

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-129

PROCEDURAL HISTORY

On October 12, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Richland School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 13, 2020, 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. In its October 13, 2020 communications to both the Parent and the District, OSPI identified two issues for investigation (Issues 1 and 2).

On October 28, 2020, OSPI received an email from the Parent, wherein the Parent requested that Issue 2 be removed from the investigation. On October 30, 2020, OSPI acknowledged the Parent's request, removed Issue 2 from the investigation, and informed both the Parent and the District.

On November 3, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on November 4, 2020. OSPI invited the Parent to reply.

On November 23, 2020, OSPI received additional information from the Parent. OSPI forwarded a copy of this information to the District the same day.

On November 24, 2020 OSPI determined that additional information would be helpful to the investigation and contacted the Parent. OSPI received the requested information on November 24, 2020. OSPI forwarded that information to the District on November 25, 2020.

On November 24, 2020 and December 1, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 1, 2020.

On November 25, 2020 OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information on November 30, 2020. OSPI forwarded that information to the Parent on December 1, 2020.

On December 1, 2020, OSPI received additional information from the Parent. OSPI forwarded a copy of this information to the District on December 2, 2020.

On December 1, 2020 OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information the same day. OSPI forwarded that information to the Parent on December 2, 2020.

On December 2, 2020, OSPI's investigator conducted a phone interview of the Parent, the English language arts teacher, and the instructional lab teacher.

On December 3, 2020, OSPI's investigator conducted a phone interview of the geometry teacher and the Student's case manager.

On December 4, 2020, the Parent provided OSPI with additional information. OSPI provided the District with a copy of that information the same day.

On December 4, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information the same day. OSPI forwarded that information to the Parent on December 7, 2020.

On December 4, 2020, OSPI's investigator conducted a phone interview of the teacher of visually impaired.

On December 7, 2020, the Parent provided OSPI with additional information. OSPI forwarded this information to the District the same day.

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

ISSUE

1. Has the District followed proper procedures for implementing the Student's individualized education program (IEP) in the 2020-2021 school year?

LEGAL STANDARDS

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. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure 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. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Specially Designed Instruction: The purpose of the IDEA is to ensure that all students eligible for special education have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1; WAC 392-172A-01005. Special education includes specially designed instruction, which 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).

Provision of Services: Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate. 34 CFR §300.156; WAC 392-172A-02090(i).

Difference between Accommodations and Modifications: Accommodations: (a) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide equal access to learning and equal opportunity to demonstrate what is learned; and (c) grading and credit is the same as typical students. Modifications: (a) do fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide a student with a meaningful and productive learning experiences based on individual needs and abilities; and (c) grading and credit are different. OSPI, Evaluation and IEP Technical Assistance Module (April 2008).

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education citizen complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed." *In re: Mabton School District*, 2018-SE-0036.

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable

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

FINDINGS OF FACT

2020-2021 School Year

1. At the start of the 2020-2021 school year, the Student was eligible for special education services under the category of multiple disabilities, was in the 10th grade, and attended a District high school.
2. On August 31, 2020, a speech language pathologist emailed the biology teacher regarding the Student, stating, in part: "Student's laptop is larger than other students, due to his visual impairment."
3. The District's first day of school was September 1, 2020. According to the District, when the 2020-2021 school year started, the District was in a "100% remote learning" environment.
4. At the start of the 2020-2021 school year, the Student's February 2020 individualized education program (IEP) was in effect. The Student's February 2020 IEP provided the Student with the following, non-concurrent, specially designed instruction in a *special education setting* from September 1, 2020 through January 23, 2021:
 - **Math:** 53 minutes 5 times a week (to be provided by special education staff)
 - **Written Expression:** 53 minutes 5 times a week (to be provided by special education staff)

The Student's February 2020 IEP provided the Student with the following related service in a *special education setting* from September 1, 2020 through January 23, 2021:

- **Vision:** 30 minutes 1 time a month (to be provided by a teacher of the visually impaired)

The Student's February 2020 IEP provided the Student with 37 accommodations, one modification, and four supports. The Student's IEP included the following annual goals:

- **Math 1:** By 01 /23/2021, when given a real-world problem with two related linear relationships, one modeled in function form, and one represented in table form, Student will be able to answer questions about the relationships improving his math skills from 40% to 80% accuracy as measured by student work samples.
- **Math 2:** Student will complete the problem, improving and increasing his skill in adding, subtracting, and multiplying fractions from 10% to greater than 80% accuracy in 5 problems as measured by over 3 consecutive work samples with teacher made assessments.

- **Written Expression 1:** By 01/23/2021, when given a grade level paragraph containing composition errors, Student will use a checklist to denote editing errors improving increasing in accuracy from 14% of errors corrected in a 9th grade text to 90% of errors corrected in a 9th grade text found over 3 consecutive composition samples. as measured by curriculum-based assessment. Progress monitoring bi-weekly with work samples.
- **Written Expression 2:** By 01/23/2021, when given a topic and text, Student will produce from 2 word associations to 4 word associations that go with that text, and formulate a simple sentence using those word associations improving in accuracy from 2 words in three complete sentences in order (topic, four supporting sentences, concluding) in consecutive composition samples to 4 words in 4 sentences independently as measured by 3 consecutive composition samples. Progress monitoring bi-weekly with work samples.
- **Written Expression 3:** By 01/23/2021, when given a graphic organizer, Student will sequence his ideas and sentences independently and appropriately to formulate an introductory and supporting paragraph improving in accuracy from 2 sentences in order to 6 sentences in order (topic, four supporting sentences, concluding) as measured by in [sic] 3 consecutive composition samples.
- **Written Expression 4:** By 01/23/2021, when given a topic and/or text, Student will independently compose a complete paragraph (containing a topic, supporting details, and concluding statement) using dictation software improving in his accuracy from a baseline of no use of dictation to proficient use of dictation as measured by over [sic] three opportunities observed. Progress monitored monthly with work sample.

According to the Student's February 2020 IEP, progress on the aforementioned goals was to be reported each quarter.

5. According to the District, the Student was enrolled in the following courses during the 2020-2021 school year:
 - **Period 1:** Materials Science Engineering – taught by a general education teacher
 - **Period 2:** Language Arts – taught by a general education teacher
 - **Period 3:** Instructional Lab – taught by a special education teacher¹
 - **Period 4:** Photography – taught by a general education teacher
 - **Period 5:** Geometry – taught by a general education teacher
 - **Period 6:** Biology – taught by a general education teacher

According to the District's response: each of the foregoing classes were provided "in a continuous learning (remote) format;" the language arts and geometry classes each took place in a general education setting, meaning 50% or more of the students enrolled did not have an IEP; and "the Student receive[d] his specially designed instruction during geometry [class]—the case manager [would] meet with the general education geometry teacher to plan/prep and support specially designed instruction for the Student."

