

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-38**

### **PROCEDURAL HISTORY**

On March 10, 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 [REDACTED] School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On March 12, 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 April 14, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on April 15, 2020. OSPI invited the Parent to reply.

On April 29, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District that same day.

On April 30, 2020, OSPI's investigator interviewed one of the Student's special education teachers.

On April 28, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on May 4, 2020. OSPI forwarded that information to the Parent the same day.

On May 5, 2020, OSPI received additional information from the Parent. OSPI forwarded that information to the District the same day.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on March 11, 2019. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUES**

1. Did the District follow proper procedures for responding to the Parent's July 8, 2019 request to access the Student's educational records?
2. During the fall semester of the 2019-2020 school year, did the District implement the following portions of the Student's individualized education program (IEP): specially designed instruction in adaptive and social/emotional?

3. Did the Student's IEP that was in effect from September 2019 through mid-December 2019 accurately reflect the Student's part-time placement at an out-of-District location?
4. During the fall semester of the 2019-2020 school year, did the District provide the Parent with progress reporting as specified in the Student's IEPs?
5. Did the District follow proper IEP development procedures in creating the December 2019 IEP? Specifically:
  - a. Does the December 2019 IEP include all the components required by WAC 392-172A-03090?
  - b. Did the District adequately respond to the Parent's concerns about the contents of the December 2019 IEP?
6. Did the District follow proper IEP development procedures, including ensuring Parent participation, in deciding, as of March 10, 2020, to provide the Student with all of his IEP services at a District high school?

### **LEGAL STANDARDS**

FERPA: The Family Educational Rights and Privacy Act of 1974 (FERPA) protects parents' privacy interests in their children's education records. FERPA gives parents, in part, the right to inspect and review their children's education records. 20 U.S.C. §1232(f) and (g), (1234); 34 CFR §99.60.

Educational Records – Definition by Inclusion: Under the FERPA, "education records" are broadly defined as "those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 USC §1232g(a)(4)(A); 34 CFR §300.99.3; WAC 392-172A-05180(2). These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and email. 34 CFR §99.3.

Education Records – Definition by Exclusion: The term "educational records" does not include records of instructional, supervisory, administrative personnel, and educational personnel ancillary to those persons if those records are in the sole possession of the maker of the records, and are not accessible or revealed to any other individual except a temporary substitute of the record maker. 20 USC §1232g(a)(4). "With regard to parents having access to 'raw data or notes,' FERPA exempts from the definition of education records under 34 CFR §99.3 those records considered to be 'sole possession records.' FERPA's sole possession exception is strictly construed to mean 'memory-jogger' type information. For example, a memory-jogger is information that a school official may use as a reference tool and, thus, is generally maintained by the school official unbeknownst to other individuals." Individuals with Disabilities Act (IDEA), 64 Fed. Reg. 12,641 (March 12, 1999) (comment to 34 CFR §300.562).

FERPA & Emails: Emails only constitute 'educational records' to the extent they are maintained by the district in a central location and in relation to specific students. *Burnett v. San Mateo-Foster City Sch. District*, 118 LRP 27117 (9th Cir. 2018) (unpublished).

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

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, (9<sup>th</sup> 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 (9<sup>th</sup> 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." *In re: Mabton School District*, 2018-SE-0036.

Progress Reports: 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).

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any

individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

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 free appropriate public education (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. IDEA, 64 Fed. Reg. 48, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9); *see also Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003); *Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9<sup>th</sup> 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.)

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR §300.322; WAC 392-172A-03100.

Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP...the Supreme Court and the

9<sup>th</sup> Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110(1).

Placement: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

## **FINDINGS OF FACT**

### **2018-2019 School Year**

1. At the start of the 2018-2019 school year, the Student was eligible for special education services under the category of specific learning disability, was in the tenth grade, and attended a District high school.

2. According to the District:

The Parent filed a request for due process hearing in December 2018. She then made another request for an [independent educational evaluation] IEE at public expense on April 1, 2019, which resulted in the District filing a request for due process hearing to defend its evaluation...Those cases were ultimately dismissed in August 2019 pursuant to a Settlement Agreement.

The 2019 Settlement Agreement provided that the District would fund up to 400 hours of instruction for the Student at Lindamood-Bell Learning Processes (LMB).<sup>1</sup> During negotiations, the District and the Parent disagreed over when the LMB hours would be delivered—the District proposing they should not be delivered at times that would conflict with the Student's regular school schedule at [his District high school], and the Parent insisting on an LMB schedule that would conflict with his [District high school] schedule.

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<sup>1</sup> According to its website, LMB is a private educational provider that utilizes "research-validated programs" to help students with a variety of disabilities. <https://lindamoodbell.com/our-approach>

The District ultimately agreed that the Parent could schedule those hours during the 2019-2020 school year and/or the summer of 2020. The LMB services were to be scheduled for no more than 20 hours per week, in subjects/areas of instruction to be chosen by the Parent. The Parent chose LMB as the entity to deliver the 400 hours of instruction. The District did not place Student at LMB and therefore no IEP was crafted which called for his placement there. [In other words, the District did not amend the Student's latest IEP—dated May 2019, to account for the Student's part-time enrollment in LMB.]

3. On May 17, 2019, the Student's individualized education program (IEP) team developed a new annual IEP for the Student. The Student's May 2019 IEP provided the Student, in part, with the following specially designed instruction in a *special education setting*<sup>2</sup>:
  - **Social/Emotional:** 55 minutes 5 times a week (to be provided by a special education teacher)
  - **Adaptive Skills:** 55 minutes 5 times a week (to be provided by a special education teacher)
  - **Behavioral Instruction:** 55 minutes 5 times a week (to be provided by a special education teacher)

The May 2019 IEP stated the Student's specially designed instruction in social emotional was to be provided concurrently with his specially designed instruction in adaptive skills.

