

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-142

PROCEDURAL HISTORY

On November 15, 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 Freeman 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 November 16, 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.

On November 24, 2020, OSPI received additional information from the Parent. OSPI acknowledged that information and sent both the Parent and the District a response to this additional information on November 25, 2020.

On November 30, 2020, the District requested an extension of time to respond to the complaint. OSPI granted the extension the same day.

On December 11, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On December 12, 2020, the Parent requested an extension of time to respond to the District's response. OSPI granted the extension on December 15, 2020.

On December 28, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On December 31, 2020, OSPI requested that the Parent provide additional information, and the Parent provided the requested information on January 4, 2021. OSPI forwarded the information to the District that same day.

On December 31, 2020 and January 5, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on January 5, 2021. OSPI forwarded the information to the Parent that same day.

On January 5, 2021, OSPI requested that the Parent provide additional information, and the Parent provided the requested information on January 6, 2021. OSPI forwarded the information to the District that same day.

On January 6, 2021, OSPI received additional information from the District. OSPI forwarded the information to the Parent on January 7, 2021.

On January 8, 2021, OSPI received additional information from the Parent. OSPI forwarded the information to the District on January 8, 2021.

On January 8, 2021, OSPI received additional information from the District. OSPI forwarded the information to the Parent on January 8, 2021.

On January 11, 2021, OSPI received additional information from the Parent. OSPI forwarded the information to the District on January 13, 2021.

On January 11, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on January 11, 2021. OSPI forwarded the information to the Parent on January 13, 2021.

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

SCOPE OF INVESTIGATION

The time period under investigation begins on November 16, 2019, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to November 16, 2019 is mentioned for informative, background purposes only.

ISSUES

1. Did the District follow proper procedures for responding to the Parent's spring 2020 request that the Student be provided with extended school year (ESY) services during the summer of 2020?¹
2. In determining the Student's placement for the 2020-2021 school year, did the District follow proper procedures for determining the Student's least restrictive environment, in accordance with WAC 392-172A-02050?

¹ During the course of this investigation, the Parent provided OSPI with additional allegations regarding extended school year (ESY) services for the Student that occurred before the time period under investigation—time period beginning November 16, 2019. Specifically, the Parent alleged: during a March 2019 parent-teacher conference, the special education teacher said something similar to, "It has been...a tough budget year so I would not expect much [in terms of ESY for Student in summer 2019]." According to the Parent, during the March 2019 IEP meeting, the Parent asked that the Student be evaluated for dyslexia by a reading specialist. In its response, the District stated it "responded [to the Parent's concerns on this matter] by having its reading specialist and special education teacher perform specific assessments and tests [which were subsequently] shared with the Parents and incorporated into the District's reevaluation [of the Student]." The District further stated: any comment the special education teacher made at the March 2019 parent-teacher conference in regards to budget constraints concerned only "general summer school offerings [and was] not at all [related to] to dyslexia or ESY services." OSPI notes that these allegations are included for context, but the veracity of these allegations was not investigated during the course of this investigation, as they occurred outside the time period under investigation. Furthermore, OSPI will not rely on these allegations in making substantive determinations on the issues investigated as part of the instant complaint.

3. Has the District properly implemented the Student's individualized education program (IEP) during the 2020-2021 school year?

LEGAL STANDARDS

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's individualized education program (IEP), and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a free appropriate public education (FAPE) to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

IEP Team Must Make Informed Decisions: An IEP team must make decisions based on sufficient, relevant data on the student. *See* WAC 392-172A-03020; *see also* WAC 392-172A-03110(1)(a)-(d), -(3); WAC 392-172A-03090(k)(i); OSEP Memorandum 00-20 (July 17, 2000); *Letter to Ash*, 23 IDELR 647 (OSEP 1994).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has the ultimate responsibility to ensure an IEP includes the services that a student needs in order to receive a FAPE. It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 48, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9) (emphasis added); *see also* Ms. S. ex rel. G. v. Vashon Island Sch. Dist., 337 F.3d 1115, 1131 (9th Cir. 2003); *Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education

it considers appropriate, even if the educational program is different from a program sought by the parents.)

Prior Written Notice: Prior written notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. IDEA, 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Least Restrictive Environment (LRE): School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A school district must ensure it provides all services in a student's IEP, consistent with the student's

needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. 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).

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

2019-2020 School Year

1. During the 2019-2020 school year, the Student attended a District elementary school, was in the fourth grade, and was eligible for special education services under the category autism.
2. The District's 2019-2020 school year began on August 28, 2019.

At the start of the 2019-2020 school year, the Student's May 2019 individualized education program (IEP) was in effect. The May 2019 IEP included the following annual goals:

- **Articulation 1:** By 05/08/2020, when given articulation therapy materials and (speech language pathologist) SLP instruction, Student will produce the /s/ phoneme at the word level improving articulation of /s/ from 20% accuracy to 80% accuracy over 5 consecutive trials as measured by speech language pathology therapy data.
- **Articulation 2:** By 05/08/2020, when given articulation therapy materials and SLP instruction, Student will produce the /r/ and vocalic /r/ sounds at the word level improving articulation from 30% accuracy to 80% accuracy over 5 consecutive trials as measured by speech language pathology therapy data.
- **Expressive Language:** By 05/08/2020, when given speech language pathology therapy materials and SLP instruction, Student will speak and write using sentences with appropriate syntax during therapy improving expressive language from less than 20% accuracy to 80% accuracy over 5 consecutive trials as measured by SLP therapy data.
- **Speech and Language Therapy:** By 05/08/2020, when given the opportunity to hear high-frequency CVC words in various structured activities, Student will identify the initial, medial, and final phonemes improving phonemic awareness from less than 20% accuracy to 80% accuracy over 5 consecutive trials, as measured by speech language therapy data.
- **Fine Motor:** By 05/08/2020, when given a writing prompt, Student will produce a 7-9 word sentence improving visual motor skills from producing a 7-9 word sentence with >% 80 correct letter formation and alignment in 3/5 trials to producing a 7-9 word sentence with correct letter formation and alignment with 80% or greater accuracy in 4/5 consecutive trials as measured by occupational therapy data.
- **Adaptive 1:** By 05/08/2020, when given a visual schedule Student will increase independent transitions and task initiation improving executive functioning skills from requiring >90 seconds and visual and verbal cues to transition between tasks to independently transitioning between 3 school-related tasks (e.g. handwriting, visual, fine motor), initiating the next task within 15 seconds in 4/5 trials as measured by occupational therapy data.
- **Adaptive 2:** By 05/08/2020, when given visual closure activities Student will correctly identify shapes or pictures from occupational therapy educational materials improving visual perceptual skills from correctly identifying 5/18 shapes or pictures from a variety of occupational therapy educational materials to correctly identifying 12/18 shapes or pictures from a variety of occupational therapy educational materials in 4/5 trials as measured by occupational therapy data.
- **Reading – Basic Skills:** By 05/08/2020, when given Dolch sight words pre-primer through third grade, Student will read the words improving reading accuracy from 94/220 words to 220/220 words in 4/5 trials as measured by teacher observation.

- **Math Calculation:** By 05/08/2020, when given addition problems with regrouping to the 100's place, Student will add with regrouping improving his accuracy from 0% to 80% in 4/5 trials as measured by student work samples.
- **Written Expression:** By 05/08/2020, when given writing a prompt, Student will write 5 sentences about the prompt improving writing sentences to a prompt from 2 sentences to 5 sentences in 4/5 trials as measured by student writing samples.
- **Reading Comprehension:** By 05/08/2020, when given text written at the 1st grade level Student will read the text and answer multiple choice questions improving reading comprehension on multiple choice questions from 20% accuracy to 80% accuracy in 4/5 trials as measured by student work samples.²

The Student's May 2019 IEP stated the Student would spend 59.25% of his weekly time in a *general education setting*.

3. The District's response included a progress report from late October 2019, that related to the goals in the Student's May 2019 IEP. That progress report stated, in part:
 - **Articulation 1:** Sufficient progress.
 - **Articulation 2:** Sufficient progress.
 - **Expressive Language:** Sufficient progress.
 - **Speech and Language Therapy:** Sufficient progress.
 - **Fine Motor:** Sufficient progress.
 - **Adaptive 1:** Mastered.
 - **Adaptive 2:** Sufficient progress.
 - **Reading – Basic Skills:** Sufficient progress.
 - **Math Calculation:** Emerging skill.
 - **Written Expression:** Sufficient progress.
 - **Reading Comprehension:** Sufficient progress.
4. The District was on break from December 23, 2019 through January 2, 2020.
5. According to the Parent, in the spring of 2020:
 - The Parent provided the Student with a private tutor. The private tutor met with the Student 1 time a week for 2 hours. The private tutor worked on reading, writing, and math with the Student.
 - The Parent also provided the Student with a private therapist. The therapist met with the Student 1 time every 2 weeks, for 1 hour. The therapist worked on "social and emotional growth, behaviors, and educational strategies" with the Student.
6. The District's response included a progress report from late January 2020 and early February 2020, that related to the goals in the Student's May 2019 IEP. That progress report stated, in part:
 - **Articulation 1:** Sufficient progress.
 - **Articulation 2:** Insufficient progress.
 - **Expressive Language:** Sufficient progress.
 - **Speech and Language Therapy:** Sufficient progress.

