

NO. 849492-I

COURT OF APPEALS
Division I

SEATTLE TIMES COMPANY,

Respondent,

v.

BHC FAIRFAX HOSPITAL, INC., doing business as
NORTHWEST SCHOOL OF INNOVATIVE LEARNING,

Appellant.

BRIEF OF AMICI CURIAE ATTORNEYS FOR
EDUCATION RIGHTS, DISABILITY RIGHTS
WASHINGTON, TEAMCHILD
IN SUPPORT OF RESPONDENT

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I. IDENTITY AND INTEREST OF AMICI

The identity and interest of *Amici* are set forth in the Motion for Leave to File, submitted with this brief.

II. INTRODUCTION

Amici are deeply concerned with BHC Fairfax Hospital's (BHC) position that it can operate Northwest School of Innovative Learning (NWSOIL) to provide publicly-funded special education services to disabled public school children, while flouting the legal requirements for every other public school program in the state. A decision exempting BHC from the Public Records Act would have implications for disabled students placed in such facilities statewide by public school districts.

BHC's argument that the education of disabled children is not a core government function simply does not comport with the duties that the Individuals with Disabilities Education Act (IDEA) places upon the state. Chief amongst these state duties is ensuring the implementation of special education services

and plans. IDEA-mandated state supervision includes making certain that public school children placed at private schools with public funding (like NWSOIL) have all the rights they would have under the IDEA if they were directly served in their neighborhood public school. These IDEA rights include access by parents and guardians to all records related to the child.

More broadly, the right to access school records by the public is critical for the protection of all students and for enforcement of other civil rights laws. Particular focus on the use of restraint and isolation in schools in Washington state and the harm caused to children has resulted in legislative change over the disclosure of school records and reporting, including increased oversight of special education facilities like NWSOIL. BHC's assertion that NWSOIL's records should be hidden from public view subverts the protection and enforcement of the rights of the public school children in the care of such facilities.

III. STATEMENT OF THE CASE

Amici adopt the Statement of Facts as set forth in the Seattle Times's brief.

IV. ARGUMENT

A. The IDEA Assigns Specific Duties to the State to Provide Special Education and Ensure Parent Participation

Washington has enshrined the right of children with disabilities to receive an appropriate education at public expense, consistent with the Washington constitution and federal law. RCW 28A.155.010. The federal law that our state must follow, the IDEA, goes further than requiring the opportunity for an education; it sets forth a comprehensive scheme for the delivery of special education and related services by the state.

Congress enacted the IDEA “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them

for further education, employment, and independent living,” and “to assist States, localities, educational service agencies, and Federal agencies **to provide** for the education of all children with disabilities.” 20 U.S.C. § 1400(d) (emphasis added). The purpose of the IDEA federal grant system is to assist the states to provide special education and related services to children with disabilities in accordance with Part B of the IDEA. 20 U.S.C. § 1411(a)(1).

1. *The state and local educational agencies must abide by the IDEA and take affirmative steps to carry out its purposes*

The IDEA’s implementing regulations make clear that its provisions are binding on the state and all political subdivisions of the state that are involved in the education of children with disabilities, including state and local educational agencies (LEAs). 34 C.F.R. § 300.2. In Washington, the school district is the LEA.

States that are subject to the IDEA must submit a plan to the federal government assuring that they meet an extensive list

of requirements for the education of disabled children. 20 U.S.C. § 1412(a)(1)-(25). States must establish the responsibility for delivering special education services and must ensure all services are provided. 20 U.S.C. § 1412(a)(12).

The IDEA requires more than just the promise of an education, it proscribes how that education is to be carried out. IDEA defines “free appropriate public education” (FAPE) as special education and related services that **are provided** at public expense, **under public supervision and direction**, and without charge, that meet the standards of the state educational agency, include an appropriate education in the state, and that **are provided** in conformity with the individualized education program required under the IDEA. 20 U.S.C. § 1401(9) (emphasis added).

All eligible special education students must receive an Individualized Education Plan (IEP) which sets forth the special education and related services and supplementary aids and services **to be provided** to the child. 20 U.S.C. §

1414(d)(1)(A)(i)(IV) (emphasis added). IEPs must be developed by a team with mandated school and parent members, including a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction. 20 U.S.C. § 1414(d)(1)(B). All IEPs must be in effect (meaning ready to be implemented) at the start of each school year. 20 U.S.C. §1414(d)(2).