The Student's May 2019 IEP provided the Student with the following related services in a *special education setting*:

- **Occupational therapy:** 30 minutes 3 times a month (to be provided by an occupational therapist (OT))
- **Speech language therapy:** 30 minutes 3 times a month (to be provided by a speech language pathologist (SLP))

The May 2019 IEP included, in part, the following measurable annual goals<sup>3</sup>:

- **Social/Emotional 1:** By May 19, 2020, when given communication opportunities, Student will use his understanding of emotions and actions of others to determine if his response is appropriate, improving pragmatic language skills 40% accuracy baseline (new skill) to 70% accuracy, as measured by speech language pathologist data and teacher observation.
- **Social/Emotional 2:** By May 19, 2020, when given communication opportunities, Student will note tone of voice, local volume, body orientation, facial expressions, sarcasm to determine implied meaning, improving pragmatic language, oral expression, and non-literal language, from 40% accuracy (new skill) to 70% accuracy as measured by speech language pathologist data and teacher observation.

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<sup>2</sup> The May 2019 also provided the Student with specially designed instruction in the areas of: math problem solving; basic reading skills; reading comprehension; written expression; behavioral instruction; and reading fluency. These areas of specially designed instruction, though, are not relevant to the issues being investigated as part of this decision.

<sup>3</sup> The May 2019 IEP also included measurable annual goals in the following areas: written expression; basic reading skills; math problem solving; reading comprehension; and written expression. Because of the August 2019 Settlement Agreement, these measurable annual goals are not relevant to this decision—as per the August 2019 Settlement Agreement, and the Parent's decision as to when the Student would attend LMB in the fall of 2019, the District did not provide the Student with specially designed instruction in these areas.

- **Adaptive Skills 1:** By May 19, 2020, when given a new assignment or task and instruction in the 'get ready, go, done' method, Student will follow the three steps to complete the assignment improving independence in goal-setting and planning from not using the 'get ready, go, done' method to completing 2/3 steps independently as measured by classroom and therapy (OT) over 3 monthly data samples.
- **Adaptive Skills 2:** By May 19, 2020, when given personal information (including, but not limited to: name, address, phone number, birth date, parent contact information, etc.), student will write into a form improving adaptive skills from three items independently to seven items independently as measured by teacher-collected data and student work.
- **Behavioral instruction:** By May 19, 2020, when given classroom assignment Student will complete assignment improving behavior from needing adult proximity and multiple reminders to completing with 2 or less reminders as measured by teacher data.

The May 2019 IEP stated the Student's progress on the foregoing measurable annual goals would be reported on a quarterly basis by providing the Parent with a copy of the goal page.

The May 2019 IEP stated the Student would attend school each week for a total of 1,880 minutes.<sup>4</sup>

4. On July 7, 2019, the Parent emailed the District's special education records office. In her email, the Parent requested the following records<sup>5</sup>:
  - **Record 1:** Student's school photo.
  - **Record 2:** The school photo for another student.
  - **Record 3:** "Copies of any and all notes and emails regarding [an] alleged incident [that took place] on September 19, 2018 by [a certain] female student."
  - **Record 4:** "Any and all notes and emails between staff...regarding [the] allegation that my son was at [this other student's] bus stop at any time during September 2018 through January 2019."
  - **Record 5:** "All emails and notes regarding the restraining order against my son."<sup>6</sup>
  - **Record 6:** "All emails concerning Student from January 2019 [through the end of the 2018-2019] school year."
  - **Record 7:** Notes from the Student's visits to a behavioral interventionist.
  - **Record 8:** The SLP's notes on the Student "for the entire school year."
  - **Record 9:** The occupational therapist's notes on the Student.
  - **Record 10:** "Copy of point sheet that was attempted—[as] noted in Student's IEP."
  - **Record 11:** Reading IEP test results for the 2018-2019 school year.
  - **Record 12:** Writing IEP test results for the 2018-2019 school year.
  - **Record 13:** Math IEP test results for the 2018-2019 school year.
  - **Record 14:** Copy of the case manager's May 2019 notes concerning the Student's "transition questions."

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<sup>4</sup> Essentially, this figure represents that the Student would attend school at the District on a full-time basis each time; 1,880 minutes of instruction each week represents approximately 6.25 hours of instruction Monday through Friday.

<sup>5</sup> The Parent requested these records in relation to "an open due process" request.

<sup>6</sup> According to the District, the date of the referenced restraining order was January 25, 2019.



- **Record 15:** A “statement from each of Student’s teachers regarding how his grades for their classes are computed.”
- **Record 16:** “The curriculum vitae, including copies of any degrees [and] certifications,” for three different teachers.

According to the District’s response:

The Parent did not identify the statutory basis for her request, and the District treated it as one under the Public Records Act.<sup>7</sup> It gathered responsive records from appropriate staff members and provided them to the Parent in installments...[The Parent made her request at a time when] instructional staff [were] not working...Many of the records requested by the parent did not exist in the form listed in her complaint. For example point sheets are used by teachers and parent educators to inform overall progress reports, but [they] are not retained. Further, the parent received spreadsheets test scores, test dates, and grade levels, but the district is legally unable to provide copies of test protocols.

5. On July 31, 2019, the District provided the Parent with **Record 1** and informed her that it would not be providing her with **Record 2**, as both FERPA and Washington State’s Public Records Act prevented the District from providing her with **Record 2**.<sup>8</sup>
6. The August 2019 Settlement Agreement is dated August 16, 2019, and it is signed by both the Parent and the District’s chief learning officer. It read, in part:

Compensatory Education — The District agrees to fund up to 400 hours of instruction attended by the Student at LMB, to be delivered during the 2019-2020 school year and/or the summer of 2020. Instruction at LMB during the District school year will be scheduled for no more than 20 hours per week. The Parent will choose the subjects/areas of instruction to be delivered at LMB.