² By the end of the 2018-2019 school year, the Student had made the following progress on the annual goals included in the May 2019 IEP: "not been provided instruction."

- **Fine Motor:** Sufficient progress.
 - **Adaptive 1:** Mastered.
 - **Adaptive 2:** Sufficient progress.
 - **Reading – Basic Skills:** Sufficient progress.
 - **Math Calculation:** Emerging skill.
 - **Written Expression:** Sufficient progress.
 - **Reading Comprehension:** Sufficient progress.
7. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis.
 8. On March 23, 2020, OSPI issued guidance, instructing districts that while school facilities are closed and not providing traditional in-person instruction, education must continue. OSPI's guidance outlined the expectation that "continuous learning" would begin for all students by Monday, March 30, 2020.
 9. On March 30, 2020, continuous learning began in the District.
 10. The District's response included a progress report from late March 2020, that related to the goals in the Student's May 2019 IEP. That progress report stated, in part:
 - **Articulation 1:** Insufficient progress.
 - **Articulation 2:** Insufficient progress.
 - **Expressive Language:** Insufficient progress.
 - **Speech and Language Therapy:** Emerging skill.
 - **Fine Motor:** Sufficient progress.
 - **Adaptive 1:** Mastered.
 - **Adaptive 2:** Sufficient progress.
 - **Reading – Basic Skills:** Sufficient progress.
 - **Math Calculation:** Emerging skill.
 - **Written Expression:** Sufficient progress.
 - **Reading Comprehension:** Sufficient progress.
 11. The District was on spring break from April 6 through 10, 2020.
 12. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
 13. The District's response included a progress report, dated May 5, 2020, that related to some of the goals in the Student's May 2019 IEP. That progress report stated, in part:
 - **Reading – Basic Skills:** Sufficient progress.
 - **Math Calculation:** Mastered.
 - **Written Expression:** Mastered.
 - **Reading Comprehension:** Sufficient progress.
 14. On May 5, 2020, the Student's IEP team developed a new annual IEP for the Student.

15. According to the Parent, at the Student's May 2020 IEP meeting:

[Concerning Extended School Year (ESY) Services]

The special education director stated regression from a student's current academic progress is the only reason for a school to consider a student eligible for extended school year (ESY) services...[but Parent] believes, [in Student's case], ESY services [for summer 2020 were] denied primarily based on the financial impact to District. [I have this belief] based on the special education teacher's original statement [during the Student's May 2019 IEP meeting].

[The special education director stated] no District student [with an IEP] qualifies for ESY services. Additionally...significant regression has not been defined for us.

Parent's request for ESY services was, and has been, for reading and math. Reading has been our primary concern because you need to be able to read to do or be success[ful] in all areas. Math we believe to be equally essential as an educational base.

[Concerning Placement & Parent's Input on the Same]

[Additionally], the District's statement about Student's placement being discussed during the [May 2020] IEP meeting is not an accurate representation...We [were] allowed to attend, but not allowed any input.

16. According to the District, at the Student's May 5, 2020 IEP meeting:

[Concerning Extended School Year (ESY) Services]

The Student's entitlement to extended school year (ESY) services [for the summer of 2020] was discussed during the Student's IEP meeting held on May 5, 2020. [As indicated] at the bottom of page 14 of [the May 2020] IEP, ESY services [were] marked 'no'. The Student did not qualify for ESY services due to the fact that he was making slow, but steady progress on his IEP goals and the Student had not exhibited significant regression or a lack of the ability to recoup lost skills within a reasonable amount of time. The Parents allege the District...considers regression as [the only] standard for determining a student's eligibility for ESY services. This is not true. District special education staff are aware of the different standards for ESY services, but certainly regression/recoupment is a significant factor in assessing a need for ESY services. I have included data on the Student's goals that shows limited regression of skills over the summer.

[Concerning Placement & Parent's Input on the Same]

[Additionally], the Student's placement was discussed during the IEP meeting on May 5, 2020, which [created] the Student's IEP for the 2020-21 school year. Student's least restrictive environment placement, including the amount of time in general education, was discussed and is reflected on the IEP at pages 13 and 14.

The Parents allege that they were allowed to attend [the IEP meeting] 'but not allowed to any input'...This is a total falsehood. Both the Parents...Parents' PAVE advocate...the Student's private therapist attended the IEP meeting and were fully allowed to participate. I have attached IEP meeting notes which reflect all of these individuals were allowed to ask questions and when they did so school staff did their best to respond. For example, Parents were specifically asked to provide feedback on the Student's goals and near the end [of the meeting the Parents] stated they both had no questions. I have also included an email from the parents dated May 6, 2020 in which the Parents thank the district's IEP team for a

'mostly productive meeting.' It is hard to imagine that the Parents would consider this meeting largely productive if they were not allowed to participate or provide any input.

17. The Student's May 5, 2020 IEP included the following annual goals:

- **Reading – Basic Skills:** When given text written at the second grade level Student will read with fluency improving from 73 words per minute with 2 errors to 100 words per minute with no more than 2 errors in 4/5 trials.
- **Reading – Comprehension:** When given text written at the second grade level Student will read text and answer multiple choice questions improving reading comprehension from 0% accuracy to 80% accuracy in 4/5 trials.
- **Math:** When given double digit subtraction problems with regrouping Student will solve the subtractions problems improving his accuracy from 0% to 80% in 4/5 trials.
- **Writing:** When given a narrative writing prompt Student will write a narrative about a single event using at least two details and sequence words (first, then, last) improving narrative writing from 0/10 opportunities to 8/10 opportunities in 4/5 trials.
- **Articulation 1:** When given articulation therapy materials and SLP instruction, Student will produce the /s/ phoneme in all positions at the sentence level improving articulation and overall intelligibility from 45% to 80% accuracy over 5 consecutive trials.
- **Articulation 2:** When given articulation therapy materials and SLP instruction, Student will produce the /r/ and vocalic /r/ sounds in all positions at the sentence level improving articulation and overall intelligibility from 30% to 80% accuracy over 5 consecutive trials.
- **Expressive Language:** When given SLP therapy materials and SLP instruction, Student will speak and write using sentences with appropriate syntax during therapy improving expressive language from less than 20% to 80% accuracy over 5 consecutive trials.
- **Fine Motor:** When given a writing prompt, Student will generate a 7-9 word sentence with correct letter formation, letter size, and letter alignment improving visual motor integration skills from generating a 7-9 word sentence with less than 80% fair letter formation and alignment to generating a 7-9 word sentence with 80% or greater correct letter formation, letter size, and letter alignment in 5/5 consecutive trials.
- **Adaptive 1:** When given a drawing prompt, Student will complete mirror image drawings, improving visual perceptual skills from accurately drawing 5/15 mirror images to accurately drawing 15/15 mirror image drawings with fair precision in 4/5 trials.
- **Adaptive 2:** When given a visual sequence strip and free work holders, student will independently complete three school-based activities with in the classroom, improving independent task completion, independently completing 3/3 tasks in a 30 minute period in a 1:1 setting to independently completing 3/3 tasks in a 30 minute period within a classroom setting with 2 or fewer cues to remain on task in 4/5 consecutive trials.

Progress toward the annual goals was to be measured via written progress reports each quarter.

The Student's May 2020 IEP additionally provided the Student with the following accommodations: extra time on tests and quizzes; extra time on complete assignments; participating at Basic (L2)³; class materials read orally; and, shortened assignments.

³ According to the District, the accommodation of 'participating at Basic (L2)' related to "state testing but [it] is no longer an option at the elementary [school] level."

The Student's May 2020 IEP provided the Student with the following specially designed instruction in a special education setting:

- **Math Calculation:** 45 minutes 5 times a week (to be provided by special education staff)
- **Reading – Basic Skills:** 30 minutes 5 times a week (to be provided by special education staff)
- **Reading Comprehension:** 15 minutes 5 times a week (to be provided by special education staff)
- **Reading Comprehension:** 45 minutes 1 time a week (to be provided by special education staff)
- **Written Expression:** 30 minutes 5 times a week (to be provided by special education staff)
- **Fine Motor:** 15 minutes 1 time a week (to be provided by an occupational therapist (OT))
- **Adaptive:** 15 minutes 1 time a week (to be provided by special education staff)
- **Articulation:** 80 minutes 1 time a month (to be provided by an SLP)
- **Expressive Language:** 40 minutes 1 time a month (to be provided by an SLP)
- **Speech and Language Therapy:** 40 minutes 1 time a month (to be provided by an SLP)

According to the Student's May 2020 IEP, none of the foregoing specially designed instruction was to be provided concurrently.

The Student's IEP indicated the Student would spend 61.66% of his time in a *general education setting* (715 minutes per week out of a total of 1,865 minutes per week).

As concerns placement and the Student's least restrictive environment, the May 2020 IEP read, in part:

Based on Student's recent re-evaluation results, Student requires specially designed instruction in the special education setting for reading, math, written expression, fine motor, adaptive, articulation, speech and language, and expressive language. He will participate in general education for all other classes.

The May 2020 IEP stated the Student requires regular transportation. And, the "Special Education and Related Services" portion of the May 2020 IEP read, in part: "Extended School Year: No."

