities he has been physical with staff, spitting, running, screaming, and kicking. This is his way of telling us the work is challenging. He ended the year with us last spring being able to do this same work. We have invited our school psychologist into Student's classroom to do observations.

59. According to the District:

The principal invited Parent to a meeting on September 17, 2019 in effort to reengage her and resolve her concerns. The meeting included the student's IEP team, social worker, special education director and [a] parent advocate. The Parent declined the invitation by phone and said she would not attend. The principal still held the meeting in hopes the Parent would change her mind and attend. She did not.

Following this attempt on September 17, 2019 to engage the Parent, the Parent did not answer or return phone calls from school staff.

60. OSPI's investigator asked the special education director the following question: "During or after September 4, 2019 through September 6, 2019, did the District ever consider a functional behavior assessment (FBA) and/or a behavioral intervention plan (BIP)? If not, why not?"

The special education director responded:

The District started with [a classroom] observation [of the Student] on September 9, 2019. A meeting was held on September 17, 2019 to discuss next steps, however, the Parent did not attend the meeting and the Parent refused to return Student to school. Without the

¹³ In a phone interview with OSPI's investigator on October 30, 2019, the CPS representative said she later learned that it was not the special education teacher that she spoke with that day, but rather that it was the speech language pathologist.

Parent's participation, the IEP team was not able to move forward with considering an FBA or BIP.

61. According to the District, "on or about September 30, 2019, the Parent expressed an interest in enrolling the Student at [another District] elementary school [(school 2)]." Specifically: "The Parent filled out a request for an intradistrict transfer to [school 2]. The special education director...spoke by phone to the Parent on October 1, 2019 and agreed to set up an opportunity to meet with [school 2] staff and discuss a potential transfer to [school 2]."
62. According to emails, as of October 7, 2019, the Parent, the Parent's attorneys, and the District agreed to meet on October 9, 2019 to discuss the Student potentially transferring to school 2.
63. According to the District, "On October 9, 2019, the Parent visited and toured [school 2] and an IEP meeting was set to discuss possible programming at [school 2] on October 11th."
64. The District's response included a 'Review IEP Invitation' dated October 9, 2019, invited the Parent to attend a meeting scheduled for October 11, 2019 to "discuss prospective programming at [school 2]." According to this document, the following individuals were invited to attend and participate in this meeting: Parent, special education director, general education teacher, principal, and "sped program staff—TBD."
65. According to the Parent's attorney, "On October 11, 2019, we requested [an] independent educational evaluation for Student to be provided by [a specific] deaf psychologist and facilitated by the Washington Center for Deaf and Hard of Hearing Youth."

66. According to the District:

At the October 11, 2019 meeting, the Parent's attorneys stated she was no longer willing to enroll the Student as [school 2].

At the October 11, 2019 IEP meeting, the Parent's lawyers indicated the Parent was refusing to return the Student to school due to "broken trust" and a belief that his IEP was inappropriate. When the IEP team attempted to explore how the IEP was inappropriate, her lawyers stated that their concerns could not be addressed until an independent educational evaluation was completed.

The purpose of the October 11, 2019 meeting was for the IEP team to discuss the Parent's interest in enrolling the Student at [another elementary school in the District].

According to the Parent's attorney:

We provided occupational therapist 2's declaration [to the District during the] October 11, 2019 meeting to show the District our concerns and to ask them to describe the therapeutic value of the belt, but they refused to engage. It was really shocking that even in light of these horrible allegations they would not explain to the Parent (who was crying) what had been going on...We also asked the District to show us the rifton chair...and they refused.

67. An October 21, 2019 prior written notice, proposing to continue the Student's IEP read, in part:

The IEP team [previously met and] was composed of [school 2] staff, [as well as the special education director, occupational therapist 3, the Parent, and Parent's attorneys, and the IEP team] met at [school 2] because the Parent had expressed an interest in enrolling the Student there. The IEP team expressed a desire to review the Student's IEP and address any concerns the Parent had regarding the IEP. The Parent, through her attorneys, indicated that she was not interested in discussing the IEP because she believed it was necessary to have an independent educational evaluation conducted to identify what, if any, changes needed to be made to the IEP. Because the Parent was unwilling to discuss the IEP, the IEP team meeting was adjourned.

68. According to the Parent's attorney, on November 4, 2019, the Student "started [his] unilateral placement at a [school for the deaf]."
69. According to the District: "There are no reports or documentation of isolation or restraint for Student as none were initiated. While at times Student's behaviors of running, hitting, screaming, throwing items and spitting were challenging, they did not rise to the level of imminent likelihood of serious harm as defined in the WACs/RCWs."
70. The District's response included several of the Student's "work samples." According to the District, these "work samples" are some evidence of the provision of specially designed instruction. The submitted "work samples" included: a 'Kid Writing K-2 Writing Developmental Scale;' handwriting and composition exercises; math worksheets; personal routine checklists.

OSPI Investigation: Issue 1¹⁴

71. OSPI's investigator emailed paraeducators 1-3 the following question and received answers concerning the use of the Student's sensory belt:

The Student's February 2019 IEP states the sensory belt "supports assistant in guiding Student when needed." When you worked with the Student, did you ever use the sensory belt to guide the student? If so, how often did this occur? And in what circumstances was it used as a guide—e.g., was it only used during particular transitions? When the Student was displaying dysregulation, etc?

- **Paraeducator 1:** No, he would often walk with me, and hold my arm or hand.
- **Paraeducator 2:** I picked up the student from lunch and walked to a table. We did not need the sensory belt during this time. It was a 30 minute period.
- **Paraeducator 3:** No this student held my hand at the time I had him.

According to the special education director, despite the fact that the Student's February 2019 IEP stated the sensory belt "supports assistant in guiding Student when needed:" "Staff do not recall using [the] belt in this way...the sensory belt was not used as a restraint device by any staff."

72. According to the special education director, the Student's elementary school does not have cameras in the following locations: the hallway outside the Student's 2018-2019

¹⁴ The OSPI investigator conducted interviews via phone and through written questions to obtain additional information as part of the investigation.

and/or 2019-2020 classroom; inside the sensory room used by the Student during the relevant time period; outside the sensory room used by the Student during the relevant time period; the recess and/or playground area that the Student used during the relevant time period.