¹ In its response, the District described the Student's Instructional lab class as follows: "[A] *special education setting* to provide specially designed instruction in multiple areas in one class period. This course is for students that are enrolled in general education courses such as [English language arts] or Mathematics, but require additional support from a *special education setting*. Students enrolled in an Instructional lab require a combined full period of specially designed instruction for several qualifying areas. This course is not appropriate for students enrolled in a co-taught English language arts or Math course."

During the course of this investigation, OSPI asked the District for the length of time each of the Student's classes lasted. In response, the District directed OSPI to a District policy document—"Building Our Road Back to School: Continuous Learning 2.0 Plan, 2020-2021." The following was the Student's schedule for the 2020-2021 school year, as reflected in the District 2020-2021 plan:

- Monday, Wednesday, Friday:
 - **Period 1:** 55 minutes (12:15–1:10 pm)
 - **Period 2:** 45 minutes (1:20–2:05 pm)
 - **Period 3:** 45 minutes (2:15–3:00 pm)
 - **"High School Zero Hour: Synchronous Learning":** 45 minutes (3:10–3:55 pm)
- Tuesday, Thursday:
 - **Period 4:** 55 minutes (12:15– 1:10 pm)
 - **Period 5:** 45 minutes (1:20– 2:05 pm)
 - **Period 6:** 45 minutes (2:15– 3:00 pm)

According to the referenced policy document, 8:30 through 11:20 a.m. each day, Monday through Friday, was reserved for "teacher feedback, student check-in/attendance, and asynchronous learning."

6. According to the District's response, both the Student's case manager and special education teacher (instructional lab teacher) were new hires, and "these positions were not filled until just before the 2020-2021 school year began, resulting in staff not being familiar with the Student as early as the District would have hoped. These changes...disrupted the continuity of [the Student's service delivery]."
7. According to the District's response: "Based on the information recorded in [the District's system for taking attendance] and the expectations for staff members to record attendance while [providing] instruction via continuous learning, the Student logged in for all [of his] scheduled online classes in September 2020."
8. On September 1, 2020, the teacher of the visually impaired (TVI) emailed the Student's case manager, stating, in part: "Student's laptop is already adjusted to be 125%, does he still need it bigger? I can zoom with Student and Parent if they need help troubleshooting."
9. According to emails included in the District's response:
 - From September 15 to 28, 2020, the Student was unable to pair his hearing aids to the school-issued laptop he had at home.
 - During this same time, the Student appears to have been able to pair his hearing aids with a personal computer he had access to at home.
 - On or about September 28, 2020, a District staff member stated a "temporary" fix had been found so as to enable the Student to pair his hearing aids to his school-issued computer. But, as of October 12, 2020, the Parent was still reporting issues with programming the hearing aid to a personal frequency modulation (FM system).
10. On September 15, 2020, the instructional lab teacher emailed the Parent, stating, in part: "I have read Student's IEP and I will be providing his specially designed instruction for both math

and written expression during our Instructional Lab time. Student will receive 27 minutes of dedicated time for written expression and 26 minutes of math...during Instructional Lab class."

11. According to the District's response, on September 16, 2020, the District "moved into [another] stage" of its reopening, and some students, including "students [in] special education with 1:1 paraeducators, [were able to come back for] part-time live instruction." However, "due to Student being medically fragile, it [was] not possible for Student to participate in hybrid ([part-time] in-person and [part-time] remote) learning activities."

12. According to the District's response, on September 17, 2020:

An IEP team meeting was held via Zoom to review the Student's [February 2020] IEP and to bring the Student's new teachers up to speed on all the specifics about the Student. During this meeting, the Parent noted...the Student's [2020-2021] schedule did not match the service minutes from his [February 2020] IEP. Also during [the] IEP meeting the Parent [was] invited to attend [another] IEP meeting [scheduled for September 25, 2020].

As concerns September 17, 2020, the District's response further stated:

Since the [discrepancy between the service minutes included in the Student's February 2020 IEP and the service minutes permitted by the Student's 2020-2021 schedule] was brought to the District's attention on September 17, 2020, the District has tried to work with the Parents to make the necessary corrections. This [was, and] continues to be challenging, since adjusting the Student's schedule and changing staff is understandably disruptive to the Student.

13. The District's response included several emails. The date one particular email was sent is unclear, but from the context of the surrounding emails, it appears it was sent on or about September 24, 2020 by the Parent. It read, in part: "We are not sure how [instructional lab] ties into his specially designed instruction? We thought that this time was to be focused on his IEP goals not general education, independent homework?"

It appears the instructional lab teacher forwarded this feedback to the Student's case manager, with the accompanying message of: "I need some help."

14. According to the District's response, an additional IEP meeting for the Student was held on September 25, 2020. According to the special education director:

This [IEP meeting] was a continuation from September 17, 2020. The basis of the meeting was a 'parent connect meeting' to focus on the Student's program needs during COVID-19, his accommodations, and his schedule for the 2020-2021 school year...The Student's IEP team did not create a new IEP for the Student on September 25, 2020. The Student's February 2020 IEP was still in effect.

15. On September 25, 2020, the TVI emailed the Parent, stating she had "enlarged" geometry notes "in 16 point font for the Student" and wanted to know how to best deliver these to the Parent/Student.

16. According to the Student's attendance record, in October 2020, the Student was absent from the following classes:

- 3 Instructional lab classes;
- 3 Materials Science Engineering classes;
- 3 Language Arts classes; and,
- 1 Biology class.

17. On October 5, 2020, the TVI emailed the Parent, stating, in part: "I have geometry notes printed and enlarged for Student at the special education office this afternoon. If you want to pick them up from [the high school tomorrow] I am able to drop them off there."

18. On October 6, 2020, the Parent emailed the photography teacher, stating, in part: "Sorry Student was a few minutes late to class he was coming from his vision therapy."

19. Also, on October 6, 2020, the Parent emailed the co-director of special education, outlining her concerns that the Student was not receiving the specially designed instruction included in the Student's February 2020 IEP.