18. The District's response included meeting notes from the May 5, 2020 IEP meeting. These notes show, in part:

- The following individuals participated in the May 5, 2020 IEP meeting, which took place via Google Meet: Parents; principal; Student's private counselor; Student's PAVE advocate; special education teacher; general education teacher; OT; SLP; special education director; and school psychologist intern.
- The PAVE advocate discussed the Student's goals and manner and timing in which to report progress on the Student's goals.
- The Student's private therapist requested a "goal about slowing down speech to help with pronunciation." But, a couple bullet points below this, the following text appeared: "Proposing 4 goals already – challenging to add a 5th goal (watering down the other goals)."
- The Mom "stated Parents don't have concerns or input on the [occupational therapy] goals."
- The PAVE advocate, private therapist, and Mom all discussed Student's difficulty engaging in certain conversations, and why the Student might have this difficulty.
- Towards the end of the meeting, the following was discussed: the possibility of including a third party in future meetings; the Dad's frustration with what he perceived to be the District's failure

to work at maintaining a productive relationship with the Parents; and, the private therapist's role in the Student's IEP team.

The May 5, 2020 IEP meeting notes also read, in part:

PAVE representative: 'Are you going to as a district going to be trying to plan any sort of summer engagement. I know it wouldn't be ESY, because it's really not. Is there going to be any plan to keep these kids on track for fall, seeing that their education is so impacted by not being in person etc. That's not any fault of your district, but I'm saying just in general is there a plan for the summer?'

Special education director: 'Not at this time.' Explains taking guidance from OSPI on educational programs as well as Federal guidelines. Having to abide by the Governor's shutdown. It's day-to-day on these decisions. Also watching the impact of the pandemic on the economy and hearing the projections of the impact to the state and budgets. That's why we are having to super communicate and consult with our parents on each individual student.

...

Parents: Stated they understand there is a lot of unknowns, agreed to a later meeting in the middle or end of May. Mom stated they want something similar to the previous summer (tutoring with the special education paraeducator).⁴

19. On May 6, 2020, the Parents emailed several members of the Student's IEP team. That email read, in part:

[We] would like to thank the members of the District team for a mostly productive meeting that regrettably ended poorly. We want to make it clear that our frustration...at the end [of the meeting] has nothing to do with your performance. We believe that over [the] last year we have found more common ground. Our frustration is with the leadership.

In the May 6, 2020 email, the Parents also expressed being open to utilizing a neutral, third-party in future conversations, and committed "to having...calm and rational conversation" in the future.

20. The District's response included a progress report, dated June 2020, which relates to the goals in the Student's May 2020 IEP. It included the following information:

- **Reading – Basic Skills:** Emerging skill.
- **Reading – Comprehension:** Not been provided instruction on this goal – Student finished Read Well lesson 38 the end of first grade.
- **Math:** Emerging skill – Student has been working on subtraction facts.
- **Writing:** Not been provided instruction on this goal.
- **Articulation 1:** Sufficient progress being made to achieve annual goal within duration of IEP – Student has attended speech and language via teletherapy. He works hard and attempts all that is asked of him. Accurate data on his success is not available at this time due to teletherapy constraints.

⁴ According to the District, the tutoring assistance the Student received from the special education paraeducator in the summer of 2019 "was not ESY services or summer school...Student participated in [the] tutoring [with the special education paraeducator] two hours per day" 4 days in June 2019 and 6 days in August 2019.

- **Articulation 2:** Sufficient progress being made to achieve annual goal within duration of IEP – Accurate data on his success is not available at this time due to teletherapy constraints
- **Expressive Language:** Sufficient progress being made to achieve annual goal within duration of IEP – Student has attended speech and language via teletherapy. He works hard and attempts all that is asked of him. Accurate data on his success is not available at this time due to teletherapy constraints.
- **Fine Motor:** Emerging skill – Due to the COVID-19 school closure, in-person OT services have been prohibited. Materials and instruction have been sent home for practice with this skill. Instruction has just begun due to [a] new IEP – no progress reporting to report at this time.
- **Adaptive 1:** Emerging skill – Due to the COVID-19 school closure, in-person OT services have been prohibited. Materials and instruction have been sent home for practice with this skill. Instruction has just begun due to [a] new IEP – no progress reporting to report at this time.
- **Adaptive 2:** Not been provided instruction on this goal – Due to COVID-19 school closure, Student is unable to practice this skill in a group setting. Student’s mother is working to maintain his independence in task completion and initiation using a visual schedule and 3 work folders in a 1:1 setting which was mastered earlier this year.
- **Speech and Language Therapy:** Sufficient progress being made to achieve annual goal within duration of IEP - Student has attended speech and language via teletherapy. He works hard and attempts all that is asked of him. Accurate data on his success is not available at this time due to teletherapy constraints.

21. On June 8, 2020, the Parent emailed the principal, stating, in part:

At Student’s IEP meeting last month there was some discussion about having another meeting prior to the end of the year. From our perspective the only outstanding issue that had not been answered was what services Student would receive over the summer? Our hope would be for something similar to what he received last summer with paraeducator 1...If the answer is no services will be provided, we would also like an explanation of how a student like Student is not going to regress over the course of the summer after receiving modified education for the past few months due to COVID-19 restrictions?

On June 12, 2020, the principal responded, stating, in part:

At this time we do not have any staff that are available to work this summer. We do have a 4th grade teacher that will be tutoring. If you are interested in her services, I can get you her contact information. I have attached a PDF with information about local programs that you may be interested in. The first flyer is for the [local] Literacy Center which is closed this summer due to COVID-19.

Student has shown the ability to recover his skills in a reasonable amount of time so the Team is not concerned about regression at this time. He completed the Grade One level of Read Well with paraeducator 1 during COVID-19 and has continued to progress with his articulation with the SLP. I am also attaching summer practice activities for the /r/ and /s/ if you would like to use them.

22. June 10, 2020 was the last day of the 2019-2020 school year for the District.

2020-2021 School Year

23. During the 2020-2021 school year, the Student attended a District elementary school, was in the fifth grade, and continued to be eligible for special education services under the category of autism. The Student's May 2020 IEP was in effect at the start of the 2020-2021 school year.

24. The District's first day of school for the 2020-2021 school year was September 2, 2020.

25. According to the Parent, in the fall of 2020:

- The Parent provided the Student with a private tutor. The private tutor met with the Student 1 time a week for 1.5 hours (in a remote setting). The private tutor worked on reading, writing, and math with the Student.
- The Parent also continued to provide the Student with a private therapist. The therapist met with the Student 1 time every 2 weeks, for 1 hour. The therapist worked on "social and emotional growth, behaviors, and educational strategies" with the Student.

26. According to the District:

It is true that the Student's [May 2020] IEP...does provide for regular transportation. It is also true that at the beginning of the school year and for some of the days during the week thereafter, the Student was riding to and from school within his special education cohort on a school bus transporting only special education students attending the Student's designed instruction class. However, the District does not believe that this should be viewed as a violation of the IEP due to the unique circumstances of dealing with the COVID-19 pandemic. At the beginning of the school year the Student's regular education fifth grade class was not meeting in-person, and thus there was no regular education transportation for his general education classmates. However, the Student's special education, designed instruction classroom was meeting two days a week. The Student therefore was transported along with his special education cohort to and from school these two days a week. There was a strong desire, in accordance with recommendations from the local health district, to keep the Student's cohort together and not cross-contaminate by having students in other classes co-mingle.

27. The District's response included a 'Class Dojo Communication' document. This document showed: on several occasions, from early September through early October 2020, the special education teacher communicated with the Parent regarding scheduling and how to access certain remote classes.

The District's response also included a 'Communication Daily Notebook.' Both the Parent and District staff wrote updates on the Student in the 'Communication Daily Notebook.' These entries related, in part, to the following: scheduling; homework; updates on the Student's performance; and, information on how to access various remote services. The 'Communication Daily Notebook' contains approximately 41 dated entries, and these dated entries span the entirety of the fall 2020 semester.

28. An email thread, dated September 9-10, 2020, between the Parent and the general education teacher shows that, on or about September 10, 2020, the Student was provided with certain educational materials, including a "student planner and dry erase board."

29. According to the District, the following information relates to the Student's schedule from September 9 through October 2, 2020:

- Student attended school in-person on Tuesdays and Thursdays, with a cohort of students with IEPs.
- Student attended school remotely on Mondays, Wednesdays, and Fridays.
- The Student's cohort was "supervised by the special education teacher [and comprised of] students with [disabilities]. [Two experienced paraprofessionals worked in the special education classroom and] they are supervised and observed by the special education teacher and the special education director. Within the specially designed instruction classroom, the special education teacher and the [two] paraeducators work collaboratively as well as independently at kidney tables with academic groups and individual academic sessions."
- Throughout the course of the fall the District also utilized the following: a communication notebook; a "blue homework notebook"; a "blue folder" that included various school assignments; and a "blue book bag" that included various school assignments.