73. During the course of this investigation, the following individuals submitted written statements asserting they did not see the Student restrained in any manner similar to that as described in occupational 2's declaration: K-5 special education specialist; occupational therapist 3; administrative assistant to the principal; K-5 title teacher.
74. During the course of this investigation, the following individuals submitted written statements asserting that they did not see District staff holding onto the Student's sensory belt while the Student ambulated, either in the classroom or in the hallways: K-5 special education specialist; occupational therapist 3; administrative assistant to the principal.
75. The K-5 title teacher submitted an email that read, in part: "I did witness District staff holding the sensory belt occasionally as the Student walked in the hallway."
76. OSPI's investigator conducted a phone interview of the principal on October 30, 2019. In that phone interview, the principal stated: she was in the Student's classroom multiple times a day; she saw Student wear the sensory belt a lot; she saw him put it on and off; she hypothesized that it signified school time to Student; she never saw the sensory belt used in conjunction with another belt; she never saw Student restrained in the manner described in occupational therapist 2's Declaration.
77. OSPI's investigator conducted a phone interview of the special education director on October 29, 2019. In that phone interview, the special education director stated that she never saw the Student restrained in a manner similar to that as described in occupational therapist 2's declaration.
78. OSPI's investigator conducted a phone interview of the special education teacher on October 31, 2019. In that phone interview, the special education teacher stated: she never saw Student restrained in manner described in occupational therapist 2's Declaration; student could take it on and off; she does not recall how long Student would keep it on after he put in on; she does not have a specific recollection of how often he did not have the sensory belt with him or how he did when he did not have it with him, but there were times when he did not have the belt.
79. OSPI's investigator conducted a phone interview of paraeducator 1 on October 31, 2019. In that phone interview, paraeducator 1 stated: the sensory belt had a Velcro connector; Student would sometimes sign 'help' for assistance in putting the sensory belt on, and, in those instances, staff would assist him in putting it on; other times, though, Student put it on entirely himself; Student could sit and stand while wearing the belt; she never saw it being used in conjunction with another belt; she never witnessed what occupational therapist 2 described seeing in her Declaration; there was a rifton chair that had a belt that Student could take on and off.

80. OSPI's investigator conducted a phone interview of paraeducator 2 on October 31, 2019. In that phone interview, paraeducator 2 stated: she never saw anything similar to what is described in occupational therapist 2's Declaration; Student could get out of the sensory belt at any time; her guess is that the Student found the sensory belt comfortable; at the start of the 2019-2020 school year, Student was no longer wearing the sensory belt; Student wore the belt while both walking and sitting; she never saw the sensory belt used in conjunction with another belt; she never saw anybody pull on the belt while he was wearing it.
81. OSPI's investigator conducted a phone interview of paraeducator 3 on October 31, 2019. In that phone interview, paraeducator 3 stated: she never saw anything similar to what was described in occupational therapist 2's Declaration; she worked in the classroom all day; Student liked to feel like he was being 'hugged'; Student could put the sensory belt on and off at will; she does not know how long Student would keep it on after he put it on; she never saw it used in conjunction with another belt.
82. OSPI's investigator conducted a phone interview of paraeducator 4 on October 31, 2010. In that phone interview, paraeducator 4 stated: she never saw anything similar to what was described in occupational therapist 2's Declaration; she never saw District staff using the sensory belt to guide the Student.
83. OSPI's investigator conducted a phone interview of paraeducator 5 on October 31, 2010. In that phone interview, paraeducator 5 stated: she never saw anything similar to what was described in occupational therapist 2's Declaration; since in a while/occasionally, in the hallways, she would see District staff hold onto the sensory belt's handle while walking with the Student down the hallway—though she does not recall this ever happening in the classroom itself.
84. OSPI's investigator conducted a phone interview of the speech language pathologist on October 30, 2010. In that phone interview, the speech language pathologist stated: she never saw anything similar to what was described in occupational therapist 2's Declaration; she was 'in the classroom frequently—multiples times per week for consultation and to pick up students for direct consultation elsewhere' (paraphrased).
85. OSPI's investigator conducted a phone interview of occupational therapist 1 on October 31, 2010. In that phone interview, occupational therapist 1 stated: she never saw anything similar to what was described in occupational therapist 2's Declaration; she never saw District staff using the sensory belt to guide the Student.
86. OSPI's investigator conducted a phone interview of school psychologist 1 on October 31, 2019. In that phone interview, school psychologist 1 stated:
- She never saw anything similar to what was described in occupational therapist 2's Declaration.
 - Student would stand up and sit down while wearing the sensory belt.
 - The sensory belt was never attached to an object so as to prevent Student from moving.
 - She did see staff members occasionally hold onto the sensory belt as they walked together. Paraphrase: "Student has lots of challenges—more than most students who have autism." She

only saw the Student, and District staff holding the sensory belt, working in a “cooperative manner.” She never saw the belt being used to guide the Student when the Student was yelling or fighting or wanting to travel in another direction.

87. OSPI’s investigator conducted a phone interview of the District social worker on October 31, 2019. In that phone interview, the District social worker stated: she is not often in the classroom—she is a social worker for the whole District; on the few, short visits she did make to the classroom during the relevant time period, she never saw the Student restrained to a chair.
88. OSPI’s investigator conducted a phone interview of occupational therapist 2 on November 1, 2019. In that phone interview, occupational therapist 2 stated: a week before February 24, 2019 (see her email of this same date), paraeducator 1 had to undo the Student from his restraint so that an evaluation could be administered to him; it was not a Rifton chair that he was tied to—she says those are only for small kids and that a Rifton chair would have been inappropriate for someone of Student’s size; to her recollection, the Student was restrained to a regular chair; she is not sure what actions, if any, District staff took in response to the concerns she articulated in her February 24, 2019 email; whenever she saw the Student restrained, he would often be banging his head and the table because he was frustrated at being restrained.
89. According to the special education director: a) the District’s current policy on the use of restraint and isolation was approved by the school board on August 18, 2016; b) that same year, “the District reviewed the new policy and procedure with certificated special education providers. The review included a discussion of changes including: advanced planning using the Emergency Response Protocol;” c) current staff that received that training include: special education director; special education teacher; speech language pathologist; school psychologist 1; and school principal; and d) the District did not provide a training on this policy for paraeducators and it proposes to do so as part of the corrective actions for this complaint.

OSPI Investigation: Issue 2

90. In the investigation of this complaint, OSPI’s investigator asked the District’s special education director questions concerning the Parent’s participation in IEP meetings. OSPI received the following answers:

Question: Since September 14, 2018, were any IEP meetings rescheduled—i.e., a date and/or time was set and then, for one reason or another, the date and/or time was changed? If so, can you please provide a detailed explanation of the same?

Answer: No IEP meetings were rescheduled during the time period at issue.

Question: Before IEP meetings were scheduled, did the District ask the Parent what date and times worked best for you?

Answer: The District engaged with the Parent to determine mutually agreeable times for IEP meetings. The Parent communicated with staff she preferred meetings during school hours and the district accommodated this request.

OSPI Investigation: Issue 3

91. In the investigation of this complaint, OSPI's investigator asked the special education director questions concerning IEP implementation since September 14, 2018. OSPI received the following answers:

Question: The Parent states that the Student's hearing aids were not always used. Is this an accurate statement? Why or why not?

Answer: The District does not have data on the frequency with which the Student used his hearing aids. Staff report that that the Student did object to wearing them or remove[d] them at times.

Question: The Parent states that, on numerous occasions, the Student was kept on an iPad all day without instruction. What is the District's response to this? What did the Student use the iPad for? Were there certain days where the Student was on the iPad more than usual?