The state must also make certain that a “continuum of alternative placements” and supplementary services are provided, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. § 300.115.

2. State and local educational agencies must ensure that parents and guardians receive the procedural safeguards mandated by the IDEA

The IDEA not only sets forth the requirements for the state to provide special education and related services to disabled students, it also delineates the rights that states must grant to parents under the IDEA.

The IDEA's procedural safeguards are an essential component of the delivery of an appropriate education to students with disabilities, ensuring participation of parents and guardians in the entire process. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-206, 102 S.Ct. 3034, 73 L.Ed. 2d 690 (1982).

First on the list of procedural safeguards is the right to examine all records relating to the child with a disability. 20 U.S.C. § 1415(b)(1). The Supreme Court emphasized that IDEA obliges schools to share information with parents, and that the IDEA bestows the right upon parents to “review all records that the school possesses in relation to their child.” *Schaffer v. Weast*, 546 U.S. 49, 60, 126 S.Ct. 528, 163 L.Ed. 2d 387 (2005).

States must also ensure the right of parents to participate in meetings regarding special education identification, evaluation, and placement, and the provision of FAPE, as well as to obtain an independent educational evaluation of the student. 20 U.S.C. §1415(b)(1). States must also afford parents

the right to receive written notice, and a dispute resolution procedure as well as an impartial due process hearing procedure to challenge the child's education and enforce educational rights. 20 U.S.C. §1415(b)(6).

3. *State and local educational agencies must comply with the IDEA when placing students in private schools in order to deliver special education services*

The state and school districts may place children with disabilities in private schools and facilities, on the condition that the special education and related services are provided to the student in accordance with an IEP, at no cost to the parents, and in conformity with all of the requirements of the IDEA. 20 U.S.C. § 1412(a)(10)(B) (emphasis added). Thus, placement of students at Nonpublic Agencies (NPAs) like NWSOIL is done under the IDEA as well as Washington law.

IDEA also requires that states determine whether such private schools and facilities where public school children are placed meet standards that apply to state agencies and LEAs,

and that children so served have **all the rights children would have** if they were served by such state and local agencies. 20 U.S.C. §1412(a)(10)(B)(ii) (emphasis added).

B. Students Placed in Segregated Special Education Schools are Among the Most Vulnerable and in Need of Protection and Oversight

The right to public education in Washington does not mean that all children will be educated in their local or neighborhood schools. A percentage of high-needs children with disabilities are pushed out of their home schools and into NPAs as authorized by the IDEA and state law. These facilities exclusively serve children with disabilities.

The practice of segregating disabled students in separate classrooms and programs on a national level disproportionately affects children of color and low-income students. In 2018, the National Council on Disability performed a study on the segregation of students with disabilities. It examined segregation data and made recommendations to Congress based on those findings. A key finding from this study was that the

decision to segregate special education students is influenced more by the students' zip code, race, and disability level, and less by the procedures and mandates of federal law.¹

Nationwide, in 2015, 21 percent of Asian students and 17 percent of Black students were educated in regular classrooms for less than 40 percent of the day, compared to 11 percent rates for their white disabled peers.²

The most segregated educational arrangement of all is removing the child from their neighborhood school entirely. In the 2015-16 school year, out of all special education students in Washington state, 0.73 percent of students were placed in a separate school or residential facility, such as NWSOIL.³

¹ National Council on Disability, *The Segregation of Students with Disabilities* (2018), https://ncd.gov/sites/default/files/NCD_Segregation-SWD_508.pdf.

² Halley Potter and Kimberly Quick, *Preventing Double Segregation for Students with Disabilities* (May 22, 2018), <https://tcf.org/content/commentary/preventing-double-segregation-students-disabilities/>.

³ *The Segregation of Students with Disabilities* at 49.