The District stated the Student's Tuesday and Thursday schedule (in-person) from September 9 through October 2, 2020 was as follows:

- **8:30 – 8:45 am:** Arrival.
- **9:00 – 9:30 am:** Student accessed—virtually—a "morning meeting" with the general education class.
- **9:30 – 10:00 am:** Student engaged in "independent seat work [that related to] reading, math, [and] writing."
- **10:00 – 11:00 am:** Student received "direct" specially designed instruction, in the following areas, from the following individuals:
 - **Reading – Basic Skills** (paraeducator 1);
 - **Reading - Comprehension** (special education teacher and paraeducator 1); and,
 - **Writing** (special education teacher).
- **11:00 – 11:45 am:** Lunch.
- **11:45 am – 12:15 pm:** Recess.⁵
- **12:15 – 12:30 pm:** The entire cohort received "math calculation" instruction from the special education teacher.
- **12:30 – 1:30 pm:** Student received "direct" specially designed instruction, in the following areas, and from the following individuals: **Math** (special education teacher and paraeducator 1).
- **1:30 – 2:30 pm:**
 - Tuesdays: speech and language therapy (SLP).
 - Thursdays: **fine motor** (OT) and physical education (special education teacher 1)
- **2:30 pm:** End of School Day

The District stated the Student's Monday, Wednesday, and Friday schedule (remote) from September 9 through October 2, 2020 was as follows:

- **8:20 – 8:50 am:** Student received "direct" specially designed instruction, in the following areas, and from the following individuals: **Math** (special education teacher and paraeducator 1).
- **9:00 – 9:30 am:** A "morning meeting" with the general education class.

⁵ During the course of this investigation, the District confirmed that recess took place within the context of the Student's cohort—in other words, it took place in *a special education setting*.

- **9:30 – 10:15 am:** Student had a number of “options” on what to do during this time: “Continue[d] access to the general education class, homework...Amplify assignments, MobyMax...YouTube instructional videos, ‘blue bag materials,’ Headsprout, occupational therapy.”
- **10:15 – 10:30 am:** “Virtual check-in with special education teacher to set goals for the day and to review the assignments for the day in the Blue Notebook. Guidance toward **adaptive goals 1 and 2, reading [goals], math, [and] writing.**”
- **10:30 am – 2:00 pm:** Student had a number of “options” on what to do during this time.
- **2:00 – 2:30 pm:** Student received “direct” specially designed instruction, in the following areas, and from the following individuals:
 - **Reading – Basic Skills** (special education teacher and paraeducator 1);
 - **Reading – Comprehension** (special education teacher and paraeducator 1); and,
 - **Writing** (special education teacher).

30. On October 1, 2020, the Parent emailed the principal, stating, in part: “We are excited to hear Student will be able to attend school 5 days a week starting Monday...What will Student’s day look like that includes regular education?”

31. According to the Parent, on October 2, 2020:

Parent requested Student be able to ride the regular education bus on the days his sisters ride the bus [but] this request was immediately denied by the special education director. We sent a follow-up email to the principal asking [that] our children [all be allowed] to ride the same [general education] bus.⁶

32. According to the District, on Monday, October 5, 2020, “fifth grade students began attending in-person school one day a week alternating days.” According to the District:

Once the Student’s fifth grade class...began attending school, which started one day a week [on October 5, 2020], and then moved to two days a week [on November 12, 2020], the Student was transported in a general education bus, as per the Parents’ request...The District has been communicating with the Parents regarding [the various transportation arrangements and] the District’s desire to try and avoid cross-contamination, and the District [thought] the Parents were agreeable to these transportation arrangements.

33. On October 5, 2020, the principal emailed the Parent, stating, in part:

I had the chance to look into [your concerns regarding transportation] and [for the start of the school year the District] scheduled all students from the special education cohort on their own bus to keep the integrity of the cohort. If you...would like to have Student ride with his sisters [on the general education bus now that general education classes have resumed meeting in-person], that would work also.

34. According to the Parent:

- On October 5, 2020, the Parent dropped the Student off herself, and at an earlier-than-normal time.
- On October 5, 2020, the Student again rode specialized transportation bus home.

⁶ The Parent did provide OSPI with an October 4, 2020 email from the Parent to the principal, wherein the Parent expressed frustration the Student was having to ride specialized transportation bus.

- But starting October 6, 2020, Student was transported 2 times a week on the specialized transportation bus and 3 times a week on a general education bus.

35. According to the District, from October 5 through 16, 2020, the Student attended school “in-person 5 days a week (full-time) with his cohort of...students that [each] received services within the [specially] designed instruction classroom.”

According to the District, for this time period, the following portion of the Student’s day was the same Monday – Friday:

- **8:30 – 8:45 am:** On bus.
- **9:00 – 9:30 am:** “Morning meeting with general education class – in-person in the general education classroom”
- **9:30 – 10:00 am:** “Independent seat work and online work [in] reading, math, [and] writing.”
- **10:00 – 11:00 am:** Student received “direct” specially designed instruction, in the following areas, and from the following individuals:
 - **Reading – Basic Skills** (special education teacher and paraeducator 1);
 - **Reading – Comprehension** (special education teacher and paraeducator 1); and,
 - **Writing** (special education teacher).
- **11:00 – 11:45 am:** Lunch.
- **11:45 am – 12:15 pm:** Recess.
- **12:15 – 12:30 pm:** Student received instruction in “math calculation – special education teacher and entire [special education cohort].”
- **12:30 – 1:30 pm:** Student received “direct” specially designed instruction, in the following areas, and from the following individuals: **Math** (special education teacher and paraeducator 1).
- **1:30 – 2:30 pm:** Varied by day.
- **2:30 pm:** “Students are released to home transportation.”

The Student’s schedule for 1:30 to 2:30 pm, though, varied according to the day of the week:

- Monday: “Mind UP Social Emotional Curriculum” (special education teacher; paraeducator 1; paraeducator 2).
- Tuesday: Speech and language therapy (SLP)
- Wednesday: “Whole group instruction – social emotional learning, fine motor, science, social studies, reading comprehension, writing, life skills” (special education teacher 1 and paraeducators 1 & 2).
- Thursday: Physical education (paraeducators 1 & 2; physical education teacher; OT; and, physical therapist (PT)).
- Friday: Cooking (OT; special education teacher 1; and, paraeducators 1 & 2).

36. On October 15, 2020, the transportation director emailed the principal, stating, “So is Student riding with his sisters [on the general education bus] now? [I] haven’t heard the decision.”

Later that day, the principal responded, stating, in part: “Yes. On the days that his sisters are on the [general education] bus, Student will ride with them.”

37. According to the District, beginning October 19, 2020, the Student attended school “in-person 5 days a week (full-time) with his cohort of...students that [each] received services within the [specially] designed instruction classroom.”

According to the District, for this time period, the following portion of the Student's day was the same Monday – Friday:

- **8:30 – 8:45 am:** On bus.
- **9:00 – 10:00 am:** "Morning meeting in-person in the general education classroom and then the general education teacher reviews a lesson in reading and/or math and/or writing."
- **10:00 – 11:00 am:** Student received "direct" specially designed instruction, in the following areas, and from the following individuals:
 - **Reading – Basic Skills** (special education teacher and paraeducator 1);
 - **Reading – Comprehension** (special education teacher and paraeducator 1); and,
 - **Writing** (special education teacher).
- **11:00 – 11:45 am:** Lunch.
- **11:45 am – 12:15 pm:** Recess.
- **12:15 – 12:30 pm:** Student received instruction in "math calculation – special education teacher and entire [special education cohort]."
- **12:30 – 1:30 pm:** Student received "direct" specially designed instruction, in the following areas, and from the following individuals: **Math** (special education teacher and paraeducator 1).
- **1:30 – 2:30 pm:** Varied by day.
- **2:30 pm:** "Students are released to home transportation."

The Student's schedule for 1:30 to 2:30 pm, though, varied according to the day of the week:

- Monday: "Mind UP Social Emotional Curriculum" (special education teacher; paraeducator 1; paraeducator 2).
- Tuesday: Speech (SLP).
- Wednesday: "Whole group instruction [in] social emotional learning, fine motor, science, social studies, reading comprehension, writing, [and] life skills (special education teacher and paraeducators 1 and 2).
- Thursday: "Physical education with [special education] cohort (paraeducators 1 and 2; PE teacher; OT; and PT).
- Friday: Cooking (OT; special education teacher 1; and, paraeducators 1 & 2).

In regard to the Student's participation in general education beginning October 19, 2020, the District stated:

During this "next step" in District's Hybrid schedule, specialists (PE/Music/Library) are beginning to be scheduled. [The general education teacher] has specialists from 10:30-11 M/T and Th/F. Student participates with his 5th grade [general education] class during these times.

...

Parents opted out of Music with a specific teacher and that teacher is the one that is assigned to 5th Grade Music. When there is another teacher teaching Music, Student participates with his 5th grade class. Student participates in Library with his 5th grade general education class.

...

Student eats lunch with his 5th grade class on occasion.

The general education teacher is now beginning to teach some Science or Social Studies and when he does so, Student participates with his 5th grade [general education] class.

...

When there is a party or special occasion, Student participates with his 5th grade general education class.

When there is an art project, Student participates with his 5th grade general education class.