Answer: The district denies the parent's allegation. The Student used the iPad for "Signing Time", an ASL Teaching Video series. He was scheduled to use the iPad two times each day for a maximum total of 45 minutes.¹⁵

Question: Were there ever incidences where the Student was not permitted to participate in recess? If so, how frequently did this occur? And, on those occasions, what was the reason for not permitting the Student to participate in recess? (The Parent alleges that the Student "is rarely taken outside as [the District] says he may run away.") Were there any accommodations made for the Student to enable him to participate in recess? If Student was not permitted to participate in recess, what did Student do during those time periods?

Answer: The Student participated in recesses daily with other students. Indoor recess was held in inclement weather. On indoor recess days the Student and other students participated in games and other activities in the gym or classroom.

Question: How did the District provide the Student with his 1:1 paraeducator on those days when his normal 1:1 paraeducator was absent—for example, for either vacation or illness?

Answer: In the event the Student's paraeducator was absent the District would reassign another paraeducator to serve the student.

Question: Since September 14, 2018, were there ever periods of time where the Student was not provided with a 1:1 paraeducator—for example, if Student's paraeducator quit or was fired and it then took the District some time to find a replacement? If so, when were these time periods and how long did they last?

Answer: There were no time periods when a 1:1 para educator was not available to the Student.

Question: According to both the March 2018 IEP and the February 2019 IEP, paraeducators were to provide SDI in certain areas. Can you provide me with an explanation of which special education teacher designed and supervised the various paraeducators' provision of specially designed instruction? And how this was accomplished?

¹⁵ The special education teacher provided the following information on this matter: "Thirty minutes included sign [a] sign language tutorial video to help him learn sign language; the other fifteen minutes was a speech app to improve language concepts or [one of the following:] starfall literacy; [a] math app; proloquoto."

Answer: [The] special education teacher...designed SDI and trained and supervised the para educators who delivered it.

Question: Concerning: Implementation of 3/18 IEP from start of 18-19 school year through 2/24/19: When in the Student's daily schedule for the 18-19 school year did he receive his respective SDIs, related service, and paraeducator support? (For example, the 3/2018 IEP has oral language, adaptive, etc, but no time in the class that has an obviously similar title or name.)

Answer: Paraeducator support is provided from arrival to dismissal through the entire day, adaptive is provided concurrently throughout the Students daily schedule, not as a separate class period (e.g., handwashing, preparing for and eating breakfast and lunch, use of restrooms, getting ready for recess, physical education class etc.) Oral language was scheduled with an SLP on Fridays 12:00-12:30, and OT (fine and gross motor) was scheduled for Mondays from 11:00-11:30.

Question: Concerning: Implementation of 2/19 IEP from February 25, 2019 through end of 18-19 school year: When in the Student's daily schedule for the 18-19 school year did he receive his respective SDIs, related service, and paraeducator support?

Answer: See the answer above.

Question: Concerning: Implementation of 2/19 IEP from start of 19-20 school year through the present: When in the Student's daily schedule for the 19-20 school year did he receive his respective SDIs, related service, and paraeducator support?

Answer: Same as answer above, except oral language was scheduled with an SLP on Thursdays from 12:45-1:15, OT (fine and gross motor) was scheduled for Wednesdays from 9:30-10:00.

92. In the investigation of this complaint, OSPI's investigator asked the Parent questions concerning IEP implementation since September 14, 2018. OSPI received the following answers:

Question: What makes you believe that the Student's hearing aids were not always used?

Answer: Student's hearing aids would get lost on the bus a few times, so I started putting them in his backpack, but when Student came home they were exactly the same. I would send it with the batteries outside the device and it would come home the same way. When I asked how often they were using them, the aides would say that sometimes Student was upset and took the hearing aids out after five or 10 minutes just "had a rough time."

Question: What makes you believe that the Student was sometimes kept on an iPad all day without instruction?

Answer: The few times I was allowed to go back into the room, I only ever saw him sitting at the corner of the table by himself on the iPad with the aide immediately next to him with big headphones over his head. She'd say "let's show mom this" and then Student would change it back to games that he was playing instead.

In regard to implementation, the Parent's reply also included the following allegation: District staff generally did not have the training required to effectively utilize the Picture Exchange Communication System (PECS) and sign language to communicate with the Student.

93. OSPI's investigator emailed paraeducators 1-3 several questions concerning the Student's access to recess with nondisabled peers. OSPI received the following answers:

- When you worked with the Student at recess, what, if any, accommodations were made for the Student to enable him to participate in recess?
 - **Paraeducator 1:** Paras supervised at recess.
 - **Paraeducator 2:** There were two paraeducators to help the Student during transition from recess to class time.
 - **Paraeducator 3:** During recess there was additional staffing.
- Can you provide a general description of how the student participated with his nondisabled peers during recess?
 - **Paraeducator 1:** He played independently and had use of all of the equipment, he didn't interact with other students.
 - **Paraeducator 2:** The Student would play independently around other students. He did not interact with them.
 - **Paraeducator 3:** At recess the Student would play among his nondisabled peers and watch them but normally just followed his own playing agenda.
- How often did the Student attend recess with his nondisabled peers?
 - **Paraeducator 1:** Twice a day.
 - **Paraeducator 2:** All students had two recesses a day. He joined them in both recess times the same as the other students.
 - **Paraeducator 3:** There were two recesses per day at which he would attend.
- If Student did not attend recess on particular days, why was this?
 - **Paraeducator 1 and 3:** He was sick or absent.
 - **Paraeducator 2:** To my knowledge the Student was never denied recess.

The special education teacher asserted the following accommodation was made so as to enable Student to participate in recess with his nondisabled peers: "Additional staff during recess periods to supervise [him] for safety."

94. The special education teacher provided the following written statement on the Student's access to physical education with nondisabled peers:

The Student was permitted to have PE with non-disabling peers as scheduled weekly for Student throughout the school year. If his behaviors were not safe or he left the PE location, he continued motor movements with a walk in the hallway, sensory activities or playground. He had PE with non-disabling peers more than not.

Recess is not teacher structured, so Student had more success with recess as he did what he wanted. PE is teacher structured so he had more difficulty.

95. OSPI's investigator emailed the special education teacher and paraeducators 1-3 several questions concerning the Student's use of hearing aids. OSPI received the following answers:

- From your observation of, and work with, the Student, how often did the Student remove his hearing aids?
 - **Special education teacher:** If he had the aid on when arriving at school, [he] would take them off at some point throughout the day.
 - **Paraeducator 1:** If he came to school with them, he would take them off by [the] middle of the day.