In response, the co-director of special education stated, in part: "ELA minutes: during at-home learning, Student could get specially designed instruction from the Instructional lab teacher through zoom for writing only...to fulfill those minutes."²

20. In a separate email, dated October 6, 2020, the Parent emailed the TVI, stating, in part: "Today we picked up Student's math notes that were enlarged. This is the first time he has had them and on large paper. It was very helpful!"

Later that same day, the TVI responded, stating, in part: "Would you like the science notes enlarged the same way?"

21. On October 8, 2020, the occupational therapist emailed the Parent: "If you could take a picture of Student with his set-up (slant board, pencil grip, hi-write paper) that would be helpful."

Later that same day, the Parent responded, stating, in part:

He has not used any of these since he's been [in] online school. None [of these] has been incorporated and he does not know when to use [them]. I have several things in cubbies in his room, with things like his FM system (still trying to get it working). I tried to put [some of these] things on his desk today and it's not working [because there's not enough space]. I asked Student if he would move to my office (the desk is larger). He does not like changes in his routine but he said he would think about it. I will see if I can rearrange/move some things and try again.

² The entirety of this email thread, which is dated October 6 through 10, 2020, appears to relate to: the co-director of special education collaborating on ways to amend the Student's schedule so as to permit the full provision of the specially designed instruction in the Student's February 2020 IEP. (There is also a separate email thread, dated September 28 through September 30, 2020, wherein District staff collaborate on ways to amend the Student's schedule so as to permit the full provision of the specially designed instruction in the Student's February 2020 IEP.)

22. The District's response included a provider log from the TVI. According to the TVI's log, on October 21, 2020, the TVI had a 60-minute Zoom session with the Student. The TVI's log noted: "Discussed results or Reading Plus initial placement assessment, installed the Snap and Read & Co-Writer chrome extensions on Student's laptop. Discussed how these extensions might be used. Demoed how to use Snap and Read for a text to speech option."³
23. The District's response included two documents the District referred to as "Specially Designed Instruction Collaboration documents" (SDI collaboration documents 1 and 2). The District stated SDI collaboration documents 1 and 2 were "created by the case manager to reflect...how she is collaborating/supporting staff members in Student's specially designed instruction areas."

SDI collaboration document 1 contained, in part, an October 26, 2020 entry from the Student's instructional lab teacher: "Student works well but our specially designed instruction efforts are a slow process. We will be completing a writing sample for Student's word choices/sentence generation goal. We will then move onto an editing piece."

24. During the course of this investigation, the District provided information, including a word document that included what appears to be an October 30, 2020 email from the instructional lab teacher to the co-director of special education.⁴ This word document-email read, in part:

For **[Written Expression 1]** in the Student's February 2020 IEP, Student was instructed to complete any corrections in a pre-written paragraph with 8 possible mistakes. Each of the possible mistakes had 4 or 5 associated multiple choice selections available. Student was observed and supported by a paraeducator to assist with accessibility and to restate any directions or prompts needed for him to complete the task individually. Student highlighted his selected answer for each question.

For **[Written Expression 2]**, I have only been able to complete one work sample for this goal so far this year. We began by giving Student a writing prompt/question. As I am learning what Student's writing methods are, we discussed possible word associations that he could use that apply to the prompt. I had him identify two words in the prompt that he could generate similar words for and encouraged him to include those word choices in his writing. We then reviewed the standard components of a paragraph response, and broke it up into three main zones – Introduction, detail/evidence, and conclusion. Because Student's writing graphic organizer was not a fillable document, we used the intro, detail, and conclusion zones to set up a fillable form of his writing organization graphic organizer.

³ The TVI's log also showed the following: throughout the fall 2020 semester, the TVI consistently provided the Parent and/or Student with enlarged notes; and, on occasion, the TVI would consult with either the Parent or the Student's teachers—in particular, on how to install and/or use certain programs, such as Lexia and Reading Plus.

⁴ During the course of this investigation, the Parent articulated a concern that the email included in this word document was created after-the-fact, and that the purported email was not actually created and/or sent on October 30, 2020.

From there, Student wrote (decided to type instead of use dictation) his response to the prompt as an individual. Rephrasing of directions or discussion prior to writing were used.

For [**Written Expression 4**], Student was presented with a curriculum based question from an assignment for his Instructional lab course, in which he was asked to write a paragraph discussion response to the question 'What was the best part of your summer?' I emphasized to Student that this goal was meant to measure his writing organization, but it also held a component to measure his proficiency in using his dragon dictation software and I encouraged him to use it for his response. He was able craft his response with minimal prompting and discussion from the paraeducator who instructed him in concluding this task.

Unfortunately, with the i-Ready testing setting us back, Student has only completed SDI practice activities for these 3 written expression skills. During the month of November will be working toward completion of the remaining goal, [**Written Expression 4**].⁵

Previous discussions of Student's service providers, places me as one of the two primary sources of his written expression goal SDI and measurement. I have not engaged in SDI for math with Student, as it has been designated to [the geometry teacher].

25. According to the Student's attendance record, in November 2020, the Student was absent from the following classes:

- 1 Instructional lab class; and,
- 1 Language Arts class.

26. According to SDI collaboration document 1, the case manager consulted with both the geometry teacher and the instructional lab teacher on November 2, and the English language arts teacher on November 3, 2020.⁶

27. According to the TVI's provider log, on November 4, 2020, the TVI had a 45-minute Zoom session with the Student. The TVI's log for that date notes as follows:

Discussed accommodations, we looked at Student's current accommodations on his IEP, and discussed which accommodations are most important, and narrowing our focus on what he really needs, so that he can be "the boss" of his accommodations. We focused on writing, and what Student needs when he is writing using his laptop, handwriting, and using dictation. We talked about focusing our time on really learning about his accommodations and how he can learn when he needs which accommodation.

⁵ Upon knowledge and belief, the Instructional lab teacher actually meant to reference **Written Expression 3**, as that was the only written expression goal included in the Student's February 2020 IEP and not mentioned in the Instructional lab teacher's email of October 30, 2020.

⁶ SDI collaboration documents 1 and 2 provided limited information on the exact nature of the case manager's conversations with the Student's service providers—specifically, SDI collaboration documents 1 and 2 do not provide a detailed summary of the discussion the case manager and the Student's various service providers had on specially designed instruction that would be helpful to the Student. SDI collaboration documents 1 and 2 represent charts. Some of the columns in those charts are titled as follows: Student has completed assignments; Student is participating in class; Student's behavior is expected; and, Is there any pre-teaching or re-teaching that needs to occur this week.