38. The District's response included a progress report, dated November 2020, which relates to the goals in the Student's May 2020 IEP. It includes the following information:

- **Reading – Basic Skills:** Sufficient progress being made to achieve annual goal within duration of IEP – On last check, Student read 89 words per minute with 1 error.
- **Reading – Comprehension:** Sufficient progress being made to achieve annual goal within duration of IEP – Student has an average of 70% on last 2 comprehension checks.
- **Math:** Sufficient progress being made to achieve annual goal within duration of IEP – Student can currently subtract double digit problems with no regrouping and can add double digit problems with re-grouping.
- **Writing:** Sufficient progress being made to achieve annual goal within duration of IEP – Student is writing narratives with one or two details.
- **Articulation 1:** Insufficient progress - Student practices his speech & language goals in person and understands the correct articulatory placement for the production of the /s/ sounds, however, gauging his accuracy at the sentence level and in conversation is a challenge due to mask requirements. While masks are mandated it may be difficult to determine his accuracy at this level, however, I observe him making extra effort to be understood clearly when he's contributing to the conversation. Even though it's difficult to observe and quantify, I still believe we're making progress.
- **Articulation 2:** Insufficient progress - Student practices his speech & language goals in person and understands the correct articulatory placement for the production of the /r/ sounds. Gauging his accuracy at the sentence level and in conversation is a challenge due to mask requirements. While masks are mandated it may be difficult to determine his accuracy at this level, however, I observe him making extra effort to be understood clearly when he's contributing to the conversation. Even though it's difficult to observe and quantify, I still believe we're making progress.
- **Expressive Language:** Mastered - Student has mastered this goal. He is consistently producing spoken and written sentences with appropriate syntax as measured by SLP therapy data.
- **Fine Motor:** Sufficient progress being made to achieve annual goal within duration of IEP – At last objective check, Student wrote a 7 word sentence 18/28 (64%) correct letter formation, 18/28 (64%) correct size, and 23/2 (82%) correct letter alignment.
- **Adaptive 1:** Emerging skill – At his last objective check, Student demonstrated that he is maintaining at the level of initial assessment baseline for this goal. Student can draw 5/15 mirror image pictures.
- **Adaptive 2:** Not been provided instruction on this goal – The District is focusing on Student's other OT goals at this time due to COVID-19 restrictions.
- **Speech and Language Therapy:** Sufficient progress is being made to achieve goal within duration of IEP – Student is currently averaging 90% accuracy with his ability to identify the initial, medial, and final sound in CVC words. When we've surpassed 5 consecutive trials at this accuracy, Student will have mastered this goal.⁷

⁷ OSPI notes: this goal does not explicitly appear in the Student's May 2020 IEP. But the May 2020 IEP does include language suggesting a speech and language therapy goal that was included in the May 2019 IEP

39. The District did not have school on November 11, 2020.
40. According to the District, "on November 12, 2020, fifth grade students began attending in-person school two days a week, again alternating with their cohort to minimize class sizes."
41. On November 15, 2020, OSPI received the Parent's complaint. In relation to the issues investigated by OSPI, the Parent's complaint read, in part:

Issue 2: Least Restrictive Environment

On September 3, 2020, I was informed [for] the first time...Student [would not be] in a regular education classroom. [For 2020-2021], Student is only [with] his regular education classroom approximately 30 minutes per day during a nonacademic time. Student has historically participated in his regular education class. This was the first time Parent had been told Student would not [be] in a regular education classroom.

Issue 3: 2020-2021 IEP Implementation

In September 2020 we were informed Student would not be riding the regular bus as he has for approximately [the past] 4 years...Student's IEP states [Student will be provided with] regular education transportation.

42. According to the District: "Upon receiving the Parent's complaint and [learning of] the Parent's dissatisfaction [with the transportation arrangements], the District [began] transporting the Student every day in a general education bus."
43. According to the District, "in an attempt to address the Parents'...concerns, we agreed to have educational service district (ESD) 101 do an overview and audit of their son's services and special education file." The District's response included a report from ESD 101, dated November 25, 2020. It read, in part⁸:

Student's May 8, 2020 IEP was reviewed. All components identified in WAC 392-172A-03090 were addressed. The IEP goals aligned with the areas of specially designed instruction as identified in the evaluation report. Services, duration and frequency were listed as well as Student's least restrictive environment. All goals were measurable and each indicated how progress would be reported to parents.

The Present Levels of Academic Achievement and Functional Performance (PLAAFP) in the area of reading comprehension indicated that Student had mastered the 'wh' comprehension questions. It is my understanding that the 'wh' questions are still included in the goal in order to maintain this level of mastery. The comprehension goal pertains to 'wh' questions as well as inferences, cause/effect, and fact/opinion questions.

will continue. And the May 2019 IEP includes one speech and language therapy goal: "By May 8, 2020, when given the opportunity to hear high-frequency CVC words in various structured activities, Student will identify the initial, medial, and final phonemes improving phonemic awareness from less than 20% accuracy to 80% accuracy over 5 consecutive trials as measured by SLP therapy data."

⁸ The other portion of the ESD report related to the Student's May 2019 reevaluation, which occurred outside the time frame being investigated with this complaint, and which does not directly relate to the issues being investigated as part of this complaint.

Student's articulation goal was measurable; however, the baseline percentage was not included in the PLAAFP. The best practice recommendation would be to include the baseline percentage in the PLAAFP.

At the conclusion of my review, I met with the special education director and shared my conclusions.⁹

44. The District was on break from November 26 through 27, 2020.

45. On December 11, 2020, OSPI received the District's response to the Parent's complaint. The District's response read, in part:

Issue 2: Least Restrictive Environment

The District did follow proper procedures in determining the Student's least restrictive environment for placement in the 2020-21 school year. The Student's placement was discussed during the IEP meeting on May 5, 2020 which was the Student's IEP for the 2020-21 school year. Student's least restrictive environment placement, including the amount of time in general education, was discussed and is reflected on the IEP at pages 13 and 14.

Issue 3: 2020-2021 IEP Implementation

The District has, with obvious modifications based on COVID-19 protocols, been providing Student with the services [in his May 2020 IEP] and addressing the goals [in the May 2020 IEP].

[As of December 11, 2020], Student is attending in-person the fifth grade class one hour a day five days a week. He also goes to PE. Library classes are not being provided in the library, rather the Student accesses that in his designed instruction classroom. The librarian comes to this classroom for library instruction. Music has been offered, but the Parents have opted out of music for this Student. Previously, the Student had been attending general education classes for science and social studies and receiving his reading, writing, and math in the special education room in accordance with the service matrix page of his IEP. However, due to COVID-19 and the limited in-person instruction available to the general education fifth-grade classroom, the fifth-grade teacher is now focusing all of his in-person attention on the core subjects of reading, writing and math. Currently, science and social studies are not being taught. Therefore, the Student is not attending general education classes for science and social studies because, once again, these subjects are not currently being taught in the general education classroom.

46. The District was on break from December 21, 2020 through January 1, 2021.

47. On December 28, 2020, OSPI received the Parent's reply to the District's response to the complaint. In relation to the issues being investigated, the Parent's reply read, in part:

Issue 1: ESY Services for summer 2020

[In rejecting our request for ESY services], the District has not considered the outside resources we are providing to Student and [their] impact on his lack of regression over the summer [of 2020]. We have been providing a tutor and therapy for Student year round with

⁹ These portions of the ESD's report are included herein solely for context. With the instant decision, OSPI has made an independent determination on the matters being investigated, in accordance with WAC 392-172A-05030(6).

additional tutoring time during the summer. The District is aware we are providing tutoring and has never requested [more detailed] information [on this]...[It is my understanding that] school districts need to consider outside resources being provided to a student to [properly] determine [whether that student's] eligibility for ESY services.

Issue 3: 2020-2021 IEP Implementation

The District's statement that 'the Parent's opted out of music for this Student' is a misrepresentation. We requested an alternative to band class for all of our children due to concerns about [the band teacher's conduct] specifically with Student.¹⁰

The District's statement of 'currently, science and social studies are not being taught' is [also] incorrect. Science and social studies have been taught in Student's regular education class a minimum of 14 times between September 15, 2020 and December 8, 2020.¹¹ These classes are listed in Student's google classroom.¹²

Student was not encouraged to attend the general education teacher's class, [in part because we were only] issued a Chrome book after we expressed our frustration.

48. On January 5, 2021, OSPI received additional information from the District. This additional information read, in part:

Issue 3: IEP Implementation

Parents contest and provide Google classroom entries attempting to show that science and social studies were in fact taught in the Student's fifth-grade general education classroom. The Parents' comment is technically correct but misses the point the District was trying to convey. In the District's initial response, we stated that the general education fifth-grade teacher was 'focusing all of his in-person attention on the core subjects of reading, writing, and math. Currently, science and social studies are not being taught.' What the District was trying to convey is that science and social studies were not being taught during the in-person portion of the general education fifth-grade class and thus Student could not attend social studies and science in-person. As reflected in the Parents' Google doc submissions, the fifth-grade teacher was attempting to provide some instruction in science and social studies: however, this was for remote instruction. As you can see from most of the Google classroom entries, the students were directed to "watch the video," confirming this was remote, online instruction. The teacher has just recently began incorporating some science and social studies in-person instruction. When this occurs, Student does attend the 5th grade general education classroom for these lessons.

¹⁰ The Parent's reply included an October 4, 2020 email from the Parent to the principal, stating, "I...request the school provide an alternative class to [band] for Student."