- **Paraeducator 2:** I was not trained to put the Student's hearing aid in or out. During our work period it was not an issue.
- **Paraeducator 3:** By the time of day he would come to me his hearing aids would be off.
- **Speech language pathologist:** Student did not consistently wear his hearing aids. Student would push staff's hands away, turn head, and yell 'no' when they tried to place his hearing aids on. This has occurred since preschool. Student generally did not come to school with hearing aids on.
- Why would he remove them?
 - **Special education teacher:** I am not sure, maybe they were not working.
 - **Paraeducator 1:** I believe they bothered him.
 - **Paraeducator 2:** I am guessing it was uncomfortable or loud.
 - **Paraeducator 3:** I can only guess that they were irritating him.
 - **Speech language pathologist:** It is unclear as to why he did not like his hearing aids. It may have been sensory issues or issues related to his autism.
- Could the Student hear anything if he didn't have his hearing aids?
 - **Special education teacher:** It seemed as though he could as he would turn his head to sound, but we used total communication (sign, verbal, visual cues) to help him understand his learning at school.
 - **Paraeducator 1:** I believe so and I signed with him.
 - **Paraeducator 2:** Yes, we talked to the Student and also signed.
 - **Paraeducator 3:** I believe he could hear some. There were times when he had them off that it seemed he could understand what we wanted him to do.
 - **Speech language pathologist:** Student sustains a mild to moderately-severe sensorineural hearing loss in his right ear and a severe sensorineural hearing loss in his left ear. He responded to words and sounds. When his name was called he could turn and look. Instruction was primarily presented with verbal, visual supports, and sign to help him increase his comprehension. Staff would sit on his right side to ensure the best comprehension with 1:1 instruction. His autism and his behavior were an impact on his comprehension.
- Did District staff assist the Student in putting the hearing aids back in after he took them out? Or did the District allow the Student to put them back in when he felt like it? If the latter scenario, generally speaking, how often would the Student's hearing aids be out?
 - **Special education teacher:** Staff assisted Student with putting in the hearing aids after they were taken out if he was wanting them in and maybe occurred one time a day.
 - **Paraeducator 1:** Yes, if he allowed, [and] yes, if he wanted to put them in—approximately once a day.
 - **Paraeducator 2:** Generally, other staff supported the Student with his hearing aids.
 - **Paraeducator 3:** If he allowed me to put them in for him which didn't happen but a few times. He would usually have them out by the time he came to me.
 - **Speech language pathologist:** I am unsure how often they would attempt. I do know there were times that I tried to assist, and Student would clearly tell me 'no' by pushing my hand away, turning his head, and yelling 'no.'

96. The speech language pathologist provided the following description of the specially designed instruction in oral language and speech therapy that she provided the Student:

Student's overall goal was total communication to break through his autism with his hearing loss. Total communication means the use of multi-modal communication techniques using every avenue of communication: sign, gesture, verbal, pictures, and augmentative technology. Some of his goals included: Being able to answer concrete yes / no concrete questions. Increasing his sound awareness – locating noises / music. Imitating and identifying ling sounds (isolated phonemes to target low, middle and high frequency sounds).

97. The special education teacher provided the following description of how she designed and supervised the provision of specially designed instruction in cognitive, math, adaptive, and social/emotional that paraeducators 1-3 provided to the Student:

Data generated from Benchmark assessments; formative and summative assessment; classroom observations. Student was taught within my classroom groups, so I was able to observe and assist with daily lessons. Data, observation data or work samples were collected weekly.

After evaluating students learning strengths and areas of need during IEP development/weekly staff meetings to review data, my team will choose available curriculum or make curriculum to meet the students learning.

Reading Edmark was chosen as it has elements of Total Communication (Print, Pictures, Sign language, verbal). There are built in assessments. DRA assessment/ReadWell Developmental stories: verbal and sign with high interest pictures for comprehension.

We used words from Edmark for written language also as the words were familiar and we could use total communication within written language. Handwriting without tears and Brain Gym was used for fine motor letter writing.

Math: We used total communication to instruct base ten instruction (Math manipulative tools-base ten blocks supported Joe's math understanding, sign language of all numbers, written numbers, verbal) Saxon math cycles math skills, use of total communication, built in assessments.

Adaptive Curriculum: Social thinking books, videos, and turn taking games with classmates and typical peers. /STARS curriculum also supported data collection, goal setting, and implementation of Functional routines using total communication.

98. OSPI's investigator asked several District staff members what their training and experience was in the following areas: picture exchange communication system (PECS); sign language; proloquo. OSPI's investigator received the following answers:

- PECS
 - **Paraeducator 1:** "[I was] trained by the speech language pathologist and the special education teacher [on PECS]."
 - **Paraeducator 2 and 3:** "[I was] educated by the special education teacher and the speech language therapist [on PECS]."
- Sign Language

- **Paraeducator 1:** "I took a course at Whatcom Community College and did an online course."
- **Paraeducator 2:** "[I was] educated by the special education teacher and the speech language therapist [on sign language], including Edmark, signing time, and life print."
- **Paraeducator 3:** "[I] took an online course."
- Proloquo
 - **Paraeducator 1 and 3:** "[I] never used [proloquo] with the Student."
 - **Paraeducator 2:** "[I was] educated by the speech therapist [on proloquo] but I did not use this with the Student."

The speech language pathologist provided the below answer to the aforementioned question:

I have a master's degree in Speech Language Pathology. I have been practicing for 26 years (7 years in the medical field – home health, hospitals and 19 years in the schools). I take continuing education classes every year. I have had classes pertaining to all of these areas. Some of the relevant classes are: Functional AAC Assessment and Interventions Strategies for Individuals with Severe Disabilities in Schools and Other Settings; Working Memory and Language of Children Who are Deaf and Hard of Hearing; Two Day Conference For School Based Speech – Language Pathologists; High Functioning Autism: Proven and Practical Interventions for Challenging Behaviors in Children, Adolescents and Young Adults; Two Day Conference STAR Program – Strategies for Teaching Based on Autism Research; American Sign Language – Whatcom Community College; Addressing Challenging Behaviors in School Age Children with Autism; Structured Teaching: Creating systems that Work for Students with Autism; Early Intervention for Young Children with Autism; iPad Innovations for SLPs; Autism Summit; and Proloquo2go training videos – I have used Proloquo2go for a variety of students for approximately 10 years.

The special education teacher provided the below answer to the aforementioned question:

I have a Master's Degree in Curriculum and Instruction, BA in Special Education, Early Childhood Education, 1 full college year of Sign Language (level1,2,3). Over a year with volunteer and personal friendships with deaf individuals which made my skills fluent, Continuing education classes in STARS (Strategies for teaching based on Autism Research); PEC training (Picture Exchange Communication System); PROLOQUO usage and training for a min. of 7 years with...SLP training and development.

I have worked with severe disabled students who have had Autism, Hearing Impairments, Physical Disabilities and other disabilities for over 20 years.

99. According to multiple District staff members: the iPad could only be accessed if a District staff member first entered a 4 digit password¹⁶; when not in use, the iPad was stored at a "recharge station;" the iPad was used by multiple students in the classroom; the Student only used the

¹⁶ The special education teacher stated that, at some point, a "guided access teacher-only password was added to student programs, so that the Student was unable to change programs." Paraeducator 1 also said: "When the Student used the iPad with me, I entered a code for guided access so he would stay on the app I wanted him to be on."

iPad for a total of 45 minutes; and the Student never used the iPad to play games and/or use apps that were not related to sign language and/or speech skills.

