

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-50

PROCEDURAL HISTORY

On May 18, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) on behalf of the parent (Parent) of a student (Student) attending the Seattle School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On May 21, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 8, 2018, OSPI extended the due date for the District's response to June 15, 2018.

On June 15, 2018, OSPI received the District's response to the complaint and forwarded it to the Complainant on June 18, 2018. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On June 28, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on July 3, 2018. On July 10, 2018, OSPI forwarded the information to the Complainant.

On June 29, 2018, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on July 2, 2018.

On July 12, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on the same day. On July 13, 2018, OSPI forwarded the information to the Complainant.

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

OVERVIEW

The Student's November 2017 IEP required the District to provide the Student with a 1:1 instructional aide because the Student suffered from a severe seizure disorder, which required the Student to have constant supervision. The Student spent most of each school day in a medically fragile special education classroom, with four other students and three staff members. None of the three staff members were assigned exclusively to the Student; all of the three staff members had responsibilities involving the other four students at various points in the day. In March 2018, the Student's private caretaker was hired as a substitute paraeducator to work in the medically fragile classroom. Around the same time in March 2018, one of the other classroom staff members transferred to another school in the District. Due to this, the Student's caretaker was assigned responsibilities with the other four students, and did not act as the

Student's dedicated 1:1 instructional aide. Throughout the 2017-2018 school year, the District did not hire anyone else to work in the medically fragile classroom. Additionally, the Student was not evaluated for adapted physical education (PE) services as part of her triennial evaluation in November 2017, nor were adapted PE goals set forth in the Student's November 2017 IEP. While the Student did participate in general and adapted PE classes throughout the school year, the nature of these classes, as well as the extent of the Student's participation in them, was unclear.

The Complainant alleged that the District failed to implement the Student's IEP because it did not provide a 1:1 instructional assistant for the Student. The Complainant further alleged that the Student did not receive appropriate PE services during the 2017-2018 school year. Finally, the Complainant alleged that the District did not follow proper procedures for developing the Student's IEP in regard to annual goals in adaptive PE.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on May 19, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District provide the Student with "1:1 [instructional assistant] support," as stated in her individualized education program (IEP) during the 2017-2018 school year?
2. Did the District follow procedures for developing the Student's IEP in regard to annual goal(s) in adapted PE services and providing for adapted PE services?
3. Did the District provide the Student with access to appropriate physical education services (PE) during the 2017-2018 school year?

LEGAL STANDARDS

Provision of FAPE: An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." An IEP must "aim to enable the child to make progress", the educational program must be "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom," and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017). A district must implement an IEP that is "reasonably calculated to remediate and, if appropriate,

accommodate the child's disabilities so that the child can 'make progress in the general education curriculum,' commensurate with his non-disabled peers, taking into account the child's potential." *M.C. v. Antelope Valley Union High School District*, 852 F.3d 840, 69 IDELR 203 (9th Cir. 2017).

If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to receive educational benefits, the district is not in compliance with the IDEA. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982). Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE; and (3) caused a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); see 34 CFR §300.513; WAC 392-172A-05105. *Andrew F. v. Douglas County Sch. Dist. RE-1*, further clarifies that to meet the IDEA's substantive obligations, a district must offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. 137 S. Ct. 988, 999-1000, 69 IDELR 174 (2017).

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. The initial IEP must be implemented as soon as possible after it is developed. 34 CFR §300.323(c); WAC 392-172A-03105(2). Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105(3)(a). "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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Requirements for Physical Education: 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. 34 CFR §300.108; WAC 392-172A-02030.

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of

instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c). A need for special education is not limited strictly to academics; it also may include physical education, transition services, behavioral progress, and the acquisition of appropriate social and/or organizational skills. 34 CFR §300.39; WAC 392-172A-01175.

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

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in

effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

FINDINGS OF FACT

Background Facts

1. Prior to November 3, 2014, the Student received early intervention services through a health clinic.
2. The Student was initially evaluated for eligibility for special education and related services on November 3, 2014. The Student was evaluated in the following areas: adaptive, general background, cognitive, communication, fine motor, gross motor, medical-physical, social/behavior, and vision. The evaluation group determined that the Student met eligibility criteria under the category of other health impairment. The evaluation group noted that the Student had diagnoses of Down Syndrome, cortical blindness, hypoxic-ischemic encephalopathy, and hypothyroidism. The evaluation group recommended specially designed instruction and related services in the following areas: vision, fine motor, gross motor, communication, social/behavior, adaptive, and cognitive.
3. During the 2016-2017 school year, the Student was in preschool, enrolled in a medically fragile program at a District elementary school, and was eligible to receive special education services.
4. In November 2016, the Student's individualized education program (IEP) team developed her annual IEP. The Student's November 2016 IEP included annual goals in the areas of adaptive, functional academics, communication, social/behavior, motor, and vision. The November 2016 IEP provided for specially designed instruction and related services to be delivered from November 18, 2016 to August 31, 2017, when the Student attended a part-day preschool program in the District. The November 2016 IEP also provided for the following specially designed instruction to be delivered in a *special education setting* from September 1 – November 16, 2017, when the Student would attend a District kindergarten program:
 - Communication – 30 minutes three times monthly (provided by a speech language pathologist (SLP))
 - Vision – 15 minutes three times monthly (provided by a vision teacher)
 - Motor – 10 minutes five times weekly (provided by a special education teacher)
 - Motor – 10 minutes five times weekly (provided by a special education teacher)
 - Adaptive – 80 minutes five times weekly (provided by a special education teacher)
 - Functional academics – 115 minutes five times weekly (provided by a special education teacher)

- Social/behavior – 120 minutes five times weekly (provided by a special education teacher)