¹¹ According to the Parent: science was taught in the general education class on September 15, 21, 24, October 1, and December 8, 2020. And social studies was taught in the general education class on October 6, 14, 21, 23, November 2, 3, 4, 6, and December 8, 2020.

¹² The Parent's reply did include what appeared to be print outs from a Google application that included the general education teacher's name. While these print outs were not entirely clear, it does appear that, on several occasions throughout the fall of 2020, the general education teacher assigned social studies and science assignments in his class.

District also feels compelled to respond to the Parents' comment that Student is not encouraged to attend Student's general education fifth-grade class. We as a school are baffled by this comment. The general education teacher very much wants Student in the class. Student is attending the general education teacher's fifth-grade class in-person five days a week, whereas all of the general education students are only attending two days a week. We are also baffled by this notion that we did not, or at least did not want to, provide Student with a Chromebook. Student has had a Chromebook as have all the other students.

49. On January 8, 2021, OSPI received additional information from the Parent. This additional information read, in part:

Issue 3: IEP Implementation

Regarding the general education teacher's class and Student being provided a Chromebook...When we arrived at the meet the teacher meeting prior to the fall quarter...no Chromebook, books or planner was ready for Student....Student was only, and reluctantly, provided a Chromebook by the general education teacher after we expressed our dissatisfaction.

50. On January 11, 2021, OSPI received additional information from the District. This additional information read, in part:

Student is on the general education classroom roster in Skyward Student Management, he has a[n] email [address related to accessing the general education classroom], and he has access to his 5th grade classroom Google Classroom material. During the Meet/Greet and Materials meeting, Student and his parents were given the Google Classroom access code as well as educational program passwords.

Student [was provided with a Chromebook on or about] September 3, 2021...He has had consistent access to his Chromebook every day, he carries it to class, and it has his name on a sticker on the back. In the event that a student forgets their Chromebook, the school has extra Chromebooks and the special education teacher's room has an additional cart of Surface Pro's available.

CONCLUSIONS

Issue One: Extended School Year (ESY) Services – The Parent alleged the District did not follow proper procedures for responding to her spring 2020 request that the Student be provided with ESY services during the summer of 2020.

ESY services are services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's individualized education program (IEP), and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a free appropriate public education (FAPE) to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE.

The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the

need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP.

A student's IEP team must decide whether the student requires ESY services and the amount of those services.

Here, during the May 5, 2020 IEP meeting, the Parent made a request that the Student be provided with some type of service over the summer. From the documentation provided to OSPI, though, the exact nature of the request does not appear clear. For example, according to the May 5, 2020 IEP meeting notes, the Parent's PAVE representative requested some type of summer service to account for the schooling disruptions caused by COVID in the spring of 2020—a request that would be more in line with OSPI's current guidance on recovery services.¹³ In fact, the May 5, 2020 IEP meeting notes read, in part: "I know [this request] wouldn't be [characterized] as ESY services, because it's really not, [but] is there going to be any plan to keep these kids on track for [the] fall, seeing that their education [was] so impacted by not being in-person [in the spring]." Then, according to the meeting notes, the Parent requested a meeting occur closer to the end of the school year; and, that the Student receive "something similar to the previous summer, [which was] tutoring with the special education paraeducator." According to the District, the services the special education paraeducator provided the Student with in the summer of 2019 "was not ESY services or summer school."

Ultimately, on May 5, 2020, the IEP team determined the Student did not require ESY services during the summer of 2020 and the IEP read: "Extended School Year: No."

Then, on June 8, 2020, the Parent emailed the principal, stating the issue of summer services was outstanding, and the Parent hoped it would be something similar to what the Student received the summer of 2019. Importantly, the June 8, 2020 request was framed more in terms of ESY services. For example, the Parent's June 8, 2020 email read, in part: "If the answer is [Student will not receive any services over the summer], Parent would like an explanation of how Student will not regress [during this same time period]."

¹³ Recovery services are intended to mitigate the impact of COVID-19 school facility closures and to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services during COVID-19 school closures. While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services during the 2020-2021 school year and recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during school building closures on the student's overall progress and engagement, including progress toward their IEP goals.

On June 12, 2020, the principal responded, stating, in part:

Student has shown the ability to recover his skills in a reasonable amount of time so the Team is not concerned about regression at this time. He completed the Grade One level of Read Well with paraeducator 1 during COVID-19 and has continued to progress with his articulation with the SLP.

Ultimately, during the summer of 2020, the District did not provide the Student with any ESY services.

For the following two reasons, OSPI finds the District followed proper procedures for responding to the Parent's spring 2020 request that the Student be provided with ESY services during the summer of 2020:

First, the decision to not provide the Student with ESY services during the summer of 2020 appears to have been an IEP team decision, and one that was made after ensuring the Parent's full participation. For example, the May 5, 2020 meeting notes and IEP show that the following individuals participated in the IEP meeting: Parents; principal; Student's private counselor; Student's PAVE advocate; special education teacher; general education teacher; occupational therapist; speech language pathologist; special education director; and school psychologist intern. And, from the documentation provided to OSPI during the course of this investigation, it appears the Parent—and the Parent's representatives, meaningfully participated in the May 5, 2020 IEP meeting.¹⁴ Finally, the principal's June 12, 2020 email also stated that the decision to not provide the Student with ESY services during the summer of 2020 had been made by the "team." For the foregoing reasons, OSPI finds this decision to have been made by the IEP team.

Second, the decision to not provide the Student with ESY services during the summer of 2020 was based on relevant, sufficient Student-specific data on the Student's needs resulting from the Student's disability—in particular, progress reporting data from the 2019-2020 school year showed that the Student did not suffer significant regressions in performance following school breaks. For example:

- According to the late October 2019 progress report, soon after school resumed following the summer break, Student was able to make progress on most of the goals in his May 2019 IEP. The

¹⁴ Parents of a child with a disability must be afforded an opportunity to participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum; and, what services the agency will provide to the child and in what setting. Here, for example, the May 5, 2020 meeting notes show, in part: the PAVE advocate discussed the Student's goals—both the substance of the goals and the timing and manner in which progress on those goals should be reported; and, the PAVE advocate, private therapist, and Parent all discussed the Student's difficulty engaging in certain conversations, and why the Student might be exhibiting this challenge. The May 5, 2020 IEP itself reflects some of the Parent's concerns, for example: "Student's Parents would to see Student [experience] a year's growth in reading and math during this IEP year."

Student either “mastered” or made “sufficient progress” in 10 of the 11 annual goals in the May 2019 IEP. (For **math calculation**, the late October 2019 progress report noted: “emerging skill.”)

- According to the late January 2020 progress report, soon after school resumed following winter break, Student was able to make progress on most of the goals in his May 2019 IEP. The Student either “mastered” or made “sufficient progress” in 9 of the 11 annual goals in the May 2019 IEP. (For **math calculation**, the late January 2020 progress report noted, “emerging skill;” and, for **articulation 2**, the late January 2020 progress report noted, “insufficient progress.”)
- According to the early May 2020 progress report, soon after school resumed following spring break, Student either “mastered” or made “sufficient progress” on the following goals: **reading – basic skills; math calculation; written expression; and, reading comprehension.**

Furthermore, in his June 12, 2020 email, the principal noted the Student-specific data that the IEP team relied on in making the determination that the Student did not require ESY services during the summer of 2020.

In sum, the IEP team’s decision to not provide the Student with ESY services during the summer of 2020 was based on relevant, sufficient Student-specific data on the Student’s needs resulting from the Student’s disability.

OSPI acknowledges the Parent does not agree with the substantive decision that was made. However, for the above-stated reasons, OSPI finds that proper procedures were followed. During the course of this investigation, the Parent stated she believed the decision to not provide the Student with ESY services during the summer of 2020 was improperly based primarily on the District’s available finances. However, the facts provided to OSPI during the course of this investigation show this was not the case; again, the facts provided to OSPI during the course of this investigation show the IEP team’s decision was based on relevant, sufficient Student-specific data on the Student’s needs resulting from the Student’s disability, and that proper procedures were followed. In regard to this disagreement, OSPI reminds the District and Parent that the IEP team should work toward consensus, but the district has the ultimate responsibility to ensure an IEP includes the services that a student needs in order to receive a FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district’s proposals or refusals, or both, regarding the student’s educational program and the parents have the right to seek resolution of any disagreements through dispute resolution processes.

Here, after the Parent made her June 8, 2020 request that the Student be provided with ESY services during the summer of 2020, the District did not provide the Parent with a prior written notice. Rather, the principal responded to the Parent’s request via email on June 12, 2020.

Here, the principal’s June 12, 2020 email did include several of the required elements of a prior written notice: a description of the action the District was refusing to take; an explanation of why it was refusing to take the requested action; and, accordingly, some of the bases for its refusal to take the requested action. The principal’s June 12, 2020 email, though, did not include the following two required elements for a proper prior written notice:

- A statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and,

- Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice.

However, the failure to provide a sufficient prior written notice does not render the IEP team's decision regarding ESY improper and OSPI finds no violation related to ESY. OSPI reminds the District that a proper prior written notice must include the foregoing two elements to be compliant under the IDEA.

Issue Two: Least Restrictive Environment – The Parent alleged the District did not follow proper procedures for determining the Student's least restrictive environment (LRE) for the 2020-2021 school year, in accordance with WAC 392-172A-02050.