...

The Parent waives the following special education and related services in the Student’s May 2019 IEP for so long as the Student is receiving instruction at LMB:

- a. 55 minutes, 5 times weekly, of specially designed instruction in math problem solving in a *special education setting*;
- b. 55 minutes, 5 times weekly, of specially designed instruction in basic reading skills in a *special education setting*;
- c. 55 minutes, 5 times weekly, of specially designed instruction in reading comprehension in a *special education setting*;

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<sup>7</sup> OSPI does not have authority, through the special education citizen complaint process, to investigate allegations the Public Records Act was not followed. In this special education citizen complaint, OSPI will only be investigating the Parent’s record request via the Family Educational Rights and Privacy Act (FERPA) and State special education records regulations.

<sup>8</sup> In response to this complaint, the District provided OSPI with several thousand pages of documents. As most of these documents would have been responsive to the Parent’s July 7, 2019 request, the District did not provide OSPI with a duplicative copy of these documents. In other words, the District provided OSPI with the copies of relevant emails from District staff to the Parent that referenced attachments relevant to the Parent’s July 7, 2019 records request, but the District did not provide copies of the attachments themselves.

- d. 55 minutes, 5 times weekly, of specially designed instruction in written expression in a *special education setting*; and,
- e. 55 minutes, 5 times weekly, of specially designed instruction in reading fluency in a *special education setting*.

The parties agree that any remaining specially designed instruction and related services listed in the Student's May 2019 IEP will be provided so long as the Student's part-time schedule at [the high school] makes it possible to receive those services at times and in academic courses where they are available. Once the Student's part-time schedule at [the high school] is established for the 2019-2020 school year, the District will issue a prior written notice listing the specially designed instruction and/or related services that he will receive, if any, during his part-time attendance.

7. On August 29, 2019, the District's special education records office emailed the Parent, stating, in part: "I am sending you the following records...Emails from January 2019 through July 7, 2019 (pages 1-1165) concerning Student...I am continuing to process this request and anticipate sending an additional installment of records to you by September 17, 2019."

### **2019-2020 School Year**

8. The District's first day of school was August 29, 2019.
9. At the start of the 2019- 2020 school year, the Student was eligible for special education services under the category of other health impairment, was in the eleventh grade, attended a District high school, and his May 2019 IEP was in effect. At the start of the 2019-2020 school year, the Student was 16 years old.
10. According to the District, during the first semester, "the Student attended LMB for the majority of the day." However, the Student did spend part of the afternoon each Monday, Tuesday, Thursday, and Friday at the District high school.<sup>9</sup> On afternoons he attended the District high school, the Student's schedule was as follows:
  - **Period 5:** Weight Lifting (taught by a general education teacher)
  - **Period 6:** Individual Skills (taught by special education teacher 3)
  - **Period 8:** Advisory (taught by special education teacher 4<sup>10</sup>)

According to the District, each class period was 55 minutes in length. Furthermore:  
[During Student's Individual Skills class], he received specially designed instruction in social/emotional and adaptive. This class centered on a daily writing prompt, which the

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<sup>9</sup> According to the District: "During the time the Student was attending LMB, he did not attend [the District high school] on Wednesdays because those were shortened days throughout all schools in the District, and the school day was over before his scheduled attendance for 5th and 6th periods. Class periods on Wednesdays at [the District high school] were 30 minutes long, rather than the normal 55 minutes on the other days of the week. Had Student attended on Wednesdays, he would have received 30 minutes of specially designed instruction in the areas of adaptive and social/emotional."

<sup>10</sup> Special education teacher 4 also served as the wrestling coach.

students discuss at the end of each week in restorative justice circles. It also included games focusing on teamwork, problem solving, and effective communication.

11. The District asserted that, during the fall 2019 semester, it provided the Student with the specially designed instruction in adaptive and social/emotional that he was entitled to as a result of the interplay of the Student's May 2019 IEP, the August 2019 Settlement Agreement, and the Student's fall 2019 schedule. The District further stated:

The May 2019 IEP [which was] in effect [in the fall of 2019] was not changed [to reflect the Student's part-time enrollment at LMB].

[The Student's part-time enrollment at LMB] was not a 'part-time placement at an out-of-District location,' as that phrase is included in the issue statement [for this special education citizen complaint], but rather an entity and schedule chosen by the Parent. The District did not place the Student at LMB. The 2019 Settlement Agreement addresses which parts of that IEP would be implemented, and which would not, during the time the Student received services at LMB.

12. According to the Parent:

[In the fall of 2019], Student's 6th period class [was] supposed to address some of his specially designed instruction including the adaptive goal for learning how to fill out applications or related forms with demographic information. However, in the 1st semester it led to me filing a curriculum complaint because all the Student did was write on a topic for 10 minutes and then nothing. He wasn't being taught anything related to his specially designed instruction goal. Supposedly the class was about his social/emotional goals too but again definitely nothing was taught [in that area].

13. On September 20 and 25, 2019, the District provided the Parent with a portion of the documents covered by her request for **Record 16**. And on October 1, 2019, the District provided the Parent with **Record 4**.

14. The District's first quarter ended on November 1, 2019.

15. On November 8, 2019, the District provided the Parent with **Record 3** and **Record 5**.

16. According to the District, it "mailed handwritten progress reports to the Parent during the week of November 18, 2019."