Another issue is the overrepresentation of students of color in special education. For example, in Washington for the 2018-19 school year, Black students made up 4.34 percent of the total student population. However, within all special education students that number was 5.7 percent.⁴ This trend continues nationally. In that same year, Black or African American children made up 13.8 percent of the population aged 6-21, but out of the population of students with disabilities nationwide, 17.89 percent were identified as receiving special education services.⁵

Students with disabilities are also vulnerable in other respects. The disparity in educational outcomes and rates of discipline between students with disabilities and students

⁴ U.S. Department of Education, *OSEP Fast Facts: Black or African American Children with Disabilities*, 2020, <https://sites.ed.gov/idea/osep-fast-facts-black-or-african-american-children-with-disabilities-20/#:~:text=In%20school%20year%202018-19%2C%20Black%20or%20African%20American%20students,than%20all%20students%20with%20disabilities.>

⁵ *Id.*

without is stark. In the 2021-22 school year, OSPI reported that students with disabilities had a drop-out rate of 15.2 percent versus the 9.3 percent of students without disabilities.⁶ Of those that remained enrolled in school, the disparities continued. In that same school year, OSPI reported that students with disabilities were disciplined at a rate of 6.1 percent versus 2.4 percent for students without disabilities.⁷

When NPAs are scrutinized individually, data shows restraint is often misused for discipline, even though it is only meant to be for emergencies. RCW 28A.600.485(3)(b). For example, in the 2019-20 school year, report findings show that 69 percent of students enrolled at a particular NPA were subject to restraint, a number that was 2.6 times higher than the statewide rate for that year.⁸

⁶ *Washington State Report Card*, <https://washingtonstatereportcard.ospi.k12.wa.us/ReportCard/ViewSchoolOrDistrict/103300>

⁷ *Id.*

⁸ Andrea Kadlec, Mina Barahimi Martin, & Kendrick Washington, *Coming into the Light: An Examination of*

Data from individual NPAs is congregated with the data from the student’s home school district and is not generally available.⁹ This means that getting a clear picture of practices within individual NPAs is extremely difficult. It is critical that parents, students, and communities are able to access records from NPAs in order to make informed choices, and to monitor the treatment of students, educational outcomes, and the effects of segregation.

C. Schools Possess Important Records that the Public Can Access by Law

Public schools must comply with the Public Records Act (“PRA”), Chapter 42.56 RCW. There are school records subject to the PRA that can be used to gain crucial information about the treatment of students and school safety. School surveillance

Restraint and Isolation Practices in Washington Schools, DISABILITY RIGHTS WASHINGTON AND ACLU OF WASHINGTON, (Jan. 2022), <https://www.disabilityrightswa.org/wp-content/uploads/2023/02/Restraint-and-Isolation-Report-dist.pdf> (last visited Dec. 10, 2023).

⁹ *Restraint and Isolation Practices in Washington Schools*, *supra* at 14.

video and internal emails fall under the Public Records Act and are requested in order to monitor school practices and enforce students' legal rights.

The case of *Lindeman v. Kelso School District No. 458* is instructive. 162 Wn.2d 196, 201, 172 P.3d 329 (2007). The parents in that case requested production of video surveillance footage on a school bus of a fight between students. The Washington Supreme Court emphasized that the Kelso School District's duty under the PRA is to "liberally construe its public records provisions and narrowly construe its exemptions." *Lindeman*, 162 Wn.2d at 201 (citing former RCW 42.17.251, recodified as RCW 42.56.550(3)). Moreover, the policy enshrined in the PRA is that "free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." RCW 42.56.550. The Court found that no exemption applies to production of school surveillance video.

Cantu v. Yakima School District No. 7, is another illustration of a school district's obligation to comply with the PRA. 23 Wn. App. 2d 57, 514 P.3d 661 (2022). During 2016, Ms. Cantu's daughter suffered multiple incidents of harassment, intimidation, and bullying at Davis High School in Yakima. *Id.* at 67. Ms. Cantu sought assistance from the school but ultimately petitioned for protection orders from the court. *Id.* In an attempt to gather records to support her petition for a protection order, Ms. Cantu requested records from the Yakima School District. *Id.* The school district's response was delayed and incomplete. *Id.* Finally, in 2018 Ms. Cantu filed a PRA complaint against the school district. Division III of the Court of Appeals ultimately determined that 85 emails were wrongfully withheld for 631 days and remanded the case to superior court for assessment of financial penalties. *Id.* at 66, 105.

D. The Right to Access Public Records is Critical for Parents, Students, and Community to Protect Children

There are multiple processes that exist to protect children

in school from discrimination, bullying, wrongful discipline or exclusion. Access to public records is critical to apply those protections. Many of the systems of protection would be rendered hollow if parents, students and their communities could not access important public records to investigate schools and uphold students' rights.

1. *Special Education Due Process*

Parents have the right under IDEA to participate in all meetings regarding the placement of their child,¹⁰ and challenge such placements in a hearing,¹¹ which would be near-impossible to enforce without access to records and information from the NPA.