School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and, 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom.

Here, at the May 5, 2020 IEP meeting, the team determined the Student would spend 61.66% of his time in a *general education setting*. The documentation provided to OSPI during the course of this investigation, though, does not suggest improper procedures were used in making this determination. For example: as detailed above, in Issue 1, a properly-constituted IEP team convened for the May 5, 2020 IEP meeting and the Parent appears to have fully participated; the 61.66% of time in a *general education setting* that was in the May 2020 IEP was similar to the 59.25% of time in a *general education setting* that was in the May 2019 IEP; and, during the course of this investigation, the Parent does not appear to take issue with the least restrictive environment determination that resulted from the May 5, 2020 IEP meeting.

During the 2020-2021 school year, though, the District did not implement this particular portion of the Student's IEP and the Student spent far less than 61.66% of his time in a *general education setting*. For example, during the 2020-2021 school year, the Student's time in a *general education setting* appears to have been largely limited to a half-hour daily check-in with the general education class each morning.

As explained by the District: in a normal, non-COVID-19 school year, the Student would attend social studies, science, recess, and band in a *general education setting*. This year, though:

- Due to the constraints imposed on the District because of COVID, the general education teacher is not providing direct, synchronous instruction in social studies and science in class¹⁵; the general education teacher is devoting all of her direct instruction time to reading, writing, and math.
- In an attempt to limit potential COVID-19 exposure between different cohorts of students, the Student has been attending recess with his cohort—in other words, in a *special education setting*.
- On or about October 4, 2020, the Parent and the District agreed that he would not participate in band class.

In relation to whether a violation of the IDEA has occurred on the basis of the above facts, it is important to note: both the federal Department of Education and Washington State’s Office of Superintendent of Public Instruction (OSPI) have acknowledged the fact that COVID-19 has presented exceptional circumstances that may affect how educational and related services and supports are provided to students with disabilities. During the pandemic, there is not an expectation that IEP services will be delivered exactly as the IEP states at all times, although in the fall of 2020, OSPI has advised districts that they should be striving to provide services in conformity with IEPs and if they cannot, should consider whether an IEP amendment is necessary.

Here, the District had legitimate public health reasons for not implementing the least restrictive environment portion of the Student’s May 2020 IEP. Additionally, the District did regularly communicate with the Parent regarding the Student’s schedule, but the District did not amend the Student’s May 2020 IEP to accurately reflect: the extent to which the Student would be educated in a *general education setting* during the 2020-2021 school year; and, the reason (or reasons) for that determination. This represents a violation of current guidance, and the Student’s IEP team will be required to meet to consider if there is a way, even if seemingly minimal, that the Student can be incorporated in the general education class to a greater extent in the spring of 2021.

Issue Three: 2020-2021 IEP Implementation – The Parent alleged the District did not properly implement the Student’s May 2020 IEP during the 2020-2021 school year, including transportation.

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.

Here, OSPI took a bifurcated approach: separately analyzing (1) whether the Student was provided with the specially designed instruction included in his May 2020 IEP; and, (2) whether the Student was provided with the transportation included in his May 2020 IEP.

¹⁵ The general education teacher has assigned some at-home work in the areas of social studies and science, but she is not actively teaching them in class.

Specially Designed Instruction

In conducting an analysis of whether the Student received the amount and type of specially designed instruction included in his May 2020 IEP, the first step is to figure out how much specially designed instruction the Student should have received in each area during the fall 2020 semester, and compare that figure with what the Student actually received. Here, September 2 through December 18, 2020 represents approximately 14.5 weeks of school.

Math Calculation: According to the Student's May 2020 IEP, the Student was supposed to receive approximately 225 minutes of specially designed instruction in math each week. During the course of the fall 2020 semester, then, the Student should have received approximately 54 hours of specially designed instruction in math calculation.

According to the scheduling documentation, from September 9 through October 2, 2020, the Student received approximately 3.5 hours of specially designed instruction in math each week. This time period represents approximately 3.5 weeks of school. So, during this same time, the Student received approximately 12 hours and 15 minutes of specially designed instruction in math.

According to the scheduling documentation, from October 5 through 16, 2020, the Student received approximately five hours of specially designed instruction in math each week. This time period represents approximately two weeks of school, or approximately 10 hours of math.

According to the scheduling documentation, from October 19 through December 18, 2020, the Student received approximately five hours of specially designed instruction in math each week. This time period represents approximately eight weeks of school. So, during this same time, the Student received approximately 40 hours of specially designed instruction in math.

In total, then, the Student received approximately 62 hours and 15 minutes of specially designed instruction in math during the fall 2020 semester—a figure representing eight hours and fifteen minutes more time than was required by the May 2020 IEP. This finding is further supported by the November 2020 progress report, which stated the Student was making sufficient progress in math to achieve the goal within the duration of the IEP.

Therefore, OSPI finds that the District properly implemented the specially designed instruction in math included in the Student's May 2020 IEP during the fall 2020 semester.

Reading – Basic Skills: According to the Student's May 2020 IEP, the Student was supposed to receive approximately two hours and thirty minutes of specially designed instruction in reading – basic skills each week. During the course of the fall 2020 semester, then, the Student should have received approximately 36 hours and 15 minutes of specially designed instruction in reading – basic skills.

According to the scheduling documentation, from September 9 through October 2, 2020, the Student received approximately 70 minutes of specially designed instruction in reading – basic

skills each week.¹⁶ This time period represents approximately 3.5 weeks of school. So, during this same time, the Student received approximately four hours of specially designed instruction in reading – basic skills.

According to the scheduling documentation, from October 5 through 16, 2020, the Student received approximately 100 minutes of specially designed instruction in reading – basic skills each week. This time period represents approximately two weeks of school. So, during this same time, the Student received approximately three hours and twenty minutes of specially designed instruction in reading – basic skills.

According to the scheduling documentation, from October 19 through December 18, 2020, the Student received approximately 100 minutes of specially designed instruction in reading – basic skills each week. This time period represents approximately eight weeks of school. So, during this same time, the Student received approximately 13 hours and 20 minutes of specially designed instruction in reading – basic skills.

In total, then, the Student received approximately 20 hours and 40 minutes of specially designed instruction in reading – basic skills during the fall 2020 semester—a figure representing approximately 16 hours and 25 minutes less time in reading – basic skills than was required by the May 2020 IEP.

This represents a material failure to implement the May 2020 IEP, and some compensatory education is 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. 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.

Here, despite the fact the Student was not provided with all of the specially designed instruction in reading – basic skills that he was entitled to during the fall 2020 semester, the November 2020 progress report stated the Student was making sufficient progress on his reading – basic skills goal. Specifically, the Student had advanced to “89 words per minute with 1 error” from the May 2020 baseline of “73 words per minute with 2 errors.”

¹⁶ If the Student's schedule showed the Student received specially designed instruction in multiple areas during a stated time period, then, for analytical purposes, OSPI divided that time equally among the various areas of specially designed instruction that were worked on during that time. For example, according to the Student's schedule, from September 9 through October 2, 2020, the Student received specially designed instruction in reading – basic skills, reading comprehension, and writing on Tuesdays and Thursdays from 10:00 through 11:00 am. So, for analytical purposes, OSPI determined, during this time, the Student received 20 minutes of specially designed instruction in reading – basic skills, 20 minutes of specially designed instruction in reading comprehension, and 20 minutes of specially designed instruction in writing.

Therefore, in this instance, an appropriate measure of compensatory education would be 1/6 of the total time missed, or approximately two hours and thirty minutes of specially designed instruction in reading – basic skills.

Reading Comprehension: According to the Student’s May 2020 IEP, the Student was supposed to receive approximately two hours of specially designed instruction in reading comprehension each week. During the course of the fall 2020 semester, then, the Student should have received approximately 29 hours of specially designed instruction in reading comprehension.

According to the scheduling documentation, the Student received the same amount of instruction in reading comprehension as the Student received in reading – basic skills (amounts described above) from September 9 through December 18, 2020. Thus, in total, the Student received approximately 20 hours and 40 minutes of specially designed instruction in reading comprehension during the fall 2020 semester—a figure representing eight hours and twenty minutes less time than was required by the May 2020 IEP.

Here, despite the fact that the Student did not receive all of the specially designed instruction in reading comprehension that he was entitled to during the fall 2020 semester, the November 2020 progress report stated the Student was making sufficient progress on his reading comprehension goal. Specifically, the Student had advanced to answering 70% of multiple choice reading comprehension questions at the second grade level from the May 2020 baseline of 0%.

Therefore, in this instance, an appropriate measure of compensatory education would be 1/6 of the total time missed, or approximately one hour and thirty minutes of specially designed instruction in reading comprehension.

Written Expression: According to the Student’s May 2020 IEP, the Student was supposed to receive approximately two hours and thirty minutes of specially designed instruction in written expression each week. During the course of the fall 2020 semester, then, the Student should have received approximately 36 hours and 15 minutes of specially designed instruction in written expression.

Here, according to the scheduling documentation, the Student received the same amount of instruction in writing as the Student received in reading – basic skills and reading comprehension (amounts described above) from September 9 through December 18, 2020.

In total, then, the Student received approximately 20 hours and 40 minutes of specially designed instruction in written expression during the fall 2020 semester—a figure representing approximately 16 hours and 25 minutes less time in written expression than was required by the May 2020 IEP.