28. According to the District's 2020-2021 calendar, November 6, 2020 represented the end of the first quarter.
29. According to SDI collaboration document 1, the case manager consulted with the geometry teacher and English language arts teacher on November 10 and 12, 2020, respectively.
30. On November 13, 2020, as part of the corrective actions for a different special education citizen complaint⁷, the District provided OSPI with the Student's "progress monitoring and iReady math data" for the first quarter of the 2020-2021 school year.

The progress report the District submitted on November 13, 2020 read, in part:

Writing Prompt: Should cameras on drones watch all public spaces to prevent crime, or is that a violation of privacy?

Student wrote a well written topic sentence that answered the question in the prompt. His paragraph had evidence and detail to support his main idea. Student gave 3 solid pieces of evidence as to why drones would help prevent crime and his sentences were keeping with part of the prompt. In this writing, Student's use of conventions was used well.

Student improved from writing one paragraph to two paragraphs. He is however still struggling with variability of details in his writing and with concluding statements.

Assistive Technology was offered and available for Student to access but Student did not use for this writing.

The iReady math data the District submitted on November 13, 2020 showed the following:

- Student's overall proficiency in math was at a 7th grade level.
- "Test results indicate that Student would benefit from intensive intervention focused on skills and concepts related to quantitative reasoning and representation. Instruction that connects understanding of algebraic representation, computation, and problem solving skills will strengthen Student's math abilities across domains."
- Student demonstrated an ability to perform the following skill sets: use proportions to solve real-world and mathematical problems; solve problems involving unit rate; solve problems using ratio and rate reasoning; write and evaluate numerical expressions with whole-number exponents; evaluate expressions for given values of the variables; write a variable expression to represent a real-world or mathematical problem; solve real-world and mathematical problems by writing and solving equations [when all variables] are nonnegative rational numbers; write an equation in two variables for a real-work problem in which a dependent and independent variable change in relationship to one another; identify acute, obtuse, right, and straight angles and perpendicular and parallel lines; locate and plot ordered pairs on a coordinate grid and find the distance between two points with the same x or y coordinate; use the first quadrant of the coordinate plane to represent and solve real-world and mathematical problems; find the length of a side of a polygon using two points with the same first coordinate or the same second coordinate.

⁷ Special education citizen complaint 20-89.

The District's November 13, 2020 submission also included three completed grading rubrics—two of which related to writing exercises and one of which related to the Student's knowledge of certain assistive technology.

31. According to the TVI's provider log, on November 18, 2020, the TVI had a 60-minute Zoom session with the Student. The TVI's log for that date noted as follows: "Discussion with Parent about concerns that classroom teachers and special education teachers were not providing accommodations during their classes, and special education teachers were not providing SDI during their classes. How do we expect Student to make progress on his math and writing goals?"

32. According to SDI collaboration document 1, the case manager consulted with both the geometry teacher and the English language arts teacher on November 20, 2020.

33. Regarding services, the District's response read, in part:

The District understands that it did not provide the Student with all the services listed in the Student's [February 2020] IEP since September 1, 2020. Therefore, the District proposes the following remedies:

The District will provide a total of 12 hours of recovery services in the area of written expression.

The Case Manager and General Education Geometry Teacher have been providing 315 minutes of instruction per week since October 5th. This is 30 minutes more per week than what is identified on his current IEP service matrix (285 minutes per week).

Further, the District will provide 8 hours of recovery services in the area of math.

The IEP Team will determine when these recovery services will take place.

34. On December 2, 2020, OSPI's investigator conducted a phone interview of the Student's English language arts teacher. OSPI's investigator's notes from that interview are as follows:

The English language arts teacher stated she does recall receiving a copy of the Student's February 2020 IEP in August 2020, and that, around that same time, the English language arts teacher had a conversation with the Student's case manager. During this conversation, the Student's case manager told the English language arts teacher several things: Student would separately be working with an occupational therapist; and, Student would also have periodic consultations with a vision specialist.

The Student's case manager emailed the Student's teachers, including the English language arts teacher, on a weekly basis. That email included and/or referenced a google form (check-in log) which the Student's teachers could use to provide updates on the Student. This check-in log was created on or about September 14, 2020. Initially, the idea was that the Student's teachers would update it every day, but, at a subsequent IEP meeting, it was determined this was an overly burdensome requirement for the teachers, so it was thenceforth filled out on an as-needed basis.

The English language arts teacher had roughly 35 students in her class during the fall semester of the 2020-2021 school year.

This year, to the English language arts teacher's knowledge: this Student did not have a 1:1 reading aide and Student was not a part of a small language work group. (Beginning sometime in late October 2020, Student did begin receiving specially designed instruction in writing from a special education-certified teacher, but this was in accordance with corrections required by a previous special education citizen complaint.)

The English language arts teacher created and executed several instructional tactics that were unique to this Student, but she created and executed these on her own—without the input or collaboration of the Student's case manager. These unique instructional tactics were as follows: directly messaging the Student during class to check-in with the Student; providing individual feedback on each and every assignment Student worked on; emailing the Student to check-in with the Student.

At an IEP meeting that took place on November 20, 2020, the English language arts teacher asked whether it would be smart to provide the Student with answers to reading questions prior to the Student getting overly frustrated. In response, the English language arts teacher was told this was a good strategy and she thenceforth began to utilize it.

I, OSPI's investigator, read the English language arts teacher the 4 written expression goals in the Student's February 2020 IEP and asked the English language arts teacher whether she worked on these goals with the Student during her class. In response, the English language arts teacher said; she did not work on **written expression 1** and **written expression 2** with the Student; in relation to **written expression 3**, the Student did not use a graphic organizer in her class but the English language arts teacher did work with the Student on how to construct paragraphs; and, in relation to **written expression 4**, the English language arts teacher was unaware of whether Student had access to dictation software—as the English language arts teacher understood it, if Student did have access to dictation software, it was on his computer at home and he just used it when needed.

35. On December 2, 2020, OSPI's investigator conducted a phone interview of the Student's instructional lab teacher. OSPI's investigator's notes from that interview are as follows:

The instructional lab teacher has a conditional special education certificate/permit certification. The instructional lab teacher is in the process of obtaining a 'stand-alone' special education certificate.

The instructional lab class was similar to a resource room—students brought in their general education work and the Instructional lab teacher helped them out, as needed. During the fall semester of 2020, the instructional lab class had approximately twelve students in it and each of these students had an IEP. There was a paraeducator in the instructional lab class for roughly the entire fall 2020 semester.