The District's response included a progress report for the measurable annual goals listed in the May 2019 IEP that includes entries dated November 19, 2019. In part, those entries read:

- **Social/Emotional 1:** "Student is participating in weekly group discussions developing listening and empathy skills as well as age appropriate conversation skills."
- **Social/Emotional 2:** "Student is showing improvement with receptive body language and age appropriate responses."
- **Adaptive Skills 1:** (No entry dated November 19, 2019; no information provided.)
- **Adaptive Skills 2:** "Student has developed skills to fill out and develop contact information completing more than 80% form accuracy with 0% support from staff."

- **Behavioral Instruction:** "Student is doing a great job entering classroom and [he is] starting assignments with little-to-no prompts, 100% of the time."

The November 19, 2019 entries for social/emotional 1, social/emotional 2, and adaptive skills 2 were handwritten. According to the District:

The student's first quarter progress report included handwritten notes because the IEP was in the process of being edited and was 'unlocked' in IEP Online...No information can be added to an unlocked IEP, so the District could not update the goals with progress reporting in the document itself. The District printed out the progress report and hand wrote updates accordingly. As the May 2019 IEP calls for progress to be reported via a 'copy of goal page', the method of hand writing the progress notes on the printed goal page met the IEP requirement.

17. According to the Parent's complaint, she had the following concerns with the first quarter progress report:

- "There are no updates or any input/info from the Student's OT, making the document incomplete."
- **Behavioral Instruction:** "[This information appears to be inaccurate.] Student knows what to do in his sixth period class [but] only for the first portion. He knows to come in and work on the question on the board which is 10-15 minutes of writing. After that it is free time. Considering the teacher has also made comments about Student messing around and being distractive...the [information in this goal] appears to go directly against [what I know]."
- **Social Emotional 1:** "[I] need clarification on whether the comments are from the SLP or the teacher as the remarks appear to be solely from the teacher based simply on a once-a-week 'circle' discussion."
- **Social Emotional 1:** "Since...there is a % in the goal, why do the remarks not state what % of the time Student is able to do this?"
- **Adaptive Skills 2:** "This is...inaccurate. The sample is for...application. Student did not do this on his own at all. He required a lot of assistance and the paraeducator had to walk him through completing in. Same for the second [sample]. Again, [the goal] is [for Student] to learn how to [fill out applications] on his own without being given the information [and] he can't do that yet."

18. On November 26, 2019, the assistant principal emailed the Parent, stating, in part: "Student's progress report was mailed with a certified slip last week. I'm not sure why you haven't received it yet. Would you like me to email you a copy?"

Later that same day, the Parent responded, stating:

The IEP was sent certified?<sup>11</sup> We received a notice on Saturday of a letter to pick up but had no clue who it [was] from or anything, it was mailed from Seattle it said. Since we live in an apartment complex, they can't leave it and I have to go get any certified items. If you could please email it to me I would appreciate it.

In a separate email thread, dated November 26, 2019, District staff members determined that the original (and only) copy of the Student's hand-written first quarter progress report had

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<sup>11</sup> OSPI's understanding of the Parent's reference to "the IEP" was that she was actually referring to the first quarter progress report mailed on or about November 18, 2019.

been mailed to the Parent, and they therefore could not email the Parent a copy of the exact same progress report.

19. The District was on break from November 28 – 29, 2019.
20. On December 2, 2019, the Parent emailed the assistant principal, stating, in part: "IEP: yes, I did finally obtain it."<sup>12</sup>
21. In a separate email, dated December 2, 2019, the assistant principal emailed special education teacher 1, stating, in part: "I asked LMB if they have any more testing planned, thinking that we'd want new data before making any further programming decisions, but they said they didn't have more testing planned."
22. On December 11, 2019, the reading support specialist emailed the assistant principal and special education teacher 1. In her email, the reading support specialist noted the Student's progress in reading while at LMB was "impressive."

Later that day, the assistant principal responded, stating, in part: "It looks like Student's reading skills are beyond what our self-contained program is able to offer. That's helpful information."

23. On December 11, 2019, the District provided the Parent with additional documents related to **Record 3**.
24. On December 17, 2019, the Parent filed a 'curriculum complaint' with the principal. This curriculum complaint concerned the Student's Individual Skills class, taught by special education teacher 3. In part, the Parent was concerned the Student's IEP goals were not being worked on in that class. It also, though, concerned whether "the curriculum description in the course catalogue" matched "the curriculum delivered in the classroom."
25. In an email, dated December 19, 2019, the assistant principal emailed special education teacher 1 and 3, stating, in part:

I [just] received this progress report, evaluation summary, and recommendation from LMB yesterday. When I asked a month ago about upcoming assessments LMB assured me that they had nothing scheduled until February for Student. I had told them I wanted results of any new testing before we addressed the IEP.

The IEP meeting is this afternoon and...most of the team will not have seen these results by the time we meet today, but I'm sending them along to you now.
26. On December 19, 2019, the Student's IEP team created a new IEP for the Student. A copy of the Student's December 2019 IEP is attached to this decision as **Exhibit A**.

The December 2019 IEP provided the Student, in part, with the following specially designed instruction in a *special education setting* from January 9, 2020 through February 16, 2020:

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<sup>12</sup> Again, based on a reading of the emails in this case, it appears "the IEP" referenced here is actually the first quarter progress report mailed on or about November 18, 2019.

- **Social/Emotional:** 250 minutes once a week (to be provided by a special education teacher)
- **Adaptive Skills:** 250 minutes once a week (to be provided by a special education teacher)
- **Behavioral Instruction:** 250 minutes once a week (to be provided by a special education teacher)

The December 2019 IEP provided for the following related service from January 9, 2020 through February 16, 2020:

- **Speech language therapy:** 30 minutes 3 times a month (to be provided by an SLP)

According to District, the December 2019 IEP "included a split service matrix to account for the time periods pre- and post- completion of the Student's 400 hours." According to the December 2019 IEP, the anticipated date the Student would begin attending the District high school on a full-time basis was: February 27, 2020.