The November 2016 IEP provided for the following related services to be delivered in a *special education setting* from September 1 – November 16, 2017:

- Occupational therapy – 30 minutes one time weekly (provided by an occupational therapist (OT))
- Physical therapy – 30 minutes two times weekly (provided by a physical therapist (PT))

The November 2016 IEP provided for the following supplementary aides and services to be delivered in a *special education setting* from September 1 – November 16, 2017:

- Vision services consultation – 15 minutes three times monthly (provided by a vision teacher)

The November 2016 IEP providing for the following accommodation to be provided in *all school environments* from November 18, 2016 – November 16, 2017:

- Full time nurse on site – continuously

The November 2016 IEP providing for the following accommodations to be provided in a *special education setting* from November 18, 2016 – November 16, 2017:

- Adapted seating, stander, and toilet seat – 600 minutes

The November 2016 IEP providing for the following supports to be provided to the Student from November 18, 2016 – November 16, 2017:

- All staff to be trained on the use of the Touch Initiated Communication (TIC) Talk.

2017-2018 School Year

5. During the 2017-2018 school year, the Student attended a District kindergarten program for students who were medically fragile, which was located at a District elementary school.
6. As explained by the District in its response to this complaint, “[The Student’s medically fragile] classroom [during the 2017-2018 school year] has a staff to student ratio of a minimum of 3 adults to approximately 5 students. The adult staff includes a special education teacher, and a minimum of two instructional assistants.”
7. At the beginning of the 2017-2018 school year, the following District personnel served in the Student’s medically fragile classroom: the special education teacher, and two paraeducators (paraeducator 1 and paraeducator 2). According to the District, “other instructional assistants have been in the classroom periodically on a substitute basis. None of those substitute instructional assistants were assigned any duties to supervise or provide care to the Student.”
8. The District’s 2017-2018 school year began on September 6, 2017. At that time, the Student’s November 2016 IEP was in place.
9. On September 8, 2017, the Student had a brief seizure. The special education teacher emailed the Parent, stating, “[Student] seemed a little ‘off’ (quieter, less responsive, but not

exhibiting evidence of seizing anymore) for a couple of minutes afterward.” Later that day, the Parent responded, “It is normal [for Student]. Sometimes she cries after too. She was in a good mood when she came home.”

10. On September 9, 2017, the Student visited a regional children’s hospital “to have an assessment of her manual wheelchair due to changes in status, as well as growth.”¹ The physical therapist who conducted the assessment concluded:

[Student]...demonstrates significant growth and no longer fits in her current wheelchair and seating system. Therefore, I am recommending growth modifications be made to the base. She will also need a new seat cushion and backrest to accommodate her growth, as well.

11. On October 2, 2017, the regional children’s hospital’s assessment was provided to the District’s OT and the Student’s special education teacher.

12. On November 2, 2017, the District’s PT emailed the SLP, the school psychologist (psychologist 1), the vision teacher, the special education teacher, the OT, and the school nurse, stating:

[The special education teacher] and I were just discussing [Student’s] needs. She is time sucking a great deal of classroom staff for her feeding and hygiene needs—adaptive domain. [Student] is transitioning from preschool (2-2.5 hours per day) to a full day kindergarten. Her support needs have increased significantly. In looking at her old IEP, her program minutes were 600 per week. [Student] is like 1725! That’s a big increase. She probably wasn’t fed in preschool and had fewer hygiene changes. Anyway, I bring this up because her new eval really needs to reflect how much the classroom is struggling to meet her needs. She is requiring a great deal of individualized support. If further staffing is warranted the IEP and eval need to reflect that. [Psychologist] please make sure that your evaluation includes, at the minimum, a robust teacher interview. That’s in addition to the rating scale that [the special education teacher] completed. Best case would be that you have the chance to come down and observe [Student’s] adaptive routines in order to include these considerations in your assessment.

The special education teacher responded to the PT’s email on the same day, stating:

I agree...[a]ll of our students, of course, have high needs, but [Student] is another level—hourly diaper changes, seven feedings a day, not to mention visual checks every 60 seconds because her emergency seizure meds need to be administered after only two minutes. Her feeding routine alone takes nearly two hours. It would be wonderful to have documentation of her very high adaptive and health needs, needs that were not captured by the initial eval because she was not attending school for seven hours a day.

13. On November 9, 2017, the special education teacher emailed the southeast regional program specialist (SE specialist 1), stating:

Should [we] write directly into [Student’s] IEP that there is a need for 1:1 assistance or if I should not specifically proclaim “she needs a one on one!” [sic] and instead, should I wait until you have more information and then do an amendment later, if needed.

¹ A letter from the regional children’s hospital, dated September 9, 2017, notes that the Student “recently underwent orthopedic surgery.”

Later that same day, the SE specialist 1 responded, stating, “Hard call. I have not been able to get much direction on a 1:1. Does your nurse think that is needed? Does the doctor think it is needed?” The special education teacher responded promptly, stating:

The nurse was actually the first person to recommend a 1:1. When she saw the 2 min emergency med thing, she told me we needed to make visual contact at least every 60 seconds and that she’s concerned about us having the staffing to accomplish this. She told me today, however, that she doesn’t think this isn’t really a nursing thing [*sic*—it’s an issue of there being enough staff in the room for someone to always have an eye on [Student] and be taking care of her exceptionally high and time consuming needs without leaving the other students on their own (just the feeding and toileting can take more than three hours a day). There isn’t a need for special medical training—we can’t administer the emergency meds anyway, so it’s only a matter of knowing what [Student’s] seizures look like and then calling the nurse immediately.

Here’s the issue, according to the team: someone has to be watching her closely enough to see the seizure essentially as soon as it starts happening. There always has to be someone who can immediately drop everything and attend to her, so it is worrisome to leave her in a room with one staff and multiple kids. But, with our current staffing, it’s virtually impossible to avoid doing this at least sometimes.