In early September 2020, the instructional lab teacher spoke with the Student's case manager. During that conversation, the Student's case manager informed the instructional lab teacher that the Student had an IEP and a general discussion about the same took place. On September 14, 2020, the Student's case manager emailed the instructional lab teacher a copy of the Student's February 2020 IEP.

From early September 2020 through roughly September 30, 2020, the instructional lab teacher stated: he was "expected to provide Student with 2 hours of specially designed instruction within a 1 hour window;" there was still "a lot of design [of the Student's

instruction] up in the air”; there were other students with IEPs that had unique needs in the instructional lab class; and, during this time period, the instructional lab teacher would work with the Student on whatever assignments the Student happened to need help on—on occasion this would relate to the Student’s math and written expression goals, but, on other occasions, it did not relate to the Student’s math and written expression goals.

On or about September 2020, it was decided that the instructional lab teacher would thenceforth focus exclusively on the Student’s written expression goals.

For roughly the first 2 weeks of October 2020, though, the Student was administered ‘benchmark assessments.’ According to the instructional lab teacher, all students with IEPs were administered these ‘benchmark assessments’ around this time, but it took the Student longer than most to complete the assessments.

Beginning mid-October 2020, ‘roughly ninety percent’ of Student’s time in the instructional lab class was spent in a 1-on-1 setting—with either the instructional lab teacher or the paraeducator. During this time, the Student’s written expression goals were explicitly stressed and/or worked on.

The instructional lab teacher and the Student’s case manager came up with their own writing prompts, each of which related to the Student’s written expression goals. The instructional lab teacher stated the Student did ‘really great’ with his work on these goals.

The instructional lab teacher first addressed **written expression 1** and Student made very quick progress on that goal. Then, the instructional lab teacher addressed **written expression 2** and **written expression 3** with the Student. The Student’s progress on **written expression 2** and **written expression 3** was a bit slower than it was with **written expression 1**, but consistent. As per **written expression 3**, the instructional lab teacher stated: the Student did have a graphic organizer and it did include instructions on how to properly identify and construct the various parts of a paragraph; and the Student has had a graphic organizer since the 2019-2020 school year.

Currently, the instructional lab teacher is transitioning to focus on **written expression 4**. According to the instructional lab teacher, the Student has had dictation software the whole school year but the previous approach was ‘this is available if Student wants to use it’ and now the instructional lab teacher is consciously trying to increase the Student’s use of the dictation software. But the instructional lab teacher noted, even when not using the dictation software, the Student types both quickly and accurately.⁸

36. On December 3, 2020, OSPI’s investigator conducted a phone interview of the Student’s geometry teacher. OSPI’s investigator’s notes from that interview are as follows:

In either late August 2020 or early September 2020, the geometry teacher was emailed a copy of the Student’s February 2020 IEP. The geometry teacher believes, but is not certain, that it was the Student’s case manager that emailed him the Student’s February 2020 IEP.

The geometry teacher stated the communications he had with the Student’s case manager, in terms of how and whether the geometry teacher would be providing the Student with

⁸ During the interview, the instructional lab teacher noted the Student typed much faster, and much more accurately, than the instructional lab teacher did when the instructional lab teacher was the Student’s age.

specially designed instruction in math, were 'not as informative' as they could have been. Student's 'IEP math goals were more algebra-related than geometry-related' and it was therefore challenging, sometimes, to address them in geometry class.

I, OSPI's investigator, read the geometry teacher the definition of specially designed instruction ('adapting, as appropriate to the needs of [a] student, the content, methodology, or delivery of instruction, to address the unique needs of [that] student') in relation to whether the geometry teacher addressed these matters in his conversations with the Student's case manager. In response, the geometry teacher stated: we 'did not really get into specifics'; 'I am a general education teacher'; 'I automatically modify my approach to best fit each student'; and, 'as far as I am concerned, any extra practice should have taken place during the Student's Instructional lab class.'

One approach the geometry teacher 'recently' began to take with the Student is: speaking with the Student to the side, in a 1-on-1 setting, during class.

The geometry teacher had periodic check-ins with the Student's case manager throughout the fall 2020 semester and, on occasion, the Student's case manager provided the geometry teacher with examples to use with the Student.

The geometry teacher stated he first worked on **math 1** on December 2, 2020; according to the Student's geometry teacher, he did not work on **math 1** with the Student at any time prior to December 2, 2020.

As per **math 2**, the geometry teacher stated: he tries to incorporate fractions, and computation of those fractions, into most every problem he assigns; he has been permitting Student to use a calculator when solving computation problems involving fractions; he is not clear if the IEP team, in relation to **math 2**, envisioned the Student using a calculator to solve computation problems involving fractions; and, the Student, when using a calculator, has really improved his ability to solve computation problems involving fractions.

Beginning on or about October 5, 2020, the geometry teacher began meeting with the Student on a 1-on-1 basis on most Monday, Wednesday, and Friday afternoons from roughly 3:15 p.m. through 4:00 p.m. These sessions have continued through the present. These sessions have mostly been limited to working on geometry skills, not the Student's math goals in his February 2020 IEP, which, again, are more related to algebraic skills sets. Still, the geometry teacher was able to spend a lot of time on **math 1** on December 2, 2020.

37. On December 3, 2020, OSPI's investigator conducted a phone interview of the Student's case manager. OSPI's investigator's notes from that interview are as follows:

I, OSPI's investigator, asked the case manager for clarity regarding the consultations she had with the Student's various teachers on November 2, 3, 10, 12, and 20, 2020, as reflected in SDI collaboration documents 1 and 2, which were included in the District's response. Specifically, I asked the case manager whether these were in-depth conversations related to the Student's IEP goals, or whether they were quick check-ins.

In response, the case manager stated: these were 'quick check-ins to see how the Student was doing, whether that particular teacher wanted me to sit in and observe a remote class, and whether Student was turning in assignments.'

38. On December 4, 2020, OSPI's investigator conducted a phone interview of the TVI. OSPI's investigator's notes from that interview are as follows:

The TVI stated she attempted to schedule zoom sessions with the Student in September 2020, but no schedule was able to be worked out. But in October and November 2020, the TVI was able to meet with the Student, via zoom, for 60 minutes twice a month. The TVI stated she meets with the Student at 11 a.m. on Wednesdays.