2. *Harassment, Intimidation, and Bullying*

State law requires school districts to prohibit harassment, intimidation, and bullying and develop procedures to report and resolve bullying. RCW 28A.600.477. Schools further have an

¹⁰ 20 U.S.C. § 1414(e).

¹¹ 20 U.S.C. § 1415(f).

obligation to ensure that bullying and harassment does not prevent a student with disabilities from accessing a free appropriate education.¹²

Between 10 and 35 percent of students report bullying and harassment, with higher rates in middle school years.¹³ To prevent bullying and assist school districts with compliance, the State has created sample forms to report bullying.¹⁴ Among other questions, the form asks for evidence students and family

¹² U.S., Dep't of Educ., Office for Civil Rights, *Dear Colleague Letter: Responding to Bullying of Students with Disabilities* (Oct. 21, 2014),

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.

¹³ Wash. Dep't of Health, *Healthy Youth Survey*, 2021, <https://www.askhys.net/>; Office of Juvenile Justice and Delinquency Prevention, *Bullying Experiences Reported by High School Students* (2021), https://www.ojjdp.gov/ojstatbb/snapshots/DataSnapshot_bullying2021.pdf.

¹⁴ Wash. Office of Superintendent of Public Schools, *Washington State Harassment, Intimidation or Bullying (HIB) Sample Incident Reporting Form*, 2023, <https://ospi.k12.wa.us/sites/default/files/2023-08/samplehibincidentreporting.pdf>.

have of bullying.¹⁵ Public records are critical for parents and community advocates to understand the extent and scope of bullying, as well as what school districts knew and did to address it.¹⁶ Public records are important as a system of accountability to protect children experiencing bullying. This is particularly important for students subject to harassment and bullying due to their race, disability, gender, and other marginalized identities.¹⁷

3. *Laws Against Discrimination*

There is a system of state and federal laws protecting students from discrimination in education. *See, e.g.*, RCW 28A.642.010; Chapter 49.60 RCW; Title VI of the Civil Rights Act of 1964 (34 C.F.R. § 100); Title IX of the Education Amendments of 1972 (34 C.F.R. Part 106); Section 504 of the

¹⁵ *Id.*

¹⁶ *See Cantu*, 23 Wn. App. 2d at 67.

¹⁷ *See Dickerson v. Aberdeen School District No. 5*, No. 10-cv-05886-BHS (W.D. Wa. 2010) (lawsuit based on school district's deliberate indifference to racial harassment and harassment based on sexual orientation).

Rehabilitation Act of 1973 (29 U.S.C. § 794). Many of the documents that schools hold contain important information about individual and systemic actions (from staff communications to school-wide notices), disparate impacts of policies and practices, as well as trainings and actions by school administration to educate and mitigate harm, exist in public records, not individual student files. Public records are essential to monitor and address equity and protect students from discrimination in all schools where students are placed through the public education system.

4. *Discipline Rights*

Because students have a statutory and constitutional right to education in Washington State, they also have due process rights when they face disciplinary exclusion from school.

WASH. CONST. Art. IX, §§ 1, 2; RCW 28A.225.010

(compulsory school attendance); *Goss v. Lopez*, 419 U.S. 565, 575-576, 95 S. Ct. 729, 42 L.Ed.2d 725, (1975) (holding a hearing is required even for a short-term suspension). That

includes a right to a hearing and to present evidence. *See* WAC 392-400-465. Students who are eligible for special education have additional rights to prevent exclusion from school for behaviors that are a manifestation of disability. 34 C.F.R. § 300.530.

For these legal processes to be meaningful, parents must have access to public records, such as security videos, emails, and other documentation of incidents that schools may not otherwise share if they contain exculpatory information. *See, e.g., Lindeman*, 162 Wn.2d 196 at 203 (surveillance video is a means of maintaining security and “differs significantly from the type of record that schools maintain in students' personal files.”). If students cannot access records that are outside of their individual student file—but reflect information about the education they receive and their treatment in school—their ability to assert their rights is undermined or nullified.

E. Restraint and Isolation Records are of Particular Importance

A specific concern about NPAs, highlighting the need for public access to records, is the use of restraint and isolation.