Whether we get extra staffing or not, [Student] has a 1:1 anyway, but that means there are only two staff for all the other kids, instead of three shared staff they’re supposed to have.

14. The Student’s triennial reevaluation was completed on November 9, 2017. The Student was evaluated in the following areas: general background, adaptive, cognitive: pre-academics, communication, medical-physical, fine motor, gross motor, social/behavior, vision. The evaluation group determined that the Student continued to meet eligibility criteria under the category of other health impairment. The evaluation group noted that the Student had diagnoses of down syndrome/trisomy 21, cortical blindness, hypoxic-ischemic encephalopathy, hypothyroidism, cortical vision impairment, and history of seizures. The evaluation group recommended specially designed instruction in the following areas: cognitive: pre-academic, adaptive, social/behavior. The evaluation group recommended related services in the following areas: vision, speech language pathology, occupational therapy, and physical therapy. The Student’s seizure condition is mentioned in several places in the November 2017 evaluation report:

- General Background: The Student has a “history of seizures.”
- Adaptive: “[Student] requires an extremely high level of individualized adult support...this includes...visual checks every 60 seconds because her emergency seizure medication needs to be administered after only two minutes.”
- Medical-Physical: “[Student] also requires constant monitoring due to her seizure disorder. Her order for emergency medication is for administration after 2 minutes of seizure activity...[the Parent] reports [Student] has also been hospitalized for...seizure control during a febrile illness.

15. Also on November 9, 2017, the Student’s IEP team developed her annual IEP. The present levels of educational performance in the November 2017 IEP included the following:

- [Student] has seizures that tend to not exceed one minute in duration, but she has emergency medication that is constantly with her (in her backpack on the back of her chair) because she requires administration of the medication if a seizure lasts longer than two minutes. Because the emergency meds are required so quickly, school staff has virtual constant visual contact with [Student].

The Student's November 2017 IEP included annual goals in the areas of vision, social/behavior, adaptive, and cognitive: pre-academics. The November 2017 IEP provided for the following specially designed instruction to be delivered in a *special education setting*:

- Vision – 15 minutes three times monthly (provided by a vision teacher)
- Adaptive – 120 minutes five times weekly (provided by a special education teacher)
- Cognitive: Pre-Academics – 90 minutes five times weekly (provided by a special education teacher)
- Social/behavior – 120 minutes five times weekly (provided by a special education teacher)

The November 2017 IEP provided for the following specially designed instruction to be delivered in a *general education setting*:

- Cognitive: Pre-Academics – 20 minutes five times weekly (provided by a special education teacher)
- Social/behavior – 30 minutes five times weekly (provided by a special education teacher)

The November 2017 IEP also provided for the following related services to be delivered concurrently with the Student's specially designed instruction in a *special education setting*:

- Occupational therapy – 30 minutes one time weekly (provided by an OT)
- Physical therapy – 30 minutes two times weekly (provided by a PT)
- Speech language pathology – 90 minutes one time monthly (provided by an SLP)

The November 2017 IEP provided for the following supplementary aides and services to be delivered in a *special education setting*:

- Vision services consultation – 15 minutes three times monthly (provided by a vision teacher)

Additionally, the November 2017 IEP required the following accommodation to take place every day in both the *special education setting* and *general education setting*: "Continuous 60-second visual monitoring of seizure indicators by a 1:1 IA² support supervised by the special education teacher."

16. On November 15, 2017, the District issued prior written notice, proposing to initiate a new IEP for the Student. The notice stated, "The team believes [Student] requires dedicated 1:1 support to safely participate in school."

17. On November 16, 2017, the special education teacher emailed the adapted PE teacher and psychologist 1, stating:

[Student,] who just had a reeval, did not have adapted PE selected as an area of consideration. [Student] is unable to participate in general PE due to her disabilities and

² IA stands for "instructional assistant."

should have been evaluated in this area. [Psychologist], you may not have know [sic] the full extent of [Student's] disabilities when you selected the area for evaluation and therefore didn't realize Adapted PE should be considered. I know you are overloaded with kids! Can an amendment be created so that [Student] can be evaluated for Adaptive PE services?

Later that same day, psychologist 1 explained that she had not evaluated the Student for adapted PE "since it wasn't on [Student's] last evaluation", and because she had never done such an evaluation before. The adapted PE teacher responded on the same day as well, stating, "We can amend 1 area without a total re eval."

18. Also on November 16, 2017, another District school psychologist (psychologist 2) emailed psychologist 1, stating:

[The adapted PE specialist] is the contact person for adapted PE. Below is her response to one of our SpEd teachers when a request for adaptive PE evaluation was made:

You can also look at the Adapted Physical Education schoology page and I have a whole tab on evaluations and technically you can evaluate Adapted Physical Education.

[The adapted PE specialist] usually needs to observe students and talk with teachers first before deciding on assessment.

19. Based on the documentation in this complaint, the District did not take any additional steps to assess whether the Student needed adapted PE services.

20. The District was on break from November 23-24, 2017.

21. On December 4, 2017, the special education teacher emailed SE specialist 1, stating:

The therapists and parents of [Student] have been asking me about the 1:1 situation for her and I've been telling them that there is a process for obtaining that degree of support. I learned this morning that our school's inclusion committee, which includes [the Parent], has taken it up as a cause and made it the primary topic of their most recent meeting. [Student's private] caregiver told me she wants to apply for the position, and I told her the position doesn't exist at the moment. In other words, people are running with this and I don't know how to answer their questions. Have you learned anything more about the process?