According to the TVI, the Parent starts the zoom by telling the TVI her concerns, then the TVI works with the Student. The TVI described these sessions as "supporting Student in accessing his accommodations." For example, the TVI: helped the Student download certain Chrome extensions such as 'Snap and Read'; and helped facilitate the purchase of reading assistance programs like Lexia, at the request of the Parent, in late September or early October 2020.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged the District did not properly implement the Student's February 2020 individualized education program (IEP) during the 2020-2021 school year. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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 student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

Specially Designed Instruction in Written Expression

Here, the Student's February 2020 IEP provided the Student with 265 minutes of specially designed instruction in written expression each week, to be provided by special education staff in a special education setting. September 1, 2020 (the first day of school) through November 25, 2020 (the last day of school before Thanksgiving break) represents approximately 12 1/2 weeks of school. Therefore, during this same time period, the Student should have received approximately 55 hours of specially designed instruction in written expression.

In terms of the specially designed instruction in written expression the Student was actually provided with during this time period, OSPI notes the following:

English Language Arts Class: As preliminary matters, OSPI notes the following: the Student's February 2020 IEP stated the Student was to be provided specially designed instruction in written expression in a special education setting, and the same was to be provided by "special education staff." The Student's English language arts class, on the other hand, comprised a general education setting—as 50% or more of the students in the class did not have IEPs. Furthermore, the English language arts teacher was not certified in special education. Although general education teachers, such as the English language arts teacher, may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, such as the Student's case manager.

Those preliminary matters established, OSPI notes: from September 1 through November 25, 2020, it is not clear the Student received any specially designed instruction in written expression during the Student's English language arts class. For example, during her interview with OSPI's investigator, the English language arts teacher stated she did not work with this Student on the Student's IEP goals (**written expression 1, 2, or 4**). As per the third goal (**written expression 3**), the English language arts teacher did state students in her class, including the Student, worked on properly constructing paragraphs. But it does not appear the Student's case manager informed the English language arts teacher how to adapt, as appropriate to the needs of the Student, the content, methodology, or delivery of instruction in the English language arts class.

The English language arts teacher stated the following were all true: the Student's case manager spoke with her about the Student in August 2020; she was provided with a copy of the Student's February 2020 IEP in August 2020; and, the Student's case manager checked in with the Student's teachers via a shared Google document. But, crucially, any unique instructional approaches the English language arts teacher took with the Student appear to have been either strategies she came up with on her own and strategies that would not qualify as specially designed instruction—but would more likely qualify as accommodations.⁹

Instructional lab Class: From September 1 through September 30, 2020, it appears the Student received minimal specially designed instruction in written expression in his instructional lab class.¹⁰ For example: the teacher described the instructional lab class as being similar to a resource room—students brought in their general education work and the instructional lab teacher helped them out as needed. During his interview with OSPI's investigator, the instructional lab teacher stated: during September 2020, he was "expected to provide Student with 2 hours of specially designed instruction within a 1 hour window;" there was still "a lot of design [of the Student's instruction] up in the air"; and, there were other students with IEPs that had unique needs in the class. During this time period, the instructional lab teacher would work with the Student on whatever assignments the Student happened to need help on—on occasion, this would relate to the Student's written expression IEP goals, but, on other occasions, it did not relate to the Student's written expression goals.

Based on the information provided to OSPI, a reasonable estimate would be that, in September 2020, 10% of the Student's time in the instructional lab class was devoted to his written expression IEP goals. As the Student was in instructional lab for 135 minutes each week, and the month of September 2020 represents approximately five weeks, the Student was in instructional lab for

⁹ The English language arts teacher stated she employed the following instructional tactics with the Student: directly messaging the Student during class to check-in with the Student; providing individual feedback on each and every assignment Student worked on; emailing the Student to check-in with the Student. (Accommodations: (a) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide equal access to learning and equal opportunity to demonstrate what is learned; and (c) grading and credit is the same as typical students..)

¹⁰ The instructional lab class was taught by a teacher with a special education certification and the class represented a special education setting, as each student in the class had an IEP.

approximately 11 hours (or 675 minutes) in the month of September 2020. One-tenth of this figure is approximately one hour (67.5 minutes). To summarize, during the month of September 2020, as best OSPI can tell, the Student received approximately one hour of specially designed instruction in written expression.

According to the instructional lab teacher, in late September 2020, the Student's IEP team decided that the instructional lab teacher would thenceforth be tasked with addressing the Student's written expression IEP goals during instructional lab. For roughly the first two weeks of October 2020, though, the Student was administered 'benchmark assessments.' According to the teacher, it was not until the third week of October 2020 that the teacher was able to provide the Student with specially designed instruction in written expression.

According to the instructional lab teacher, beginning around the third week of October 2020: 'roughly ninety percent' of the Student's time in the instructional lab class was spent in a 1-on-1 setting—with either the teacher or a paraeducator; during this time, the Student's written expression goals were explicitly worked on; and, the teacher and the Student's case manager came up with their own writing prompts, each of which related to the Student's written expression goals.

October 19 through November 25, 2020 represents approximately 5 1/2 weeks of school. As the Student was in instructional lab for 135 minutes each week, from October 19 through November 25, 2020, the Student received approximately 12 hours (or 742 minutes) of specially designed instruction in written expression during this time.

In total then, from September 1 through November 25, 2020, the Student appears to have received approximately 13 hours of specially designed instruction in written expression. As the Student was supposed to have received approximately 55 hours of specially designed instruction in written expression during this same time period, this represents a failure to properly implement this portion of the IEP; the Student missed approximately 42 hours of specially designed instruction in written expression, and compensatory education is therefore warranted.

Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. There is no requirement to provide day-for-day compensation for time missed. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting.

For three reasons, the District will be required to provide the Student with half of the missed hours in specially designed instruction in written instruction or 21 hours.

First, there is legal precedent applicable to Washington State that states it is common for compensatory education in a one-to-one setting to be calculated at half of the total hours missed.

Second, perhaps because the District failed to properly implement the written expression portion of the Student's February 2020 IEP, OSPI is incapable of fully gauging the Student's progress

during the fall 2020 semester. For example, the Student's February 2020 IEP stated progress on the Student's written expression goals was to be reported each quarter.¹¹ Here, November 6, 2020 represented the end of the first quarter. On November 13, 2020, the District did create a 'progress report' type document. In terms of the Student's written expression goals, though, the November 13, 2020 'progress report' consisted of: a) how the Student performed on one writing prompt—the Student was able to write a "well-written topic sentence" and a well-constructed paragraph; b) the fact that the Student had "improved from writing one paragraph to two paragraphs [but] is still struggling...with concluding statements"; and c) "assistive technology was offered and available for Student to access but Student did not use for this writing."