100. OSPI's investigator conducted a phone interview of the principal on October 30, 2019. In that phone interview, the principal stated: PE takes place in an auxiliary room; recess takes place on a large playground close to the Student's classroom; she often goes to recess and, as best she recalls, Student was always there and playing with his nondisabled peers; recess was only canceled on rainy days.
101. OSPI's investigator conducted a phone interview of paraeducator 1 on October 31, 2019. In that phone interview, paraeducator 1 stated: she used 'starfall' on the iPad, a program for reading and math; she and Student eventually moved from the iPad to the chrome book because, as the Student progressed, the chrome book had more appropriate applications for his increased abilities; PE was 2 or 3 times a week; PE class had a warm-up activity and then a sitting period while the students got instruction; Student sometimes could not make it through this sitting period; Paraeducator 1 and Student would either walk the hallway or go back to the classroom to work on a ball activity or balance for roughly 15 minutes, then they would go back to PE after the instruction portion of the class was finished; sometimes Student went to PE, sometimes he did not.
102. OSPI's investigator conducted a phone interview of paraeducator 2 on October 31, 2019. In that phone interview, paraeducator 2 stated: she served as extra personnel support for the Student for recess; she cannot speak to how long and/or when and/or under what circumstances the Student did not receive PE.
103. OSPI's investigator conducted a phone interview of paraeducator 3 on October 31, 2019. In that phone interview, paraeducator 3 stated: it depended on the day whether he went or not he went to PE; some days Student enjoyed going, but other days he did not enjoy going to PE; she cannot say how often he did not go to PE.
104. OSPI's investigator conducted a phone interview of occupational therapist 2 on November 1, 2019. In that phone interview, occupational therapist 2 stated: the couple times she went to the Student's PE class, Student was never in attendance; she only ever saw the Student leave his classroom to attend occupational therapy sessions and speech language pathology sessions.

OSPI Investigation: Issue 4

105. In the investigation of this complaint, OSPI's investigator asked the special education director questions concerning shortening the Student's school day. OSPI received the following answers:
 - Question:** Did District staff and/or the Student's IEP team ever consider the need for specialized transportation as a result of the occurrences on September 4-6, 2019?
 - Answer:** The student is provided specialized transportation. See page 17 of his February 25, 2019 IEP.

Question: Did District staff ever tell the Parent something akin to, "from here on out," she needs to come get the Student prior to dismissal to the bus at or around 3 pm?

Answer: Staff did not tell the parent something akin to "from here on out" she needs to come get the student prior to the bus at or around 3 pm.

Question: Was the District aware that the Parent believed she was being told that, "from here on out," the Student needed to be picked up early? And, if so, what steps, if any, did the District take to correct the Parent's misunderstanding?

Answer: Staff was not aware the Parent held this belief.

Question: What did specialized transportation for this Student look like?

Answer: The Student is provided transportation on a small passenger bus, which has six bench-style seats and includes a wheel chair lift. A paraeducator rides the bus to aide in monitoring students. There are ten students in the small passenger bus.

Question: Why was this specialized transportation not sufficient on September 4, 2019 through September 6, 2019?

Answer: Due to the Student's atypical behaviors on September 4, 2019 through September 6, 2019, staff were concerned Student would not be safe on the bus with other students.

CONCLUSIONS

Issue 1(a): Use of a Proper Isolation Enclosure – Any isolation enclosure must be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy. Furthermore, the isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

Here, the Student's evaluation and IEP teams determined the Student would benefit from sensory exercises.¹⁷ As a result, Student's 2018-2019 and 2019-2020 schedules both included time for the Student to engage in sensory exercises. On occasion, the Student would engage with these scheduled sensory exercises in a "sensory room." For example, the District stated that "sensory rooms may...be used for OT sessions."¹⁸

According to the District, the single sensory room at the Student's school was "supplied with sensory items such as Kinetic sand, play dough, trapeze swing, sensory pea pod, tent, stability balls and ball pit." In the course of this investigation, OSPI obtained the following information on the sensory room at the Student's school:

- Special education director: The sensory room was ventilated, lighted, and temperature controlled.
- Special education director: "The sensory room has a window in the door that allows someone to look into the room."

¹⁷ See, in particular, Student's March 2018 IEP and February 2019 evaluation.

¹⁸ The record also suggests, though, that if the Student became dysregulated, the Student would sometimes be moved to the sensory room, in an effort to allow the Student to calm down. For example, the District says this is what happened on September 9, 2019.

- Parent's reply: The sensory room had "a tiny window on the door with blinds."

On the basis of the foregoing, the sensory room at the Student's school met the requirements of WAC 392-172A-02110(1)(b)-(c).

Issue 1(b): Discontinuing Isolation and Restraint as soon as Likelihood of Serious Harm Dissipates – Isolation and restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm.

Before determining whether an isolation or restraint event was ended at the appropriate time, it is first necessary to determine that an isolation or restraint event, as defined in state statutes and regulations, actually took place.

Isolation: Sensory Room – 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. Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior.

In the course of this investigation, OSPI obtained the following information on the Student's use of the sensory room at the Student's school:

- District's response: "Student is always accompanied by a paraeducator or teacher [when in the sensory room and] the Student may choose to leave at any time. The room has not been used for isolation for Student."
- Special education director stated: "The sensory room has the same door as all classrooms at [Student's] elementary [school]. The lock on the door can only restrict entry to the room, not exiting. The [special education] teacher confirmed the Student is able to exit on [his] own."
- Special education director: "The Student was in the sensory room 2 x after lunch for a maximum of 20 minutes." (The special education teacher provided the following clarification: "This Student was in and out throughout the day, never staying in the room very long. The total minutes would be less than 40 minutes for the entire day.")

Because the Student could leave the sensory room of his own accord, and because he was always accompanied by a teacher or paraeducator, the Student was not "isolated," as defined by RCW 28A.600.485 and WAC 392-172A-01107, when he was in the sensory room. Furthermore, when the Student was temporarily relocated to the sensory room in an attempt to allow him to calm down after becoming dysregulated, this would have represented a permissible positive behavioral intervention under WAC 392-172A-01107 and WAC 392-172A-01142.

Restraint: Sensory Belt and Regular Chair – 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.

Here, occupational therapist 2 stated that, on several occasions from mid-February 2019 through roughly May 1, 2019, she saw the Student restrained in the following manner: “The restraint consisted of a belt approximately 5 inches wide secured around Student’s waist, which was attached to another substantial strap secured to [a regular classroom] chair. Student was unable to stand or move freely while restrained.” This, if true, would definitely meet the definition of restraint under RCW 28A.600.485 and WAC 392-172A-01162. Occupational therapist 2’s allegations appear credible. For example, she submitted a notarized declaration and there is a contemporaneous email, see her email dated February 24, 2019, documenting her concerns.

However, OSPI uses a preponderance of the evidence standard in making independent determinations as to whether a district violated a requirement of Part B of the IDEA. Merriam-Webster’s Dictionary of Law defines the phrase preponderance of the evidence as “the standard of proof...in which [a] party [wishing to establish a factual premise] must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.”