The December 2019 IEP included, in part, the following measurable annual goals:

- **Social/Emotional 1:** By 01/08/2021, when given social communication opportunities or hypothetical social situations, [Student] will determine if his response is appropriate by looking at his communicative partner's non-verbal behavior/social cues (e.g., facial expression, body language, eye contact, overall mood) and verbally state if it is appropriate or inappropriate improving pragmatic language skills from 50% of opportunities provided verbal cues to 80% of opportunities provided NO cues as measured by SLP/SLPA data and teacher observation.
- **Social/Emotional 2:** By 01/08/2021, when given social communication opportunities or hypothetical problem situations during a 5-minute time sample, [Student] will use appropriate tone of voice, body orientation, facial expressions, and sarcasm to determine implied meaning improving pragmatic language, oral expression, and non-literal language from 50% of opportunities independently to 80% of opportunities independently as measured by SLP/SLPA data and teacher observation.
- **Adaptive Skills 1:** By 01/08/2021, when given a new assignment or task and instruction in the "Get Ready, Go, Done" method [Student] will follow the three steps to complete the assignment improving independence in goal-setting and planning from not using the "Get Ready, Go, Done" method to completing 2/3 steps independently as measured by classroom and therapy (OT) over 3 monthly data samples.
- **Adaptive Skills 2:** By 01/08/2021, when given a blank application type form requiring personal information (including, but not limited to name, address, phone number, birthdate, parent contact information, etc) [Student] will write into a form improving adaptive skills from 3 items independently to 7 items independently as measured by teacher collected data and student work.<sup>13</sup>
- **Speech Language:** By January 8, 2021, when given structured therapy tasks, [Student] will use compensatory word retrieval strategies (can include but not limited to: synonyms, antonyms, visualization, categories, description, phonemic cues, semantic cues) improving vocabulary and expressive language skills from 0% accuracy provided cues to 80% accuracy provided cues as measured by SLP data over 3 therapy sessions.

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<sup>13</sup> The December 2019 IEP also included measurable annual goals in the following areas: written expression 1; written expression 2; basic reading skills; math; reading comprehension; behavioral instruction; reading fluency; and speech language.

- **Behavioral Instruction:** By January 8, 2021, when given classroom assignment [Student] will complete assignment improving behavior from needing adult proximity and multiple reminders to completing with 2 or less reminders per class period as measured by teacher data.

According to the December 2019 IEP, progress was to be reported to the Parent via a “copy of the goal page” each quarter.

27. A prior written notice, dated December 19, 2019, read, in part:

Student currently attends 4 hours a day at LMB and attends the District high school for 5th and 6th periods. In February 2020, Student will return to the District high school for 3-4 periods per day. The IEP team will meet prior to his return to finalize [his] second semester schedule. Baseline data for all goals will be reviewed and updated if needed following Student’s return to the District high school.

28. According to the Parent’s complaint, at the December 19, 2019 IEP meeting:

One of the assistant directors said the District could continue my son’s specialized out-of-District placement but that they would like to see him go only 3 hours a day instead of 4 hours a day and that would allow Student to attend the District high school an additional hour a day. The assistant director said it was a suggestion and not something I had to do. I told him that I would consider it.

29. As concerns the IEP team’s determination of an appropriate educational program for the Student after the Student’s 400 hours at LMB were concluded, the Parent’s complaint stated: “Due to Student’s ADHD and the medication he takes in the AM, [I believed it was] in Student’s best interest to continue to receive the out-of-District hours in the AM and for the Student to be at his District high school in the PM.”

30. According to the District:

The December 2019 IEP has not yet been finalized or agreed upon by the IEP team...The December 2019 IEP was not finalized because the Student’s [District high school] schedule after the completion of his 400 hours at LMB had not been agreed upon. Because of this, and [because of] the Parent’s email [of January 23, 2020, wherein the Parent outlined several of her concerns about the contents of the December 2019 IEP], the District [soon thereafter] began attempting to schedule a meeting with the Parent to discuss the [Parent’s] concerns.

31. The District was on break December 23, 2019 through January 3, 2020.

32. On December 31, 2019, the Parent emailed the District representative, stating, in part: “For any additional hours Student may receive after the original 400 hours are provided by LMB, will there be another legal agreement drawn up?”

On January 2, 2020, the district representative responded, stating, in part:

Regarding additional hours at LMB beyond the original 400 hours agreed to previously, the IEP and prior written notice will serve as the necessary documentation for continuation of those services. As referenced in the prior written notice, the team will convene to finalize his second semester schedule. Thank you for reaching out to the director at LMB as this information will assist the team in the scheduling process.

33. On January 7, 2020, the assistant principal emailed the Parent, stating, in part: "I saw [your] email...saying Student's LMB schedule could be reduced to 3 hours per day. Before I can tell you what electives would be available, I need to know what Student's hours here at the District high school would be."

On January 10, 2020, the Parent responded, stating, in part:

I confirmed with LMB [that it is] up to me and Student. LMB can do 8 to 11 AM or 9 to 12 PM. I'm thinking 8 to 11 is best. However, I need to speak a little with Student's case manager next week, to discuss...what his schedule and program will look like.

34. On January 15, 2020, the assistant principal emailed the Parent, stating, in part:

I was waiting to hear back from you about what Student's hours would be at LMB...you indicated that you needed to check with LMB to discuss if 3 hours/day would be enough time for Student. If you tell me Student's LMB hours, I will identify his second semester District high school classes.