The SE specialist 1 responded that same day, stating, "[W]e need...to look or have the nursing lead give clarification to the need, from medical side, for a 1:1. Can [the school nurse] give guidance on this?" The special education teacher responded later that same day, "I will go find [the school nurse] right now and find out what information I need."

22. The Parent alleged that she discussed the fact that the Student had not been provided with a 1:1 aide with the principal and the special education teacher sometime around winter break.³
23. The District was on break from December 18, 2017 through January 1, 2018.
24. On January 2, 2018, another southeast regional program specialist (SE specialist 2) emailed the southeast regional supervisor (SE supervisor), stating, "Meeting held in November at which time team recommended 1:1 in Accommodations and PWN."
25. The Parent stated that the Student had a seizure at school on January 2, 2018.
26. On January 3, 2018, the Student had a brief (under 5 seconds) seizure while the special education teacher was placing the Student "on her supine stander."⁴ Later that day, the special education teacher emailed the Parent about the seizure.
27. On January 5, 2018, the special education teacher emailed the adapted PE teacher:
I see that I've got a couple of kids who don't qualify for Adapted PE on their evals, but they undoubtedly should—for instance, [Student]. How do we do an amendment? Can we initiate that ourselves or does it need to go through the school psych? I know our school psych...has a million initials and reevals right now.
28. On January 12, 2018, the Student had a seizure while she "was being put in the stander." In an email to the Parent on the same day, the special education teacher explained:
The stander seizures are the only seizure activity we have seen at school in months. I've copied [the PT] on this email so she is aware of this, too. Something about being supine on the stander seems to be triggering [Student's] brain, because the seizures never happen when she is already standing.
29. On January 19, 2018, the special education teacher emailed the Parent, "[Student] did have a seizure today—the regular kind, with the arms out and mouth pulled back. It lasted for 3-5 seconds."
30. The District was on break February 19-23, 2018.
31. On February 20, 2018, the Parent provided the special education teacher with a letter from the Student's private doctor. This letter, dated February 13, 2018, read:
I am writing this letter...to request that [Student] have a dedicated aid in the classroom, as it would be essential to meet this patient's medical needs. For example, she is G tube fed and incontinent, so to provide monitoring of her G tube for leakage or draining as well

³ The Parent further stated that it was her belief that the concerns she articulated around this time were conveyed to the southeast regional special education supervisor.

⁴ A supine stander is "used to promote weight bearing through the feet in a standing position. This type of special needs equipment places the support on the user's back for full-length support. Supine standers are recommended for people who need help supporting their heads and/or trunks against gravity during therapy."
<https://www.adaptivemall.com/supinestandere.html>

as timely diaper changes is essential to prevent skin breakdown or infection. She also has seizures, and identifying her seizure activity and other behaviors associated with seizure can be difficult as they are subtle. It is therefore important to keep a close eye on her, and monitoring her activity every 30 to 60 seconds is important to identify seizures early.

32. The documentation in this complaint also included a letter, dated February 21, 2018, authored by the Student's private neurological physician. It read:

The purpose of this letter is to recommend a 1:1 aide for [Student], to be with her at all times while at school, in order to detect seizure activity. [Student's] seizures are subtle and can look similar to other behaviors, therefore a dedicated aide needs to observe [Student] at all times along with working with her on her educational activities. This is recommended in support of the student's safety and best interest.

The Parent stated that she provided the District with this letter soon after receiving it.

33. The documentation in this complaint contained an undated letter from the Student's private nurse practitioner,⁵ which read:

I help manage [Student's] neurological care...[Student] is currently in the hospital, while we start her on the Ketogenic diet. This is a strictly controlled medical diet, that using high fat/low carbohydrate intake to help control seizures. I'm writing to reinforce the need for [Student] to have a one-on-one aide in the classroom. Not only would this be important for seizure detection and safety, but [Student] will also need extra attention at mealtimes; her formula needs to be weighed to the exact gram before feeds, and her feeds will have to be gavaged⁶ through her tube to ensure she doesn't vomit up this high-fat diet.

34. Additionally, the documentation in this complaint contained a joint letter, dated February 28, 2018, authored by the Student's private pediatric epileptic specialist and clinical dietitian. In part, it read:

[Student] has a history of frequent seizures, which have been difficult to control, despite treatment with multiple anti-epileptic drugs. She has started on the ketogenic diet, which is a very restrictive dietary therapy used to treat epilepsy...It is essential for the success of this diet treatment that all formula is carefully prepared and weighed accurately on a gram scale. The formula plan is calculated by the dietitian with a specific amount of calories, fat, protein, and carbohydrate, according to the prescribed diet plan. NO additional formula should be given to [Student] at school. No substitutions or additions to the prescribed formula plan should be allowed...[Student's] feeding tolerance is optimized by carefully providing her feeding over a One Hour time interval...It is important to...monitor [Student] closely for up to 30 minutes after each feeding for signs of significant discomfort or issues of vomiting...In summary, the ketogenic diet is a very effective treatment for epilepsy, but requires 100% adherence to the prescribed diet plan in order to succeed. In order to support [Student's] health outcomes, she would benefit from having a designated person for her at school.

⁵ Based on the documentation in this complaint, it is believed that this letter was authored in February of 2018.

⁶ This is a medical term meaning "to introduce material into the stomach by a tube."

The Parent stated that she provided the District with this letter soon after receiving it.