Here, then, occupational therapist 2’s notarized declaration and February 24, 2019 email need to be examined in conjunction with the assertions (both verbal and written) from 16 different staff members that were in and out of the Student’s classroom on a regular or irregular basis during the time period relevant to this investigation, that they never saw what is described in occupational therapist 2’s declaration—or even something similar to what is described in occupational therapist 2’s declaration.

On the basis of the foregoing, OSPI cannot conclude that the Student was restrained in a manner as described in occupational therapist 2’s declaration.

Restraint: District Staff Holding Sensory Belt while Student Walked in Hall – Restraint device as defined in RCW 28A.600.485 means: A device used to assist in controlling a student (emphasis added). A restraint device does not include a seat harness used to transport a student safely or other safety devices, including safety belts for wheelchairs, changing tables, booster seats, and other ambulatory or therapeutic devices when used for the purpose intended for the safety of a student. A restraint device shall be used only when a student’s behavior poses an imminent likelihood of serious harm. The use of a restraint device is subject to each of the following conditions: a) the restraint device must be discontinued as soon as the likelihood of serious harm has dissipated; b) the restraint device shall not interfere with the student’s breathing; c) either the student shall be capable of releasing himself or herself from the restraint device or the student shall continuously remain within view of an adult responsible for supervising the student; d) any staff member or other adults using a restraint device must be trained and certified by a qualified provider in the use of such restraint devices, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

Here, the Student's February 2019 IEP stated the Student's sensory belt, in part, "support[ed] assistant[s] in guiding Student when needed." According to the special education director, despite the fact that the Student's February 2019 IEP included this language, "staff do not recall using [the] belt in this way...the sensory belt was not used as a restraint device by any staff." However, in the course of this investigation, the following three District staff members stated that, on occasion, they saw District staff members holding onto the Student's sensory belt as he walked in the hallways: K-5 title teacher; paraeducator 5; and school psychologist 1. School psychologist 1 says she only ever saw District staff holding onto the Student's sensory belt in a "cooperative manner"—in other words, she never saw District staff use the belt to guide the Student when the Student was emotionally dysregulated and/or wanted to travel in a direction other than where Student was supposed to.

Still, given: a) the numerous references in the record to the Student's elopement and aggression challenges¹⁹; and b) the fact that the District does not deny that the Student possessed normal coordination and balance and was independently ambulatory²⁰, it is clear that District staff, in placing their hand(s) on the Student's sensory belt while he was walking in the hallways, were only doing so because it **assisted** them in controlling the Student. Therefore, the use of the sensory belt, in this specific manner, constituted the use of a restraint device. And, given the fact that there is nothing in the record to indicate that the use of the belt to guide the Student was undertaken because the Student's behavior posed an imminent likelihood of serious harm, the use of the belt in this manner constituted an impermissible use of a restraint device. OSPI finds the District in violation when the sensory belt was used in this manner and the District will be required to provide training.

Restraint: Rifton Chair – According to the District, during the 2018-2019 school year:

The Student also had seating preferences, a child's wood rifton chair with a front buckling strap. This chair is designed to support positioning and providing security and stability for children with sensory and strength needs. Staff reported Student used the chair at his work place, seating himself and buckling the front buckle of the strap. Student was able to buckle and unbuckle and leave the chair at any time...The Student used the rifton chair during academic/instructional work times in the classroom at his...table...the Student was [first able] to buckle and unbuckle himself during his first grade year—2018-2019.

¹⁹ See February 2019 evaluation ("Student consistently runs away, screams, or is aggressive if he leaves our classroom"); see also occupational therapist 2's February 24, 2019 email (Wherein she states that one of the Student's paraeducators told her that "they do not have the staff [to] watch Student 'in case he runs'"); occupational therapist 2's Declaration (Wherein she says she "never observed the eloping behaviors [that other] staff were concerned about [with Student]"); principal's September 13, 2019 email to the CPS representative ("Student had a difficult transition back to school. When prompted to do learning activities he has been physical with staff—spitting, running, screaming, and kicking"); District's response generally; Parent's reply generally.

²⁰ See February 2019 evaluation ("Student does not appear to have gross motor delays below age/grade level. Student has adequate balance, coordination, and mobility"); see also statement by special education director ("The district is not aware of any staff member who believed the Student has poor coordination").

As the Student was able to buckle and unbuckle the strap on the rifton chair, and to “leave the chair at any time” he desired, this did not constitute either a restraint or the use of a restraint device.²¹

Issue 1(c): Proper Documentation of Isolation and Restraint – School districts must follow the documentation and reporting requirements for any use of isolation, restraint, or restraint device consistent with RCW 28A.600.485.

Here, the District did not follow these reporting requirements following the occasional use of the sensory belt as a restraint device when Student walked the hallways because the District did not acknowledge that this was a restraint. The District stated that “there are no reports or documentation of isolation or restraint for Student as [it did not believe that any had been] initiated.” This represents a violation of the IDEA.

Issue 2: Parent Participation in IEP Meetings – In the course of this investigation, the Parent’s complaint on this score was clarified. Specifically, the Parent stated: “IEP meetings were actually moved to exclude occupational therapist 2 which thus inhibited my participation and the flow of information about what was actually happening in the classroom.”

Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student’s IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child’s educational program; participate in discussions about their child’s need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. An IEP team is composed of, in part, any individuals who have knowledge or special expertise regarding the student, including related services personnel. An IEP meeting

²¹ A separate issue, though, is whether the rifton chair was an appropriate support for the Student based on the Student’s needs resulting from his disability. According to the Parent’s reply, “the [rifton] chair is never mentioned in Student’s IEP and...he has never shown a preference for being strapped into chairs.” According to the Parent’s attorneys: “Parent had not heard of the use of a rifton chair until [she received] information...from the District’s response to [this complaint]. Parent responded that she had not seen one and that such a chair would not have been appropriate.” The Student’s IEP documents mention that he has certain sensory needs. To the extent the rifton chair fulfills Student’s sensory needs, it might be an appropriate support for the Student. However, OSPI makes three observations: a) rifton chairs usually serve as “positioning chairs [that] enable users to learn functional sitting skills...[permitting] a client [to] actively use and develop his or her core muscles and improve their postural motor skill” (<https://www.rifton.com/resources/articles/2012/april/guidelines-for-the-rifton-activity-chair>); b) the record in this complaint does not support the notion that the Student needed assistance with sitting and/or seated posture; and c) the rifton chair does not appear to be mentioned in the March 2018 IEP, the February 2019 evaluation, or the February 2019 IEP. Therefore, OSPI recommends that the Student’s IEP team discuss (this would, by definition, include the Parent), whether and why the Student’s needs resulting from the Student’s disability requires that he be given the option of using a rifton chair.

invitation informs the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student.