A journalist's expose in the seventies revealed horrific abuse in a New York residential school,¹⁸ spurring Congress to create the protection and advocacy system.¹⁹ Congress accordingly created a nationwide advocacy system, granting federal access authority to settings, records, interviews, data, and other relevant information needed to conduct monitoring and investigations on behalf of disabled individuals.²⁰

Disability Rights Washington (DRW), a private, non-profit designated as Washington's Protection and Advocacy

¹⁸ Geraldo Rivera, Sarah McConnell. Willowbrook: The Last Disgrace. (Jun. 14, 2022), <https://www.youtube.com/watch?v=IRK0LO-9ZYk>.

¹⁹ Rooted in Rights. What is the Protection and Advocacy System? DISABILITY RIGHTS WASHINGTON. (Aug. 14, 2017), https://www.youtube.com/watch?app=desktop&v=m3vYxSe3s4M&feature=emb_logo.

²⁰ 29 U.S.C. §794e, *et seq.*, 42 U.S.C. §15041 *et seq.*, 42 U.S.C. §10801 *et seq.*

System,²¹ routinely monitors locations where people with disabilities receive services, supports, and assistance.²² In 2018, DRW began monitoring school-based restraint and isolation use.²³ This included monitoring in NPAs like NWSOIL. DRW and the ACLU-WA co-produced a report to capture restraint and isolation monitoring, research, data, and legal analysis in January 2022.²⁴

Washington NPAs²⁵ serve public school students with significantly-involved disabilities, behavioral support needs,

²¹ RCW 71A.10.080.

²² 42 U.S.C. §15043 (a)(2)(H).

²³ Restraint and Isolation. WASHINGTON OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION. *Available at* <https://ospi.k12.wa.us/student-success/health-safety/school-safety-center/restraint-and-isolation>. (Last visited Dec. 4, 2023.)

²⁴ Andrea Kadlec, Mina Barahimi Martin, & Kendrick Washington. *Coming into the Light: An Examination of Restraint and Isolation Practices in Washington Schools*. DISABILITY RIGHTS WASHINGTON AND ACLU OF WASHINGTON, (Jan. 2022), <https://www.disabilityrightswa.org/wp-content/uploads/2023/02/Restraint-and-Isolation-Report-dist.pdf> (last visited Dec. 10, 2023).

²⁵ Current Nonpublic Agencies. WASHINGTON OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION. *Available at* <https://ospi.k12.wa.us/student-success/special-education/laws->

and trauma history. Despite the fact this is publicly-funded education for some of Washington’s most vulnerable and traumatized students, practices in these settings are largely obscured from the public eye.

For any other public school student, a parent could search OSPI’s website and look up the annual number of restraint and isolation incidents in their child’s school.²⁶ NPA restraint and isolation data, however, is reported to the state in aggregate with the student’s neighborhood school, so there is no way to quantify restraint or isolation in a given NPA setting.

To navigate this gap, DRW requested restraint and isolation data directly from NPAs after state data did not include individual NPA restraint and isolation use.²⁷ Only five

and-procedures/current-nonpublic-agencies. (Last visited Dec. 10, 2023).

²⁶ Restraint and Isolation, Wash. Office Superintendent of Public Instruction, <https://ospi.k12.wa.us/student-success/health-safety/school-safety-center/restraint-and-isolation>.

²⁷ *Restraint and Isolation Practices in Washington Schools*, *supra* at 14.

institutions initially responded, one which did not track racial demographic data at all,²⁸ and another that did not track federally qualifying categories (low-income, homeless, foster care, etc.).²⁹ In these settings, where 100 percent of students have disabilities, DRW and the ACLU found rates of restraint and isolation far exceeded rates statewide.³⁰ In one NPA, 69 percent of the student enrollment was subjected to restraint in one year, 2.6 times higher than the state rate, with disparity against students of color and low-income students.³¹ Multiracial students in this NPA experienced restraint at a rate 10 times higher than the statewide rate,³² and low-income Hispanic students were restrained at a rate 8 times higher than the statewide rate. In another NPA, where 67 percent of students were low income, 73 percent of students were subjected to

²⁸ *Id.*

²⁹ *Id.* at 15.

³⁰ *Id.*

³¹ *Id.* at 15-16.

³² *Id.* at 16.

restraint and 68 percent experienced isolation, five times higher than the state average.³³ Public access to data is critical for state agencies, the legislature, parents, and schools to accurately understand and reduce overuse and misuse of these practices.