35. On February 28, 2018, the senior administrative assistant for the District's special education department emailed the SE supervisor and SE specialist 2, stating, "[Parent] was in the office today saying she needs a 1:1 for her daughter...she said there was an IEP meeting in November requesting this and she also has letters from doctors."
36. On March 5, 2018, the SE supervisor emailed the Parent, stating, "I sent the link your caregiver will need to apply to the substitute parapro position. Your caregiver should apply as soon as possible...I am able to expedite her application contingent upon qualifications."
37. On March 5, 2018, the Student's private caregiver emailed the SE supervisor, stating, "Ideally I would not want to be a sub. Ideally I would want to work full time permanently in the classroom." Later that same day, after being forwarded the caregiver's email, the human resource representative responded:

If you will apply for parapro substitute, I will process you [sic] application so that you can begin as a substitute. Due to auditing concerns, we cannot move applications from one job to the other and you have only applied for a permanent job at [the Student's school]. Once you have applied for a position, applying a second time should go quickly.
38. On or about March 7, 2018, the Student's private caregiver was hired as a substitute instructional assistant (paraeducator 3) for the District.
39. On March 9, 2018, paraeducator 3 emailed the human resource representative, stating:

I spoke with you yesterday concerning my paperwork/application for the full time, permanent position at [the Student's school]. I was told by...the principal...to reach out to you to make sure my application/paperwork got forwarded to her so that I can interview for the position. I also was told that my paperwork was to be expedited for the substitute position because of the urgency of need in [the Student's medically fragile classroom]. I have not received my employee number so that I can start subbing while I wait for the permanent position to become available. Due to this I have been volunteering in the classroom for the past 2 days. I would really appreciate being able to sub and get paid by Monday, as I am missing hours from my respite care job in order to be in the classroom.
40. On March 9, 2018, the SE supervisor emailed the director of special education concerning "[District Initiated]⁷ requests." (As explained by the District in its supplemental response, 'District Initiated' refers to when the District needs to fill a position quickly, but not necessarily permanently.) This SE supervisor stated that the District needed a "[District Initiated] to permanent 1:1 position" and that paraeducator 3 would "take the position." The SE supervisor also asked, "What is the process for confirming that these positions have been entered?" Attached to this email was a "SPED Temp 1:1 Aide Request Form" pertaining to the Student.

⁷ As explained by the District in its supplemental response, 'District Initiated' "generally occurs when the District needs to fill a position quickly, but not necessarily permanently."

41. Also on March 12, 2018, paraeducator 2 transferred from her position at the Student's school to a position at another school in the District.
42. Also on March 12, 2018, paraeducator 3 began working as a substitute instructional assistant in the Student's classroom. While in a "substitute" position, paraeducator 3 worked five days a week in the Student's classroom. Paraeducator 3 helped with all of the students in the medically fragile classroom, and did not act as a dedicated 1:1 assistant for the Student.
43. On March 21, 2018, paraeducator 3 emailed the District's substitute office, stating, "I am currently subbing at [the Student's school]. I need Friday, April 6th off as I will be out of town."
44. In her complaint, the Parent stated that the Student had a seizure at school on March 22, 2018.
45. On March 23, 2018, the SE supervisor emailed the director of special education, "[W]hen will [paraeducator 3's] position move from [District Initiated] to [Position Change Request]⁸?"
46. On March 28, 2018, the Parent emailed the SE supervisor, stating:
- 1) It has been brought to my attention that the education position in [Student's] class has not been filled yet and has been open for 203 days.⁹ If you have visited the classroom you would know that this is not ok. They NEED help. I would like to meet you over there on Friday (3/30) morning at 9:30 am so you can see why it is so important that this is filled.
 - 2) [Student's] Position has not been filled either.¹⁰ I am not sure if you were notified but, the school had to call 911 last Thursday and [the Student] had to be transported to the hospital because she was having seizures and rescue meds were given. There was another incident on this Monday that she was having multiple seizures too and rescue meds were almost administered. It is VERY important that these were caught by someone watching her, because they are short and if you look away you might not catch that they are clusters and start to time them. This position should be filled by now, the fact that this was stated in her IEP (which is a binding legal document) back in November and it took until I mentioned something to get the ball rolling at this point [is] unacceptable.
47. Also on March 28, 2018, the SE supervisor emailed the principal, the special education teacher, and the nurse, stating, "I would like to respond to [the Parent's email] within 24 hours but have some big questions to ask the [Student's] team...before doing so. Could you all meet for 30 minutes today from 2:30-3?"

⁸ As explained by the District in its supplemental response, 'Position Change Request' "is the District's method of hiring an individual permanently or making a permanent change to an existing position (e.g., title change, personnel change)."

⁹ It is unclear from the documentation in this complaint, what position the Parent is referring to. It is possible the Parent is referencing paraeducator 2's vacated position, but this position was not unfilled for 203 days.

¹⁰Based on the information in this complaint, it is assumed that the "Student's Position" is in reference to the 1:1 instructional assistant provided for in the Student's November 2017 IEP.

48. On March 31, 2018, the SE supervisor received a letter from the Student's private doctor. The letter, dated March 31, 2018, read:

[Student is a] medically complex little girl cared for in multiple clinics here...she has a history of a severe hypoxic brain injury at birth, Down Syndrome, visual impairment, cerebral palsy, obstructive sleep apnea and a seizure disorder. She is entirely dependent upon others for all activities of daily living. I follow [Student] in the Neurodevelopmental Clinic.

Today, [Student's] father shared with me that although [Student's] IEP apparently states she requires a 1:1 paraprofessional, the family was told that the district has been unable to find anyone to hire this entire school year. This is very concerning. [Student] is not a child where a 1:1 aide is optional. She has recently started to have a dramatic increase in seizure events only at school. The family reports that 911 was called three times in the last two weeks. Because the timing of these new seizure clusters has been somewhat consistent and they are happening exclusively at school, we really need to have someone immediately there to ensure her safety. Additionally, we would like a staff to assist with taking a short video of the events so her medical team can assess more about what is happening and what might be the cause of these events. Even in the absence of this uptick of seizure frequency, [Student] deserves and requires 1:1 support daily.