Here, there is an email from occupational therapist 2 dated February 24, 2019, wherein she says that she only learned about the Student's evaluation and IEP meeting scheduled for the next day (February 25, 2019) late in the afternoon on February 21, 2019. In that same email, occupational therapist 2 says she will need "through Friday, March 1, 2019 [to] review [Student's file], [conduct] observations across settings, [complete a] sensory profile for home and school, and [sic] standardized testing." A 'Review IEP Invitation' document, however, states that occupational therapist 2 was invited to the February 25, 2019 meeting on January 31, 2019. Even accounting for several days for mailing and any snow-related school closures, this still represents roughly 3 ½ weeks of notice of the February 25, 2019 meeting. Finally, occupational therapist 2 participated in the February 25, 2019 meeting—she signed the February 2019 IEP and the February 2019 evaluation includes detailed fine motor and gross motor sections that were completed by occupational therapist 2. On the basis of the foregoing, the Parent's participation in the February 25, 2019 meeting was not hindered by a failure to properly include occupational therapist 2.

Issue 3: IEP Implementation – The Parent alleged the District did not implement the Student's March 2018 and February 2019 IEPs. At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

Speech – Here, the Student did not always receive the speech language therapy sessions that were required by this March 2018 and February 2019 IEPs. In the situation "where the student is absent from school because of the family's or physician's decision that the student not attend school...the general rule is that, if the school district makes IEP services available to the student at the normally scheduled time, the school district is not obligated to make other arrangements to provide services." In the situation "where the student cannot receive the services in his or her IEP due to reasons associated with participation in school-sponsored activities or the unavailability of needed personnel...the school district generally will be responsible for making alternative arrangements for providing IEP services." *Letter to Balkman*.

The Student's March 2018 IEP provided the Student with three 30 minute speech therapy sessions a month. From the latter half of September 2018 through February 2019, the Student missed 9 speech therapy sessions because either the provider was absent, school was not in session on the scheduled day, or a school-wide event took place on a day a session was scheduled for.

The Student's February 2019 IEP provided the Student with three 30 minute speech therapy sessions a month. From March 2019 through September 10, 2019 (the last day Student attended school in the 2019-2020 school year), the Student missed 6 speech therapy sessions because

PE – The Parent alleged the Student rarely received PE with his nondisabled peers. Each student eligible for special education services must be afforded the opportunity to participate in the general physical education program available to students who are not disabled, unless the student is enrolled full time in a separate facility or the student needs specially designed physical education, as described in the student's IEP. If the student requires specially designed physical education, the district will ensure that the school either provides the services directly or makes arrangements with a private program.

Here, both the Student's March 2018 IEP and February 2019 IEP said that the Student was to participate in a general education PE class. The record, though, shows that, on a regular basis, the Student would not fully participate in the general education PE class. Rather, the Student often participated in the PE warm-up activity with his peers, but then, during a sitting period where the Students received instruction immediately following the PE warm-up activity, Student would either walk the hallway or go back to the classroom to work on a ball or balance activity.²² The record also suggests that, on certain days, the Student did not go to the general education PE class at all.²³

On the basis of the foregoing, the Student's IEP team should have met to determine: a) the maximum extent to which the Student's needs resulting from his disability permitted him to participate in the general education PE class; b) the reasons for this determination; c) what additional specially designed instruction, related services, accommodations, and/or modifications the Student needed in order to increase the amount of time he could spend in the general education PE class; and d) amended the Student's IEP to reflect the aforementioned decisions. The fact that this did not occur represents a violation of the IDEA.

Recess – The Parent alleged the Student rarely attended recess with his nondisabled peers.

Here, the Student's March 2018 and February 2019 IEP both stated that the Student would "participate with non-disabl[ed] peers for recess." And the record shows that this generally occurred. For example, the special education teacher and paraeducators 1-3 said that additional staffing, in the form of an additional paraeducator, were provided to the Student during the general education recess period. Paraeducators 1-3 said that the only time Student missed general education recess was if he was absent or sick. The principal stated she went to recess on most day

²² See February 2019 reevaluation ("Student's behaviors have affected his social integration times. He began the school year integrating into music and PE. He consistently runs away, screams, or is aggressive if he leaves our classroom. He has been given PE activities within our classroom by using our OT equipment (exercise ball, trampoline, swing, balance board"); see also Statement by special education teacher ("If his behaviors were not safe or he left the PE location, he continued motor movements with a walk in the hallway, sensory activities or playground. He had PE with non-disabling peers more than not"); paraeducator 1 interview notes; paraeducator 3 interview notes; occupational therapist 2 interview notes.

²³ See paraeducator 1 interview notes (paraphrased: 'Sometimes Student went to PE, sometimes he did not'); see also paraeducator 3 interview notes (paraphrased: 'It depended on the day whether he went or not'); occupational therapist 2 interview notes (In the interview, she said that, on the couple times she went to the Student's PE class, he was never in attendance).

and that, as best she recalls, the Student was always there and playing with or near his nondisabled peers. The special education teacher offered an explanation for why the Student was able to participate in general education recess more than he was general education PE: "Recess is not teacher-structured, so Student had more success with recess as he did what he wanted. PE is teacher-structured, so he had more difficulty." On the basis of the foregoing, OSPI concludes that this portion of the Student's March 2018 and February 2019 IEPs was properly implemented.

Hearing Aids – OSPI has a concern as to whether the Student was actually able to benefit from the specially designed instruction he received since September 14, 2018. For example, the Student appears to have a significant hearing loss in both ears, and wears hearing aids for this purpose. However, the record also shows that, for significant portions of the Student's average school day, he did not wear his hearing aids. In order for the Student's service providers to have engaged with him via total communication (verbal, sign language, PECS, proloquo, print), it would have been imperative the Student be able to hear verbal commands and communication. Here, the Student appears to have made fair progress on the goals in his March 2018 IEP through late February of 2019. However, the Student appears to have made poor progress on the goals in his February 2019 IEP through September 10, 2019. For example, as of June 2019, Student's progress on 7 of 8 of his goals was either emerging skill or insufficient progress; by June 2019, Student had only made sufficient progress on 1 of his 8 goals. Given this fact, at some point in the spring of 2019, the Student's IEP team should have met to determine: a) the reason Student was failing to make progress on his goals; and b) whether the Student needed any additional SDI, related services, accommodations, or modifications so as to permit him to make progress on the goals.

Issue 4: Whether Student's School Day Was Shortened – Students eligible for special education services should attend school for the same amount of time as students without disabilities, unless the IEP team decides that a shortened school day is necessary to ensure access to FAPE.

Here, according to the special education director:

The special education teacher and principal reported that on *September 4, 5, and 6, [2019]*, the special education teacher called [Parent] and requested that, due to [Student's] behaviors [Parent] pick him up prior to dismissal to the bus as it was determined that it was unsafe for [Student] to ride the bus home. As [Parent] must meet the bus at home for [Student's] sibling, [Parent] arrived to pick [Student] up from the school at approximately 2:45 on [these] three days. Students prepare for dismissal and loading the bus at 3:00 for a 3:15 departure.

According to the District: a) the Student received the following specialized transportation: ten students, including the Student, ride a six bench bus with one paraeducator; and b) it did not believe that this specialized transportation was sufficient on September 4-6, 2019, because the District was concerned about the safety of the other students that rode the Student's bus.

As a preliminary matter, it is important to note there was not an IEP team decision in early September to permanently require the Parent to come get the Student before the end of the regular school day; rather, it appears that the act of requiring the Parent to get the Student before

the end of the regular school day on September 4-6, 2019, was merely a reaction to the events of those specific days.