Thus, the November 13, 2020 progress reporting: 1) provided no information in relation to **written expression goals 1 or 4**; and, 2) provided minimal information in relation to **written expression 2 and 3**. Importantly, the November 13, 2020 progress reporting was not written in the same manner as the written expression goals in the February 2020 IEP. OSPI recommends that goals—and progress reports, consist primarily of the following: a baseline; an objective; and a common unit of measurement. If progress reports are written in the same manner as the goals are written, then it is easy for parents and service providers to understand the student's progress.

Third, in the spring of 2020, OSPI investigated another complaint that related to this Student and this District (Special Education Citizen Complaint (SECC) 20-89). In SECC 20-89, OSPI determined that the District failed to both provide appropriate progress reporting and to provide the Student with appropriate, individualized specially designed instruction. In that sense, then, the problems uncovered with the instant complaint—SECC 20-129, are recurring.

In sum, then, the District will be required to provide the Student with 21 hours of compensatory education in written expression, and these hours will be provided in a one-to-one setting—meaning just the Student and the special education-certified service provider.

Specially Designed Instruction in Math

Here, the Student's February 2020 IEP provided the Student with 265 minutes of specially designed instruction in math each week, to be provided by special education staff in a special education setting. September 1, 2020 (the first day of school) through November 25, 2020 (the last day of school before Thanksgiving break) represents approximately 12 1/2 weeks of school. Therefore, during this same time period, the Student should have received approximately 55 hours of specially designed instruction in math.

Throughout the fall 2020 semester, the Student received math instruction in three different classes: geometry class; beginning on or about October 5, in private, 1-on-1 afternoon sessions with the geometry teacher (high school zero hour); and the instructional lab class.

¹¹ The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals.

Each of the foregoing classes will be analyzed, in turn, to determine how much specially designed instruction in math the Student actually received during the fall 2020 semester:

Geometry Class: As a preliminary matter, again, the Student's February 2020 IEP required his specially designed instruction in math be provided in a special education setting, and the geometry class represented a general education setting. However, the District in its response and the instructional lab teacher both stated that the Student was supposed to receive or was receiving specially designed instruction in the geometry class. Thus, OSPI notes the following:

From September 1 through November 25, 2020, it appears the Student received a minimal amount of specially designed instruction in math during geometry class. For example, during his interview with OSPI's investigator, the geometry teacher stated: the communications he had with the Student's case manager, in terms of how and whether the geometry teacher would be providing the Student with specially designed instruction in math, were "not as informative" as they could have been; and, Student's "IEP math goals were more algebra-related than geometry-related" and it was therefore challenging to address them in geometry class. Furthermore, during the course of this investigation, OSPI's investigator read the geometry teacher the definition of specially designed instruction in relation to whether the geometry teacher addressed these matters in his conversations with the Student's case manager. In response, the geometry teacher stated: we "did not really get into specifics"; "I am a general education teacher"; "I automatically modify my approach to best fit each student"; and, "as far as I am concerned, any extra practice should have taken place during the Student's Instructional lab class." The foregoing facts suggest the Student did not receive specially designed instruction in math during geometry class.¹²

However, during his interview with OSPI's investigator, the geometry teacher did state he had periodic check-ins with the Student's case manager, and on occasion, the Student's case manager provided him with specific examples to use with the Student. The Student's case manager—a special education-certified staff member, designing examples specifically for the Student, would qualify as special education.¹³ Therefore, based on the information provided to OSPI, it appears the Student was provided a minimal amount of specially designed instruction in geometry class. A reasonable estimate would be that, in fall 2020, 10% of the Student's time in geometry class was devoted to his math IEP goals.

As the Student was in geometry class for 90 minutes each week, and as September 1 through November 25, 2020 represents approximately 12 1/2 weeks of school, the Student was in

¹² During his interview with OSPI's investigator, the geometry teacher did state that many of the problems his students work on in class involve computations with fractions (generally, **math 2**). However, he was unable to assert that he adapted, as appropriate to the needs of the Student, the content, methodology, or delivery of instruction, to address the unique needs of the Student. Furthermore, as the geometry teacher was not special education-certified, instructions on how to best adapt the content, methodology, or delivery of instruction to the Student would have needed to have been designed and supervised by the Student's case manager. And there is insufficient evidence to conclude that occurred.

¹³ Though, it should be noted, the Student's February 2020 IEP required his specially designed instruction in math be delivered "by special education staff" not a general education teacher.

geometry class for approximately 19 hours (or 1,125 minutes) during this time period. One-tenth of this figure is approximately two hours (112.5 minutes).

High School Zero Hour: Beginning on or about October 5, 2020, the geometry teacher began meeting with the Student on a 1-on-1 basis on most Monday, Wednesday, and Friday afternoons from roughly 3:15 through 4:00 pm, and these sessions have continued through the present. According to the geometry teacher, though, these sessions have mostly been limited to working on geometry skills, not the Student's math goals in his February 2020 IEP—which, the geometry teacher stated, are more related to algebraic skills sets than geometric skill sets. Again, according to the geometry teacher, it was not until the afternoon of Wednesday, December 2, 2020, that he was first able to spend a significant amount of time with the Student on a math goal in the Student's February 2020 IEP—**math 1**. In conclusion, then, from October 5 through November 25, 2020, it does not appear the Student received any specially designed instruction in math during the afternoon sessions with the geometry teacher.

Instructional Lab: From September 1 through September 30, 2020, it appears the Student received minimal specially designed instruction in math in his instructional lab class.¹⁴ During his interview with OSPI's investigator, the instructional lab teacher stated: during September 2020, he was "expected to provide Student with 2 hours of specially designed instruction within a 1 hour window;" there was still "a lot of design [of the Student's instruction] up in the air"; and, there were other students with IEPs that had unique needs in the class. During this time period, the teacher would work with the Student on whatever assignments the Student happened to need help on—on occasion, this would relate to the Student's math IEP goals, but on other occasions, it did not relate to the Student's math goals.

Based on the information provided to OSPI, a reasonable estimate would be that, in September 2020, 10% of the Student's time in the instructional lab class was devoted to his math IEP goals. As the Student was in instructional lab for 135 minutes each week, and the month of September 2020 represents approximately five weeks, the Student was in instructional lab for approximately 11 hours (or 675 minutes) in the month of September 2020. One-tenth of this figure is approximately one hour (67.5 minutes).