Report findings showed that while restraint and isolation are supposed to be rare, used only for emergency, that is not the case. In one school year, 3,866 of Washington's students were subjected to 24,873 occurrences of restraint or isolation.³⁴

Report interviews and documents showed restraint and isolation for behavior correction, punishment, classroom management, and compliance.³⁵ Schools that reduced restraint and isolation consistently tracked their data.³⁶

Though these NPA-placed students are public school students, in publicly funded education, it took protection and advocacy federal access authority and a policy analyst with a

³³ *Id.* at 15.

³⁴ *Id.* at 6.

³⁵ *Id.* at 20.

³⁶ *Id.* at 32.

data research doctorate to discern the amount of restraint and isolation in NPA school settings, something openly available for all other students at public schools.

A Seattle Times investigative series stated, “Northwest SOIL operated for years with few trained teachers, and its staff relied heavily on restraint and isolation. Some of the students made no academic progress and even regressed, as their parents were shut out of information that would be available in any public school.”³⁷ The story cited complaints made by parents and school districts for years without response from OSPI. In a resignation letter to NWSOIL, a former school director said an individualized education plan (IEP) coordinator had no special education certification, teaching staff were primarily employed under emergency certification for prolonged periods of time,

³⁷ Mike Reicher and Lulu Ramadan, *At Washington State Special Education Schools, Years of Abuse Complaints and Lack of Academics*, SEATTLE TIMES, Nov. 26, 2020, <https://www.propublica.org/article/therapeutic-schools-northwest-soil-invisible-washington>.

and untrained staff who taught the most vulnerable students did not have access to training.³⁸ “There is one staff member,” the letter read, “who arrives whenever and leaves whenever. This staff member is incredibly combative, hostile, and counters each directive leadership gives, yet continues to remain in the role of certified teacher, despite not even being certified as an emergency cert...”³⁹ In public schools, teacher certification and training data would be available to parents through an OSPI public records request.

In the wake of the Seattle Times series and the DRW ACLU-WA report, OSPI and the Washington State Legislature collaborated to increase NPA oversight and openness. They

³⁸ Letter from Donna Green, M.Ed., M.EDL, School Director, Northwest School of Innovative Learning to United Health Services, Inc. 1 (Aug. 10, 2021). *Available at* <https://www.documentcloud.org/documents/23315525-resignation-letter-forwarded-to-tacoma-public-schools?responsive=1&title=1>, (last visited Dec. 10, 2023).

³⁹ *Id.* at 2.

created a law⁴⁰ that requires more oversight,⁴¹ transparency with school district/NPA contracts,⁴² renames NPAs as “authorized entities,”⁴³ and closes the reporting loophole so NPAs report restraint and isolation incidents and data to OSPI,⁴⁴ to be published on OSPI’s website,⁴⁵ with an additional report to the legislature.⁴⁶ The purpose of the law made clear: “The legislature ...intends to codify the requirement that these standards must ensure that any student with disabilities placed in the authorized entities [NPAs] by school districts have the same rights, protections, and access to special education and related services that they would have if served by school districts.”⁴⁷ The explicit intent of the Washington State Legislature indicates parents should have access to the same

⁴⁰ Laws of 2023, ch. 436, *et. seq.*

⁴¹ Laws of 2023, ch. 436, §2(6).

⁴² Laws of 2023, ch. 436, §6(2) .

⁴³ Laws of 2023, ch. 436, §1(iv)(b) .

⁴⁴ Laws of 2023, ch. 436, §1(viii)(m) .

⁴⁵ Laws of 2023, ch. 436, §62(4)(a) .

⁴⁶ Laws of 2023, ch. 436, §8(1)(d).

⁴⁷ Laws of 2023, ch. 436, §1(iv)(b) .

information and protections to secure rights for their students with disabilities, to the extent they would have those rights in a public school setting.

DRW did individual case work with a parent unable to access records from NWSOIL, specifically video footage of her son's injury-causing isolation. The parent was barred from accessing it until attorneys got involved.⁴⁸ This illustrates the barriers parents face in obtaining information about their children's schooling.

Restraint and isolation are not evidence-based practices, but rather a set of "aversive interventions," the "systematic use of stimuli or other treatment which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student."⁴⁹ These practices are now prohibited

⁴⁸ Not published, on file with DRW.