Still, by September 6, 2019, the Student's IEP team should have likely been considering whether additional supports were needed to permit the Student to attend a full day of school—for example: the addition of another paraeducator to the Student's bus and/or whether a functional behavior assessment and behavioral intervention plan needed to be completed. In the course of this investigation, OSPI's investigator asked the special education director the following question: "During or after September 4, 2019 through September 6, 2019, did the District ever consider an FBA and/or a BIP? If not, why not?" The special education director responded:

The District started with [a classroom] observation [of the Student] on September 9, 2019. A meeting was held on September 17, 2019 to discuss next steps, however, the Parent did not attend the meeting and the Parent refused to return Student to school. Without the Parent's participation, the IEP team was not able to move forward with considering an FBA or BIP.

On the basis of the foregoing, OSPI recommends that, if the Student reenrolls in the District, the Student's IEP team determine what additional supports, if any, are needed to ensure the Student can participate in a full day of school.

CORRECTIVE ACTIONS

By or before **December 6, 2019, December 13, 2019, January 6, 2020, January 22, 2020, and February 10, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **December 6, 2019**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 7.5 hours of speech language therapy; 1 hour of fine motor; 1 hour of gross motor; 30 minutes of sensory; 3 hours of occupational therapy. Services will occur in a one-on-one setting and 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 **February 7, 2020, including those needing to be rescheduled**. The District will provide OSPI with documentation of the schedule for services by or before **December 6, 2019**.

No later than **February 10, 2020**, the District shall provide OSPI with documentation that all of the compensatory services have been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for Student to access these services, or reimburse Parent for the cost of providing transportation for these services. If the District

reimburses Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **February 10, 2020**.

DISTRICT SPECIFIC:

One

By **February 7, 2020**, the following District staff will receive training: special education administrators, the principal, the assistant principal, and special education-certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2018-2019 and 2019-2020 school years, as well as the paraeducators in the Student's classrooms during those two years. The training will cover the following topics:

- Restraint (WAC 392-172A-01162)
- Restraint Devices (WAC 392-172A-01163)
- Limitations to Using Restraint and Restraint Devices (WAC 392-172A-02110(2)-(3))
- Reporting Requirements for the Use of Restraint and Restraint Devices (WAC 392-172A-02110(4); RCW 28A.600.485)

The training will include examples. **The training will be presented by Lee Collyer, Program Supervisor (OSPI).**

By or before **December 13, 2019**, the District and Lee Collyer will establish a date on which the training will take place. By or before **December 13, 2019**, the District will inform OSPI of the scheduled date for the training.

By **February 10, 2020**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

Two

By **January 17, 2020**, the District will ensure that the following individuals receive written guidance on WAC 392-172A-02030 (physical education requirements for students with IEPs): special education administrators, the principal, the assistant principal, and special education-certified staff, including educational staff associates (ESAs)²⁴, at the school that the Student was enrolled in during the 2018-2019 and 2019-2020 school years, as well as the paraeducators in the Student's classrooms during those two years. The guidance will include examples.

By **January 6, 2020**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by January 10, 2020.

²⁴ ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

By **January 22, 2020**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

Three

By **January 22, 2020**, the District will provide OSPI with the following information on each student with an IEP that attends the school the Student attended during the 2019-2020 school year, as of November 11, 2019:

Student's Name (Grade)

Does this student's most recent IEP state that this student will receive specially designed physical education? Or does this student's most recent IEP state that this Student will receive general physical education?	
If the student is to receive specially designed physical education, why is this?	
If the student is to receive specially designed physical education, is the student actually receiving this?	
If the student is to receive specially designed physical education, what does this look like? In other words: who provides it, who designs and supervises it, when is it provided, and where is it provided?	
If the student is to receive specially designed physical education, what plans are in place so as to enable the student to eventually participate in general physical education?	
If the student is to receive general physical education, are accommodations, modifications, and/or supplementary aids and services necessary to enable the student to participate in general physical education? If so, what are these, why are they necessary, and are they being provided?	
If the student is to receive general physical education, is the student actually receiving this? For example, is the student able to regularly participate in the full class period for general physical education? Or is the student only able to regularly participate for a portion of the full class period for general physical education?	

Does the District believe that WAC 392-172A-02030 is being followed for this student? And, if not, what corrective actions does the District propose?	
---	--

Upon review of the foregoing documents and information, OSPI will order additional corrective actions as necessary.

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.

RECOMMENDATIONS

One

OSPI recommends that, if the Student reenrolls in the District, the Student’s IEP team meet to determine what additional supports (specially designed instruction, related services, accommodations, modifications), if any, are needed to ensure the Student can participate in a full day of school.

Two

OSPI recommends that, if the Student reenrolls in the District, the Student’s IEP team discuss (this would, by definition, include the Parent), whether and why the Student’s needs resulting from the Student’s disability requires that he be given the option of using a rifton chair.

Three

OSPI also reminds the District that, were the Student to reenroll in the District, the District must set up the Student’s schedule so as to ensure that the Student is receiving the SDI required by his most recent IEP.

Four

OSPI further recommends that the following individuals review the Tip portion of OSPI’s September 2019 monthly update, titled, “When Do Students Start Receiving Special Education Services”: special education administrators, the principal, the assistant principal, and special education-certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2018-2019 and 2019-2020 school years, as well as the paraeducators in the Student’s classrooms during those two years. A copy of that Tip can be found on pages 9 through 10 of this link: <https://www.k12.wa.us/sites/default/files/public/specialed/monthlyupdates/Sept2019Updates.pdf>. For convenience, though, that portion of the September 2019 monthly update is reproduced here:

Tips from the Special Education Division: Reminders to the Field

When Do Students Start Receiving Special Education Services?

Each school district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services at the beginning of the

school year (WAC 392-172A-03105). The beginning of a new school year, however, often brings questions about when students eligible for special education will start receiving services.

School districts are reminded that they cannot arbitrarily determine when special education and related services will begin or schedule them to begin after the start of the school year for some providers (SECC 16-29 (2016)). Furthermore, a school district policy mandating that services for all students eligible for special education will begin at a specific time after the beginning of the school year (e.g., the third week of the school year) would not be consistent with the IDEA and its implementing regulations (Letter to Ackerhalt). 60 IDELR 21 (OSEP 2012).

The IEP team, which includes the parent(s) and school district officials, determines the projected date for the start of a service based on the individual needs of the student. The IEP team, on a case-by-case basis, may determine that the individual needs of the student require that the start date of a service should occur the first week of school or some other time after the beginning of the school year. Any decision by an IEP team regarding the anticipated start date for services must be documented within the IEP (WAC 392-172A-03090). The expectation, however, absent any other documented decision from an IEP team, is that students eligible for special education start receiving services at the beginning of each school year. School districts may want to remind school leaders and providers of these requirements, and encourage them to proactively address questions and concerns prior to the start of school to ensure each student accesses an appropriate education.

Dated this ____ day of November, 2019

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.)