35. On January 16, 2020, the Parent responded, stating, in part:

For next semester, after talking to Student and talking to LMB, we are agreeable to Student attending LMB from 8 AM until 11 AM, once his 400 hours have been completed. For Student's schedule at the District high school, my concern is fourth period. It does not work very well if Student arrives late for class. Is it possible that his arrival time, estimated at 11:30 AM, be which ever lunch [period it is] that [falls during that time] and then Student would have fourth, fifth, and sixth periods at the District high school. Student does not want to lose weight training. However, I think moving sixth period around is also possible as Student is not learning anything in that class and it is not useful to him. It is essentially a study hall class.

That same day, the assistant principal responded, providing the Parent with some different course options available to the Student for fourth, fifth, and sixth periods.

36. On January 21, 2020, the assistant principal emailed special education teacher 1, stating, in part:

The original agreement...was [for] 400 hours at LMB. After assessing Student, LMB recommended 600-800 hours. At Student's IEP meeting, the district representative agreed that since Student was making so much progress, the District would continue funding LMB, although it would drop to 3 hours a day starting January 29, 2020.

37. On or about January 23, 2020, the assistant principal drafted a letter to the Washington Interscholastic Activities Association that read, in part:

During the first semester, Student attended LMB for four hours a day, returning to the District high school for two classes and wrestling. During second semester, Student will continue at LMB for three hours a day, then return to the District high school for three classes. It is our intention to have Student return to the District high school full time in the fall.



38. On January 23, 2020, the Parent emailed the special education director and the District representative, stating she had the following concerns with the contents of the December 2019 IEP:

Page 5 Medical-physical: ...This section appears to be the 2<sup>nd</sup> paragraph verbatim from page 6 of [Student's] IEP last spring. The 1 and 3rd paragraph are not present. The section listed as May 2019 on the spring IEP MUST be present at all times on any of [Student's] IEPs or re/evaluations...The item missing from this section is [a doctor's report for indication of dysgraphia].

Page 3: [This page] doesn't mention any parents concerns -if you really want me to write a formal letter so be it. This shouldn't be empty.

...

Page 7: top of page stating [Student] has a previous goal to address personal information and completing forms...It...needs reworded to match the actual goal which doesn't include providing him the information.

Page 7: adaptive goal for filling out application... ok closer on the wording, however it should say something more like when given a blank form requiring personal info (including but not limited to: first/middle/last name, DOB, parent contact info, address, place of birth, etc). He needs to be able to fill out a variety of forms that require this type of info. Yes job applications are just one type of form he needs to learn to fill out but other forms as well.

...

The reading comp goal states for [Student's] last testing he scored 20 correct restorations with 3 errors but the goal states to go from 20 correct restorations to 30 correct restorations in 3 minutes but doesn't state with how many errors.

...

Page 14: for SLP last paragraph it states [Students] 30 minutes a week can be individually, small group, large group or in the classroom. I believe this is incorrect. It should be individually or possibly small group (meaning 1-2 people). In large groups or in classroom he isn't receiving instruction specific to his goals necessarily.

Page 15: Goals for related Services for SLP. The 1st goal for using and improving accuracy of vocab it says he is supposed to go from 0% accuracy to 80% accuracy. I think we need an actual baseline that is accurate. 0% is not accurate since no baseline was actually done.

The transition assessment...there is no mention of that outside assessment or reference to it which shows different skill settings and interests.<sup>14</sup>

Later that day, the District representative responded, stating, in part: "Your suggestion to review these items in a meeting is greatly appreciated and I would like to schedule something as soon as possible...please let me know some days and times that will work for you to meet next week."

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<sup>14</sup> The Parent's January 23, 2020 email also referenced the following concerns: disagreement with where certain items were located within the IEP; disagreement with the general education teacher's report; and a request that the District monitor LMB's provision of writing instruction with the Student.

39. On January 27, 2020, the assistant principal emailed the Parent, stating: "We are available to meet with you on the dates/times listed below to discuss the concerns you shared...about IEP errors...Are you available either of these days? Friday, January 31 [or] Wednesday, February 5."
40. The District's first semester (and the second quarter) ended on January 28, 2020.
41. According to the District:  
In the course of responding to the Complaint, the District was unable to locate a record that the second quarter progress report was sent to the Parent. The District is in the process of providing that information. [See special education teacher 1's March 26, 2020 email to the assistant principal].
42. On January 28, 2020, the principal emailed the Parent about the curriculum complaint she filed in mid-December 2019. That email read, in part:  
I want to update you on my findings after I reviewed your complaint and interviewed our staff. In regards to your curriculum complaint about the curriculum description in the course catalog not matching the curriculum delivered in the classroom, I agree with you and I will direct special education teacher 3 to more closely align the activities and skills development in class with Student's IEP goals.
43. On January 29, 2020, a general education teacher provided special education teacher 1 with a completed 'General Education Teacher IEP Data Form' to be used in the on-going discussions about Student's draft IEP (dated December 2019).
44. On January 30, 2020, the assistant principal emailed a District special education paraeducator, stating, in part: "[Beginning in early March], Student will be attending 3 hours per day [at LMB] and will arrive [at the District high school] in time for most of fourth period."
45. On January 30, 2020, the Parent emailed the OT. The Parent was frustrated the Student was to be pulled from a sixth period general education setting class to receive his occupational therapy services.

On January 31, 2020, the OT responded, informing the Parent: a) it was "a challenge to provide services [to Student] with his limited schedule" at the District high school; b) it was the OT's understanding, from a previous meeting, that the Parent "preferred Student continue being pulled from his gen-ed class as opposed to being seen in the classroom" when Student was receiving other specially designed instruction; and, c) if the Parent preferred that the Student's OT services be provided when the Student was otherwise scheduled to receive specially designed instruction in social-emotional, then the Student's IEP would need to be amended to make the provision of these two services "concurrent" with one another.