49. On April 2, 2018, the SE region supervisor, the principal, the special education teacher, and the school nurse met with the Parent to go over the concerns she expressed in her email, dated March 28, 2018.

50. According to the Parent's reply to the District's response to this complaint, the following occurred at the April 2, 2018 meeting:

It was discussed that [Student] still did not have a 1:1 instruction assistant. [I] stated that this was unacceptable and a safety issue. [I] relayed [my] concern that [Student] had been having seizure activity in the classroom, that 911 had been called several times...due to her hav[ing had] seizure activity in the classroom...No statements were made by any district personnel indicating a commitment to implement the IEP's directive for a 1:1 Instructional Assistant.

51. Also on April 2, 2018, the SE supervisor emailed the director of special education and the director of school based services (special education), stating, "[Student]...requires a 1:1 for medical reasons and per IEP team decision. I informed the school team that a position will be loaded early this week...I would like to know exactly when position [sic] is loaded." The staff then found a "vacant position number" that the District could utilize in attempting to procure the 1:1 aide for the Student.

52. Also on April 2, 2018, the school nurse emailed the Parent, stating, "I have attached [Student's] old seizure [Individual Health Plan] and the new one. Please look over the new one, especially the second page which describes her seizures. Let me know if anything needs to be added or changed." Later that same day, the Parent replied, "I tried to call you this afternoon to discuss the new new [sic] plan. When you have time tomorrow give me a call. Thanks for your help today. I think I found someone who might want to do the job."

53. On April 4, 2018, the principal emailed the Parent a copy of “[The District’s] Hiring Process Guidelines.”¹¹ Later that same day, the Parent responded:

My concerns are not necessary [sic] with you...I have not received a position description for the 1:1. I have someone that might be interested but she wants to see the description. If by chance you have it can you please email it to me.

Later that same day, the principal responded, “So far all the job listings are general. I’ll see if I can find one that fits our specific needs.”

54. On April 5, 2018, the principal emailed the Parent a job description for a “Special Education Assistant.” As explained in the description:

The job of special education assistant...is done for the purpose/s of assisting in the supervision, care and instruction of special needs students in the regular classroom or in a self-contained classroom; assisting in implementing plans for instruction; monitoring student behavior during non-classroom time; providing information to appropriate school personnel; and attending IEP meetings.

55. Also on April 5, 2018, the special education teacher emailed the Parent, stating, “[The SE region supervisor] asked me to send you the job description for the 1:1 that was posted.”

56. Also on April 5, 2018, paraeducator 3 emailed the District substitute office, stating, “I was just confirming that tomorrow April 6th I will NOT be at [the Student’s school] tomorrow. I am out of town.”

57. The District was on break April 9-13, 2018.

58. On April 10, 2018, the Parent emailed the SE supervisor, “I have seen the position but I need the actual post. I have someone who is interested but it doesn’t give information on how to apply. This woman would be amazing at this job.” The SE supervisor replied by providing a link to the posting, stating, “The position will close this Friday [April 13] at 5 pm.”

59. On April 17, 2018, the Parent emailed the principal, stating:

I [am] reaching out to you because I haven’t heard anything in regards to the 1:1 position and the teacher’s assistant position.

1-I was notified that when [paraeducator 3] was gone the Friday [April 6] before spring break there was no sub. It was brought to my attention that there was no position posted on the sub finding porthole. This worries me because what happens if [paraeducator 3] is sick and cannot come to work. For [Student’s] safety I feel that this position should be available for all subs to see if one is needed. I also want to make sure that we fill this permanent position as soon as possible for the remainder of this year.

¹¹ This document outlines six steps in the hiring process: application, open and closing dates, document screening, position interviews, reference checks, job offer.

2-I was also checking up on the teacher's assistant position in Room 102. I am aware that you had interviews and reference checks, and per our discussion during the meeting earlier this month, this position was suppose [sic] to be filled today.

60. On April 18, 2018, the principal responded, "We have a long-term sub for your daughter who has been coming every day. All subs check in with...our administrative assistant daily. The position for the 1:1 is open and HR has forwarded the candidates to be interviewed. We will keep you posted."

61. On April 19, 2018, the Parent responded, "I'm a little confused. What happens if that long term sub is not available? Or gets a job somewhere else? Does the 1:1 position get posted on the sub job porthole? Or does it not exist because you have a long term person?"

62. On May 7, 2018, the Parent emailed the principal, stating:

I was at school today for [Student's] wheelchair appointment. When we were finished with her appointment I was asked to bring [Student] back to adapt[ed] PE and I was SHOCKED to see what was happening in that classroom. First, there was NO teacher anywhere in site. He was sitting in the office doing nothing (I know this because I looked for him). Second, when I asked if there was any structure and I was told that all he does is put music on and let the kids do NOTHING. Third, I asked if there was or has ever been activities that the special needs kids could do rather than walk around the classroom and or dance (as the [teachers' assistants] called it). I was told no, there has never been any activities in that class and this is what they do for adapt[ed] PE. This is NOT acceptable, I expect my child to have the same classroom expectations as other typical developing students. I am not sure how long this has been going on for but I expect a swift result.

63. According to the District's response to this complaint, the general education PE teacher position at the Student's elementary school was not filled with a full-time employee during the 2017-2018 school year. The PE teacher originally assigned to the position put in a notice to leave the position on September 1, 2017. As a result, two substitute PE teachers filled the position. One PE substitute teacher served as a long-term substitute from September 6, 2017 until December 15, 2017, and the other substitute teacher served as a long-term substitute from January 2, 2018 until June 22, 2018. Additionally, an adapted PE teacher provided adapted PE services at the elementary school.

64. On May 8, 2018, the principal responded to the Parent's May 7 email, stating:

I understand your concerns and they are being taken seriously. It is never acceptable for any teacher to do nothing. My expectation is for all teachers to build positive relationships and to facilitate and provide learning opportunities and support to every student, every day so students can achieve their learning goals.