According to the instructional lab teacher, the first two weeks of October 2020 were devoted to administering the Student's 'benchmark assessments' and, after that date, the remainder of the Student's class time for fall 2020 was devoted to the Student's written expression goals. In other words, after September 2020, the Student did not receive any specially designed instruction in math in his instructional lab class.

Therefore, as best OSPI can tell, the Student received approximately one hour of specially designed instruction in math during his instructional lab class in the fall of 2020.

¹⁴ The Instructional lab class was taught by a teacher with a special education certification and the class represented a special education setting, as each student in the class had an IEP.

In total then, from September 1 through November 25, 2020, the Student appears to have received approximately three hours of specially designed instruction in math. As the Student was supposed to have received approximately 55 hours of specially designed instruction in math during this same time period, this represents a failure to properly implement this portion of the IEP; the Student missed approximately 52 hours of specially designed instruction in math, and compensatory education is therefore warranted.

Similar to above, for three reasons, the District will be required to provide the Student with half of the missed hours in specially designed instruction in math: 26 hours.

First, here is legal precedent applicable to Washington State that states it is common for compensatory education in a one-to-one setting to be calculated at half of the total hours missed.

Second, the progress reporting for math that was completed on November 13, 2020 consisted solely of iReady math data. Upon knowledge and belief, this data shows the Student had some ability to answer questions about linear relationships (**math 1**) and to complete computations involving fractions (**math 2**), but from the data, it is not clear what the Student's performance level was in terms of the specific math goals in his February 2020 IEP. It is also not clear whether the Student has advanced or regressed in his capabilities in these areas.

Third, and as detailed above, a previous special education citizen complaint (SECC 20-89) found the District had followed improper procedures for progress reporting and IEP implementation for this Student in the spring of 2020. In that sense, then, the problems uncovered with the instant complaint—SECC 20-129, are recurring.

For the foregoing three reasons, the District will be required to provide the Student with 26 hours of compensatory education in math, and these hours will be provided in a one-to-one setting.

Vision Services

The Student's February 2020 IEP provided the Student with 30 minutes of vision services each month as a related service. September through November 2020 represents three months, so during this same time period, the Student should have received an hour and a half of vision services. Here, the evidence shows the Student received two hours and forty-five minutes of vision services during this same time period. For example: on October 21, 2020, the Student had a 60-minute consultation with the teacher of the visually impaired (TVI); on November 4, 2020, the Student had a 45-minute consultation with the TVI; and, on November 18, 2020, the Student had a 60-minute consultation with the TVI. In conclusion, the District materially implemented this portion of the Student's February 2020 IEP.

Accommodations and Modifications

The Student's February 2020 IEP included 37 accommodations and one modification. The documentation provided to OSPI during the course of this investigation—by both the Parent and the District, is largely silent on some of these accommodations and modifications. For other

accommodations and modifications, though, there is sufficient evidence the District materially implemented them. For example:

- For example, an October 8, 2020 email between the occupational therapist and the Parent shows the Student did have the following available to him: slant board, pencil grip, hi-write paper. (Though, in her October 8, 2020 email, the Parent stated she had not received instruction from the District on how to incorporate these items into the Student's academic routine.)
- From late September through early October 2020, District staff worked with the Parent to ensure the Student's FM system was working.
- Emails from the TVI, as well as the TVI's log, show Student was provided with enlarged notes on at least a semi-regular basis.
- During the instructional lab teacher's interview with OSPI's investigator, he stated the Student has possessed a graphic organizer since the 2019-2020 school year.
- The TVI's log entry for November 4, 2020 mentions the Student having access to dictation software and the instructional lab teacher, during his interview with OSPI's investigator, stated the Student has had access to dictation software for the entirety of the 2020-2020 school year.

Still, OSPI recommends the District undertake the following:

- Confirm with the Parent that the Student's FM system is working. From the emails provided to OSPI during the course of this investigation, it appears that the issues the Student experienced with his FM system in late September and early October 2020 were resolved, but it was not entirely clear this was the case.
- Confirm with the Parent the Student has access to the following: "multiplication chart/math tool sheet/100s number table"; and, "multiplication table-4th and up, math only."

CORRECTIVE ACTIONS

By or before **December 18, 2020, January 8, 2021, and June 15, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **January 8, 2021**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 21 hours of specially designed instruction in written instruction; and, 26 hours of specially designed instruction in math.

The District will provide OSPI with documentation of the schedule for services by or before **January 8, 2021**.

The compensatory education will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. Because of the COVID-19 pandemic, the compensatory education may be provided remotely.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with

at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **June 15, 2021**, including those needing to be rescheduled.*

No later than **June 15, 2021**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **June 15, 2021**.

IEP Meeting

By or before **January 8, 2021**, the Student's IEP team will meet.

At the meeting, the IEP team must address the following topics: how will the District provide the Student with the specially designed instruction in math during the second semester of the 2020-2021 school year?

For example, as it currently stands, the Student's February 2020 IEP states the Student is supposed to receive his specially designed instruction in math in a special education setting, from a special education teacher. However, in instructional lab, the only class on the Student's schedule that represents a special education setting that is taught by a special education teacher, it appears the almost-exclusive focus will be the Student's specially designed instruction in written expression.

By **January 8, 2021**, the District will provide OSPI with: i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's amended IEP; iii) any relevant meeting invitations and prior written notices; iv) a list of people, including their roles, who attended the meeting; v) the Student's amended schedule, if applicable; and, vi) any other relevant documentation.

DISTRICT SPECIFIC:

Dissemination of Written Guidance

By **January 8, 2021**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the assistant principal, and special education-certified staff, including educational staff associates (ESAs)¹⁵, at the school that the Student was enrolled in during the 2021-2021 school year. The guidance will include examples.

¹⁵ ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

Topic 1: Specially designed instruction (WAC 392-172A-01175(3)(c)), including:

- What specially designed instruction is;
- Who can provide specially designed instruction;
- Who can devise and supervise the provision of specially designed instruction;
- Implementing services in conformity with an Individualized Education Program (IEP);
- Reviewing an IEP's service matrix to ensure services being provided align; and,
- Providing specially designed instruction in the correct educational setting.

By **December 18, 2020**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by December 23, 2020.

By **January 8, 2021**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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 December, 2020

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.)