46. In a separate email, dated January 31, 2020, the assistant principal emailed the Parent, stating, in part:  
We are trying to provide the minutes stated in the IEP as closely as we can, given the limited hours that Student is on campus. If we pull Student out of his inclusive education class to

receive SLP and OT services, he's not getting [the] service minutes [he'd otherwise receive in the inclusive education class].

47. On January 31, 2020, the District's compliance specialist emailed the District representative and special education teacher 1, stating, in part: "I would address [the Parent's] possible concerns via an IEP amendment, as determined appropriate by the team. Going back and unlocking a process deemed done is not standard protocol for [responding to the Parent's IEP content concerns]."
48. On February 4, 2020, the assistant principal emailed several District staff members, stating, in part: "I didn't receive a response from Parent when I invited her to meet with us about her concerns. The two dates I'd offered were last Friday and tomorrow, Wednesday. I plan to re-issue an invitation and [I] need to know your availability."
49. In a separate email, dated February 4, 2020, the assistant principal wrote to several District staff members: "I issued two invitations to Parent to come in to meet with us regarding her concerns. She didn't respond to either email, although she did email me several times about other issues."
50. In a separate email, dated February 4, 2020, the assistant principal emailed the Parent, stating: "I didn't hear whether or not you would be available to meet on the dates listed below, so I thought we should try some other dates. We are available to meet with you...on Thursday, February 13 or Friday, February 14. Would either of those dates work for you?"
51. On February 13, 2020, the assistant principal emailed special education teacher 1, the District representative, and the program specialist, stating, in part:

At this point, I still haven't received confirmation that Parent will be attending [the meeting scheduled for tomorrow]. Since I've issued multiple invitations, we will proceed without her. I would still like to meet to address some of her concerns, particularly around how we are providing SLP and OT services in the limited time that Student is here.
52. According to the Parent's complaint:
  - As of mid-February 2020, she was of the belief that: while the Student's IEP team had not determined exactly what the Student's schedule would look like after he completed the 400 hours at LMB, he was going to continue to attend the District high school for a portion of the day and LMB for a portion of the day.
  - Certain District staff met on February 14, 2020—without her being present, and, at this meeting, the possibility of educating the Student at the District high school for the entirety of the Student's school day was discussed.
53. On February 14, 2020, the assistant principal, special education teacher 1, program specialist, OT, SLP, and District representative met "to discuss the [Parent's] concerns in [her earlier email, as well as to] briefly [discuss] the status of Student's schedule."
54. The District was on break February 17, 2020 through February 21, 2020.
55. On February 26, 2020, the assistant principal emailed the Parent, stating, in part:

Several members of Student's IEP team met on Friday, February 14 to discuss many of the concerns that you recently communicated to us via email. I'm sorry you were not able to join us. It was not a full IEP meeting, but we were able to discuss several items.

I wanted you to know that I'm working on getting you answers to your questions, but Student's schedule is something that we need to talk about immediately. I know that we had talked about Student coming back to his District high school for three periods a day and we'd written that in the prior written notice after the IEP meeting.

Unfortunately, the schedule that is in Skyward is not going to work if Student attends LMB in the morning. Fourth period PE classes take third lunch, so the time that Student will be returning from LMB (11:30 AM) will mean that Student will only attend about 15 minutes of weight lifting.

After much brainstorming and discussion, we came up with two choices. Will you please discuss these with Student and let me know which Student's preference is?

**Plan A – very similar to Student's 1<sup>st</sup> Semester Schedule**

[Student would attend LMB in the morning from 8 to 11:30 AM and then attend the District high school in the afternoon, where he would receive some OT and SLP services, as well as attend academic skills for success and [either] woodworking or weightlifting.]

With Plan A Student will only earn one credit and will not receive math instruction. Given the few hours Student will be attending his District high school, it will be difficult to provide his OT, SLP, and adaptive services. Due to early release on Wednesdays, Student will only be able, under Plan A, to attend his District high school classes four days a week.

**Plan B—Student attends his District high school in the morning and LMB in the afternoon**

...

The District recommends Plan B for several reasons: Student can receive math instruction; additional time at the District high school will allow us more flexibility in providing Student's SLP and OT services; taking more classes at the District high school allows Student to more fully integrate back into high school, better preparing him to return in the future; Student will be able to attend his District high school five days a week; and, it was difficult for us to ensure athletic eligibility for Student this year with him earning only one credit during the first semester. We are not sure we'll be able to do that again next year, and we know how important wrestling is to Student.

Please let me know your and Student's schedule preference. Regardless of which schedule you choose, we'll need to reconvene the IEP team update students IEP, since minutes will be different (either greater or less than what we've previously discussed).

On March 2, 2020, the Parent responded, stating, in part:

After checking with LMB, two hours a day will not work. It is not enough time [during] the day to work on Student's goals. Student needs a minimum of three hours a day at LMB. Currently the goal is to have Student start doing reading one hour a day and writing/spelling two hours a day—if Student goes to the three hour a day plan. It is that or keep Student at four hours a day [at LMB].

56. According to the District, “when Student returned to the District high school for three days of classes in March 2020 (March 3, 11, and 12, 2020), the District implemented the following schedule”:

- **Period 1:** Wood Working (taught by a general education teacher)
- **Period 2:** Weight Training (taught by a general education teacher)
- **Period 3:** Math (taught by special education teacher 1)
- **Period 4:** Career Awareness (taught by special education teacher 1)
- **Period 5:** Individual Skills (taught by a special education teacher)
- **Period 6:** Language Arts (taught by special education teacher 5)
- **Period 8:** Advisory (taught by special education teacher 5)

57. According to the Parent’s complaint, as of early March 2020, she was concerned the District was considering educating the Student at his District high school in the morning and at LMB in the afternoon—and the Parent preferred that the Student be educated at LMB in the morning and the District high school in the afternoon.