We have interviewed numerous candidates for our PE position, but we have not been successful in filling the position with a qualified candidate; therefore, the position remains open. We have more PE interviews scheduled for next week. It is our hope that we will soon have a qualified PE teacher who is able to teach students kindergarten through 8th grade, with all ability levels.

65. On May 18, 2018, the Complainant filed this complaint on behalf of the Parent and Student.

66. On May 21, 2018, the special education teacher emailed psychologist 1, stating that the Student needed a reevaluation for adapted PE.

67. In its response to this complaint, the District submitted a “class/daily schedule” for the Student’s medically fragile classroom.¹² According to this schedule, on at least two occasions during the school day, all three staff members in the medically fragile classroom were assigned tasks unrelated to the Student:

- From 9:00 a.m. to 9:15 a.m., the Student is “on wedge”¹³ while the three staff members are helping other students.
- From 2:15 p.m. to 2:45 p.m., the Student is on the Tumbleform¹⁴ while the three staff members are assigned to other students.

68. In its response to this complaint, dated June 14, 2018, the District stated the following in regards to the provision of PE:

[The Student received] both adaptive PE and general education PE instruction [throughout the 2017-2018 school year. The Student’s school] provides PE, music, and art, on a rotating basis [to all students]. In each nine-week block, the students attend three straight weeks of PE, three straight weeks of music, and three straight weeks of art. Once the nine-week cycle is complete it is repeated. The time slot for these classes is reflected on the daily class schedule between 10:15 a.m. and 11:00 a.m. These classes are attended by the students in the medically fragile class, supported by the instructional assistants, and they are general education classes.

In addition to the PE general education class, the students in the medically fragile classroom all receive adaptive PE once a week for 30 minutes. This class is held every Thursday in the afternoon. It is taught by [the adapted PE teacher]. The curriculum for this course is designed by [the adapted PE teacher] and the class is taught by him. [The adapted PE teacher] is an itinerant staff member in that he is not assigned to only one school, but provides adaptive PE services at multiple schools. In addition to [the adaptive PE teacher], the students are supported in adaptive PE class by the instructional assistants from the medically fragile classroom, a physical therapist and occasionally the vision teacher.

[The adapted PE teacher] describes the weekly adapted PE class as consisting of a modified health and fitness curriculum. The structure of the class includes: warm-up, skill activity, group activity, and transition activity. The units covered in the class include dance, soccer, hockey, bocce, the Winter Olympics, baseball, cooperative games, football,

¹² The schedule makes several references to ‘PCP.’ This acronym stands for ‘Planning, Conference, and Preparation.’ As explained by the Parent in her supplemental reply, “The primary purpose of PCP time periods in elementary, middle, and secondary schools is for the individual teacher to prepare, plan, and conference; however, PCP time shall also be used for period conferences, departmental meetings, and other cooperative group planning.”

¹³ It is believed that this refers to a mobility or positional device used to make the Student more comfortable.

¹⁴ The Tumbleform is an adaptive positioning device.

volleyball, golf, and croquet. The class varies in size from 6 to 9 students.¹⁵ [The adapted PE teacher] confirmed that each time he taught the class the Student had an instructional assistant with her at all times. Each of the units were modified to allow for participation by the Student at her level. The services in the adapt[ed] PE class were specifically designed for students in the medically fragile class and were appropriate for [the] Student.

69. As of June 14, 2018, the Student had not been evaluated in the area of adapted PE. Similarly, as of June 14, 2018, the Student's November 2017 IEP had not been amended to include measurable annual goals in the area of adapted PE.

70. In its response to this complaint, dated June 14, 2018, the District stated, "The District has encountered difficulty in finding and filling 1:1 instructional assistant positions district wide, including the position at issue in this case." The District further stated:

The District has attempted since the November 9, 2017 IEP meeting to locate and hire additional permanent instructional assistant staffing in the room so that all of the students' needs can be met at the staffing-to-student ratio that the classroom is designed for, based on the fact that one of the staff members in the room is constantly supervising the Student.

CONCLUSIONS

Issue 1: IEP Implementation (Provision of 1:1 Instructional Assistant) – The Parent alleged that the District failed to implement the portion of the Student's November 2017 IEP that required the Student to have a 1:1 instructional assistant. A district is required to provide all of the services listed in a child's IEP. When a 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 student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

In this case, the Student's November 2017 IEP required that the Student be given a 1:1 instructional aide because the Student suffered from a serious seizure condition, but the District, after a delay in the hiring process for several months, was not able to hire a 1:1 instructional assistant to provide the services during the 2017-2018 school year. In its response to this complaint, the District appears to argue that the ratio of three staff members to five students in the medically fragile classroom meant that the Student received the required 1:1 instructional assistance. The Student's class schedule shows that none of the staff members assigned to the Student's classroom served as the required 1:1 instructional aide, as the schedule shows that the three staff members were assigned responsibility for certain aspects of the other students' schedules at different parts of the day.¹⁶ And, in actuality, the Student's class schedule shows

¹⁵ There are two medically fragile classrooms at the school and the students from both classrooms attend adapted PE together, along with the instructional assistants from the classrooms, a physical therapist, and occasionally the vision teacher.