Despite this disparity, the November 2020 progress report stated the Student was making sufficient progress on his written expression goal. Specifically, the November 2020 progress report stated the Student had mastered a part of his May 2020 written expression goal. For example, the May 2020 written expression goal read: “When given a narrative writing prompt Student will write a narrative about a single event using at least two details and sequence words (first, then, last)

improving narrative writing from 0/10 opportunities to 8/10 opportunities in 4/5 trials." And the November 2020 progress report read: "Student is writing narratives with one or two details." Therefore, it appears that by November 2020, the Student had mastered the ability to write a narrative using at least two details. But the Student's ability, as of November 2020, to use "sequence words (first, then, last)", is not clear from the progress report.¹⁷

Therefore, in this instance, an appropriate measure of compensatory education would be 1/6 of the total time missed, or approximately two hours and thirty minutes of specially designed instruction in written expression.

Articulation; Expressive Language; and, Speech and Language Therapy: There were three areas of specially designed instruction that were to be provided by a speech language pathologist (SLP): articulation; expressive language; and, speech and language therapy.

According to the Student's May 2020 IEP, the Student was supposed to receive approximately: 20 minutes a week of specially designed instruction in articulation; 10 minutes a week of specially designed instruction in expressive language; and 10 minutes a week of specially designed instruction in speech and language therapy.

Over the course of the fall 2020 semester, then, the Student should have received an approximate total of: 5five hours of specially designed instruction in articulation; two hours and thirty minutes of specially designed instruction in expressive language; and two hours and thirty of specially designed instruction in speech and language therapy. In total, then, the Student should have spent a total of 10 hours with the speech language pathologist over the course of the fall 2020 semester.

According to the Student's various schedules, from September 9 through the end of the fall 2020 semester, the Student spent one hour each week with the speech language pathologist. In total, then, the Student spent approximately 13 hours and 30 minutes with the speech language pathologist in the fall of 2020—a figure that represents three hours and thirty minutes more than was required by the May 2020 IEP.

Accordingly, OSPI finds the District properly implemented those portions of the Student's May 2020 IEP that were to be provided by the speech language pathologist (articulation, expressive language, and speech and language therapy). Still, OSPI does note the following in terms of the Student's progress in these areas: The November 2020 progress report stated the Student had made sufficient progress on his May 2020 speech and language therapy goal; mastered his May 2020 expressive language goal; and made insufficient progress on the two articulation goals in his May 2020 IEP. Accordingly, OSPI recommends the IEP team consider whether the Student's

¹⁷ 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. OSPI reminds the District that the Student's May 2020 written expression goal contains two components (number of details and use of sequence words), and progress reporting entries should include information on both of these components.

speech and language therapy services need to be amended to empower the Student to make better progress on his articulation goals. Alternatively, articulation goals one and two may themselves need to be amended.

Fine Motor: According to the Student's May 2020 IEP, the Student was supposed to receive 15 minutes a week of specially designed instruction in fine motor. During the course of the fall 2020 semester then, the Student should have received approximately three hours and thirty minutes of specially designed instruction in fine motor.

Here, according to the scheduling documentation, from September 9 through October 2, 2020, the Student received approximately 30 minutes of specially designed instruction in fine motor each week.¹⁸ This time period represents approximately 3.5 weeks of school. So, during this same time, the Student received approximately one hour and thirty minutes of specially designed instruction in fine motor.

According to the scheduling documentation, from October 5 through December 18, 2020, the Student received approximately 30 minutes of specially designed instruction in fine motor each week.¹⁹ This time period represents approximately 10 weeks of school. So, during this same time, the Student received approximately five hours of specially designed instruction in fine motor.

In total, then, the Student received approximately six hours and thirty minutes of specially designed instruction in fine motor over the course of the fall 2020 semester—a figure representing approximately three hours more time in fine motor than was required by the Student's May 2020 IEP.

This conclusion is supported by the November 2020 progress report, which stated the Student was making sufficient progress to accomplish the goal within the duration of the May 2020 IEP. Specifically, the Student had advanced to writing a seven-word sentence with 64% correct letter formation, 64% correct size, and 82% correct letter alignment, from a May 2020 baseline of writing a seven-word sentence "with less than 80% fair letter formation and alignment." Accordingly, OSPI

¹⁸ According to the Student's schedule, on Thursdays, from 1:30 to 2:30 om, the Student received: 1) specially designed instruction in fine motor from the occupational therapist; and, 2) physical education, overseen by the special education teacher. A reasonable estimate of the specially designed instruction in fine motor, then, would be: 30 minutes each week.

¹⁹ According to the Student's schedule, during this time period: a) on Wednesdays, from 1:30 to 2:30 pm, the special education teacher and special education paraeducators provided the cohort with instruction in numerous areas, including fine motor, social emotional learning, social studies, science, reading comprehension, writing, and life skills; b) on Thursdays, from 1:30 to 2:30 pm, the Student had physical education with his special education cohort, and that class was taught by some combination of: OT, PT, special education paraeducators, and physical education teacher; and, c) on Fridays, from 1:30 to 2:30 pm, the Student had a cooking class that was taught by some combination of: OT, special education teacher, and the special education paraeducators. A reasonable determination, then, is that only a portion of the foregoing, hour-long classes was devoted to the Student's specially designed instruction in fine motor—more specifically, 10 minutes. For a half hour total each week.

finds the District properly implemented the fine motor portion of the Student's May 2020 IEP during the fall 2020 semester.

Adaptive: According to the Student's May 2020 IEP, the Student was supposed to receive 15 minutes of specially designed instruction in adaptive each week (to be provided by special education staff). During the course of the fall 2020 semester, then, the Student should have received approximately three hours and thirty minutes of specially designed instruction in adaptive.

Here, the only mention of specially designed instruction in adaptive in the Student's various schedules is as follows:

On Monday, Wednesday, and Friday, from September 9 through October 2, 2020, the special education teacher checked in with the Student from 10:15 to 10:30 am, and occasionally, this check-in related to adaptive. (According to the Student's schedule, reading, math, and writing were also occasionally discussed during this check-in period.)

A reasonable estimate might be then, that five minutes of the Student's morning check-in with the special education teacher were devoted to specially designed instruction in adaptive. So, under this estimate, the Student would have received approximately 15 minutes of specially designed instruction in adaptive each week.

As September 9 through October 2, 2020 represents approximately 3.5 weeks of school, the Student would have received approximately 50 minutes of specially designed instruction in adaptive during the fall 2020 semester. This represents a figure that is two hours and forty minutes less than the total amount of specially designed instruction in adaptive that the Student should have received in the fall of 2020.

OSPI's conclusion that the Student did not receive all of the specially designed instruction in adaptive that he was afforded under the May 2020 IEP during the fall 2020 semester is bolstered by the November 2020 progress report, which states: 1) Student received no instruction related to adaptive 2; and, 2) Student had not advanced beyond his baseline in adaptive 1.

In this instance, the District will be required to provide the Student with the following specially designed instruction in adaptive: 2 hours and 40 minutes.

Transportation

The Parent alleged the District did not properly implement the transportation portion of the Student's May 2020 IEP during the fall 2020 semester. The Student's May 2020 IEP said the Student required regular transportation.

Here, as OSPI understands the facts:

From September 9 through October 2, 2020, the Student was transported in a bus with other students with disabilities two days of the week (during this time period, the Student only attended

school in-person two days of the week). From October 6 through roughly November 15, 2020, the Student was transported two days a week on a bus with other students with disabilities and three days a week on a bus with general education students. And, beginning on or about November 15, 2020, the Student was transported five days a week on a general education bus.

The above facts do show the transportation portion of the Student's May 2020 IEP was not implemented correctly from September 9 through roughly November 15, 2020. However, OSPI determines this does not represent a material failure on the part of the District to implement the Student's May 2020 IEP. COVID-19 has presented exceptional circumstances that may affect how educational and related services and supports are provided to students with disabilities. During the pandemic, there is not an expectation that IEP services will be delivered exactly as the IEP states at all times and districts are required to meet Department of Health safety and health requirements. And, here, the District had a legitimate public health reasons for transporting the Student, occasionally, on the special education bus: the District was attempting to limit contact between different cohorts of students.

Thus, OSPI does not find an IEP implementation failure in relation to this particular aspect of the May 2020 IEP.

CORRECTIVE ACTIONS

By or before **January 29, 2021** and **March 5, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP MEETING

By or before **January 27, 2021**, the Student's IEP team will meet. At the meeting, the IEP team must address: whether there is a way, even if seemingly minimal, that the Student can be incorporated in the general education class to a greater extent in the spring of 2021.

By **January 29, 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; and, v) any other relevant documentation.

COMPENSATORY EDUCATION

By or before **January 29, 2021**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 2 hours 30 minutes of reading skills – basic; 1 hour 30 minutes of reading comprehension; 2 hours 30 minutes of written expression; and, 2 hours 40 minutes of adaptive.

The District will provide OSPI with documentation of the schedule for services by or before **January 29, 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 **March 5, 2021**, including those needing to be rescheduled.*

No later than **March 5, 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 **March 5, 2021**.

DISTRICT SPECIFIC:

None.

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 January, 2021.

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.)