⁴⁹ See WAC 392-172A-03120, repealed 2015, available at <https://lawfilesexternal.wa.gov/law/wsr/2007/08/07-08-086.htm>. (Last visited Dec. 10, 2023.)

in rule,⁵⁰ with the exception of restraint and isolation for serious likelihood of imminent harm.⁵¹ Restraint and isolation provide no therapeutic or educational benefit,⁵² but can cause lifelong disability and harm, including suicidal ideation, startle to touch into adulthood, depression, anxiety, and post-traumatic stress disorder.⁵³ Additionally, these practices result in loss of valuable instruction time.⁵⁴ Parents and guardians of children subjected to these practices during publicly-funded school must have access to information to mitigate harm, provide needed medical or therapeutic support, and advocate as needed.

⁵⁰ See Prohibited Practices, WAC 392-172A-02076.

⁵¹ WAC 392-172A-02076 (1).

⁵² Laws of 2015, ch. 206, §1.

⁵³ Wanda Mohr, *Adverse Effects Associated with Physical Restraint*, CANADIAN JOURNAL OF PSYCHIATRY. 334. (2003). Available at

<https://journals.sagepub.com/doi/pdf/10.1177/070674370304800509>. (Last visited Dec. 10, 2023).

⁵⁴ *Restraint and Isolation Practices in Washington Schools* at 7.

At the time of this writing, NW SOIL has indicated intent to close.⁵⁵ Extraordinary, concerted advocacy brought to light the abuses students endured for years behind the school’s locked doors. Multiple journalists at the Seattle Times and ProPublica reviewed “more than 17,000 pages of documents from 45 school districts, three police departments, and the state education department” to produce their investigative series.⁵⁶ OSPI conducted an internal investigation after the Seattle Times story broke.⁵⁷ This resulted in a provisional ban on new

⁵⁵ Mike Reicher & Lulu Ramadan, WA special education school accused of abuse is closing amid scrutiny. SEATTLE TIMES. Dec. 4, 2023, <https://www.seattletimes.com/seattle-news/times-watchdog/washington-special-education-school-accused-of-abusing-students-is-closing-amid-scrutiny/>.

⁵⁶ *Years of Abuse Complaints and Lack of Academics*, SEATTLE TIMES, *supra*.

⁵⁷ Letter from Tania May, Assistant Superintendent of Special Education, Office of Superintendent of Public Instruction, to Northwest School of Innovative Learning, Olympia, Redmond, and Tacoma Campuses. (Jan. 18, 2023) Available at https://s3.documentcloud.org/documents/23579745/letter-nwsoil_118-004.pdf. (Last visited Dec. 10, 2023).

student enrollment.⁵⁸ DRW and the ACLU monitored school settings, interviewed over a hundred educators, parents, and students, analyzed extensive law and research, and drafted a report over a period of multiple years.⁵⁹ Legislators worked with the OSPI to address policy gaps and change the law.⁶⁰ Parents simply do not have this kind of power. Parent and district complaints were overlooked at NWSOIL for years.⁶¹

NWSOIL may seem an outlier, but Congress built a nationwide protection and advocacy system recognizing abuse thrives in darkness, behind closed doors, where the public cannot access information. These are public school students who would otherwise have access to these records, but for their

⁵⁸ Mike Reicher and Lulu Ramadan, A Washington Special Education School That Was Accused of Harming Kids Is Now Barred From Taking New Students. PROPUBLICA. Aug. 24, 2023. <https://www.propublica.org/article/washington-special-education-school-faces-state-restriction>.

⁵⁹ *Restraint and Isolation Practices in Washington Schools*, *supra* at 52.

⁶⁰ Laws of 2023, ch. 436, *et. seq.*

⁶¹ *Years of Abuse Complaints and Lack of Academics*, SEATTLE TIMES, *supra*.

publicly funded placement, requisite to secure educational access due to a child's disability. Provision of public transparency to educate students and keep them safe is a foundational government obligation. When school programs don't respond to public records requests, students can experience real harm.

V. CONCLUSION

For all the reasons set forth in the Seattle Times's brief, and discussed above, the decision of the trial court should be affirmed.

CERTIFICATE OF COMPLIANCE

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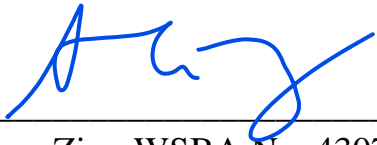
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Dated: December 15, 2023

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on December 15, 2023, the foregoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Tacoma, Washington, this 15th day of December 2023.



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