¹⁶ It appears that the basic structure of the class did not change at any time during the school year. On or about March 7, 2018, the Student's caregiver was hired as a substitute paraeducator (paraeducator 3) for the medically

that there were certain periods of the school day where all three staff members were assigned tasks unrelated to the Student. For example, from 9:00 a.m. to 9:15 a.m., the Student is “on wedge” while the three staff members are helping other students. Similarly, from 2:15 p.m. to 2:45 p.m., the Student is on the Tumbleform while the three staff members are assigned to other students. This supports that there were times during the day when either the Student was not being supervised by any staff member, or the needs of the others the students in the classroom could not be met, due to a staff member having to monitor the Student. This is the exact scenario identified as problematic by the staff at the Student’s school, which led *the staff*, emphasis added, to recommend a 1:1 IA for the Student. Given the seriousness of the Student’s seizure condition and other needs, the prolonged failure to provide the Student with a 1:1 instructional assistant represents a material failure to implement the IEP, and it is a substantive violation of the IDEA.

Issue 2: IEP Development (Adapted PE) – The Parent alleged that the Student should have been evaluated in the area of adapted PE, and that the Student’s November 2017 IEP should have included annual goals in this area. Special education includes, when necessary, adapted PE. Furthermore, a district must evaluate a student in all areas of suspected disability. The IDEA also requires that each child’s IEP include measurable annual goals designed to meet the child’s educational needs resulting from the child’s disability. The IEP must also contain a statement of special education and related services that will be provided to the child to advance toward attaining the measurable annual goals. In this case, the District concedes that the Student was not evaluated in the area of adapted PE – despite its awareness that the Student needed to be evaluated in this area. As a result of its failure to evaluate the Student in the area of adapted PE, the Student’s November 2017 IEP lacked annual goals in this area. As of June 14, 2018, the Student had not been evaluated in the area of adapted PE. Similarly, as of June 14, 2018, the Student’s November 2017 IEP had not been amended to include measurable annual goals in the area of adapted PE. The District’s failure to evaluate the Student in the area of adapted PE, when it knew the Student’s disabilities negatively affected the Student’s ability to participate in the general education PE class, is a violation of the IDEA. It is also noted that the District’s documentation in this complaint suggests that other students at the Student’s school were in need of evaluations for adapted PE, but did not receive these due to what appears to be a lack of training for the school psychologist. The District will ensure that all school psychologists are trained in the procedures for ensuring an evaluation includes assessments in the area of adapted PE, when appropriate.

Issue 3: Provision of Appropriate PE Services – The Parent alleged that the District failed to provide the Student with appropriate PE services. Each student eligible for special education must be afforded the opportunity to participate in the general PE 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. The District argues

fragile classroom. However, on March 12, 2018, paraeducator 2 left the Student’s medically fragile classroom. Paraeducator 3’s role was not any different than that of paraeducator 2. In other words, paraeducator 3 had responsibilities with other students at various times in the day. The District did not hire any other staff members during the 2017-2018 school year to work in the medically fragile classroom.

that despite the fact that the Student was never evaluated for adapted PE services, and despite the fact that the IEP did not include adapted PE services, the Student was provided with the appropriate physical education in both a general education PE class and a separate adapted PE class. As both a factual and legal matter, this is impossible. The cornerstone of the IDEA is individualized education; the measurable annual goals in a student's IEP are informed by the results of that student's evaluation. Then, a district provides services designed to enable that student to make progress on those goals. In this case, since the District neither evaluated the Student in the area of adapted PE, nor provided goals in this area in the IEP, it was impossible for the District to provide the Student with appropriate PE services.¹⁷ The District will immediately take steps to begin an evaluation of the Student in the area of adapted PE and will hold an IEP meeting prior to the beginning of the 2018-2019 school year to develop a new IEP or amend the Student's current IEP, as appropriate.

CORRECTIVE ACTIONS

By or before **August 31, 2018, September 10, 2018, and October 26, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By **August 31, 2018**, the District will provide documentation to OSPI, showing that it has either hired a 1:1 instructional assistant for the Student or has a substitute 1:1 instructional assistant ready to provide the 1:1 services beginning the first day of the 2018-2019 school year (September 5, 2018). The District will also provide documentation of the other staff members assigned to the Student's classroom for the 2018-2019 school year.
2. Before **September 4, 2018**, the District will complete an evaluation of the Student in the area of adapted PE and hold an IEP meeting prior to the beginning of the school year to discuss the results and update the Student's IEP as appropriate. By **September 10, 2018**, the District will submit 1) a copy of any meeting invitations; 2) a copy of the evaluation report; 3) a copy of the amended or new IEP; 4) a copy of any related prior written notices; and, 5) a copy of any other relevant documentation.

DISTRICT SPECIFIC:

1. The District will develop procedures for hiring 1:1 instructional assistants, when an IEP team determines that 1:1 instructional support is needed. By or before **September 10, 2018**, the District will submit documentation of these procedures to OSPI. The procedures will identify the person(s) on a student's IEP team responsible for informing District special education

¹⁷ OSPI further notes that the Student's schedule, which was last updated on January 27, 2018, included the following text: "Thursdays: all [students in the medically fragile classroom] to Adapted P.E. when [the adapted PE teacher] is set up." This text suggests that the adapted PE teacher was either not working at the Student's school for the entirety of the 2017-2018 school year or not "set up" for some portion of the year. (While the District asserts that "the Student received 30 minutes per week of adapted PE for the entire school year," the documentation submitted by the District did not clarify this ambiguity in the record.)

administration about the need for a 1:1, and identify other people responsible for ensuring positions are posted to the District's website in order to be filled.

2. By or before **October 12, 2018**, the District will provide training for all school psychologists regarding the procedures for completing an adapted PE evaluation, including a determination of when such an evaluation is appropriate. The training will include examples.

By or before **September 10, 2018**, the District will provide a draft of the training materials to OSPI. By or before September 21, 2018, OSPI will provide feedback on the training materials.

By or before **October 26, 2018**, the District will provide OSPI with a sign-in sheet that lists those individuals who attended the training. The District will also provide a roster of all of the school psychologists who work for the District.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of July, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)