58. On March 4, 2020, the assistant principal emailed the Parent, stating, in part: “Since Student will be attending LMB for 3 hours per day, here are two schedule choices.” (Both of the schedules included in the assistant principal’s email had the Student attending his District school in the morning, and LMB in the afternoon.)

The Parent responded, stating, in part: “What happened to the other option I was previously told about where Student [would] still [go] to LMB in the AM and then [have] 2 classes at [the District school] in the PM?”

59. On March 5, 2020, the district representative responded to the Parent, stating, in part: The hours at LMB, per the settlement agreement, will be satisfied this week. We need to start transitioning back to [the District high school] on a full-time basis. As we discussed at the IEP meeting, a gradual transition is preferred, but not required. If an afternoon schedule at LMB is not conducive to a medication schedule, we can expedite the transition. At this time, the AM schedule at [the District high school] is most accommodating to his transition, schedule, and our ability to implement other services...Additionally, the team is still waiting to hear from you regarding dates and times to reconvene a meeting to discuss concerns raised in previous communications.

The Parent responded, stating, in part:

At the IEP meeting I do specifically remember being told that the following was just a suggestion: weaning Student off LMB and bringing Student back to his District high school for three hours a day, but that I did not have to agree to it and it was just a suggestion. I said I was open to it...[The following] is in my Student’s best interest: academic classes with LMB in the morning... By putting Student at LMB in the afternoon you are also taking away any involvement Student has in the after-school activities.

That same day, the district representative responded, stating:

The first proposal does not allow us the opportunity to serve Student in his other areas of need. Please let us know you would like to proceed with the four period schedule at the

District high school in the morning with the option of LMB for three hours in the afternoon. We can arrange the Student's return to the District high school after LMB [for after-school activities]. Or, if you would prefer a full day schedule at District high school, as we have satisfied the settlement agreement regarding services at LMB.

That same day, the Parent forwarded the email thread to the director of inclusive education, stating, in part:

I am formally requesting that the school district honor the first proposal that was provided to myself and Student, which is that Student attend LMB in the a.m. for three hours; followed by third period lunch at the district high school and then fifth and sixth period.

It is not in Student's best interest to attend LMB in the afternoon, for a few reasons:

- By going to LMB in the morning, it helps ensure that student and a certain female student [will have less frequent interactions].
- Due to Student's ADHD and is medication, as well as his other learning delays, academic classes should be in the a.m. whenever possible.
- ...
- Putting Student in individual skills class in the a.m. puts him in with his former case manager. I filed a curriculum complaint against the Student's former case manager last semester for [not] doing anything [related to] education essentially. I don't think putting Student back in there is a good idea.

That same day, the director forwarded the email thread to the District representative, stating, in part: "I have some questions especially with process at this juncture...let's check-in [and] connect [on this]."

60. In a separate email on March 4, 2020, the assistant principal emailed the District representative, stating, in part:

The reason we wanted to move Student to only three hours at LMB was to begin to transition Student back to the District high school for his academics. We were hoping that Student could return to the District high school for three or four classes, instead of the two classes he had the first semester. We also talked about Student getting started with math instruction again. Because...math classes are in the morning, we were hoping that Student could switch his LMB schedule to the afternoon so he was attending the District high school in the morning...I need to know how accommodating we are going to be to the Parent's requests. Are we going to allow Student to take only two classes at the District high school? Will we require those two classes to be math and individual academic skills, so we can meet his math and social emotional needs?

61. On March 9, 2020, the assistant principal emailed the Parent, stating:

The District representative asked me to draft a 6-period District high school schedule for Student. It will be changed in Skyward by Tuesday morning:

- Period 1: Woodworking
- Period 2: Weights
- Period 3: Math
- Period 4: Career Awareness
- Period 5: Individual Skills
- Period 6: Language Skills

While I haven't seen the results of Student's most recent reading assessment at LMB, based on the weekly reports we received Student appears to be ready for the next level of reading...the only [support center-special education setting] classes Student will have is math and career awareness. Please let me know if you have any questions.

The Parent responded:

REFUSED!!!! And where the heck is my son's writing...he is STILL SC WRITING. He can't even spell. And now you want to take away LMB too. You can't make schedule changes without me signing the schedule change form, remember? I'm in the middle of sending a citizen's complaint to OSPI for everything.

(emphasis in original).

62. In a separate email on March 9, 2020, the Parent wrote the District representative and the director, stating, in part:

With regards to holding a meeting regarding my concerns...has the District done anything...to possibly start fixing the issues [raised] in my [previous communications]?...I would have hoped that by now the District would've reviewed the concerns and possibly have [had] fixes in place...At the time I submitted the...concerns to you, I did mention a meeting might be possible, however my time is limited as I'm trying to focus on finding a new job since I'm not working right now.

On March 10, 2020, the District representative responded, stating, in part: "I understand...that you have limited availability for a meeting. Please share some dates and times that will accommodate your availability and the assistant principal, and I will do everything we can to accommodate your schedule to the team can meet."

63. On March 16, 2020, the District stopped regular, in-person instruction in response to the COVID-19 pandemic.

64. On March 16, 2020, the District representative emailed the Parent, stating, in part:

While school is currently closed, we are able to schedule an IEP team meeting virtually (phone conference, video conference), and would like to continue to try and schedule a meeting with you. While I have not yet received progress reporting from LMB, I believe the assistant principal has and I will ask her to forward this information to me.

On March 19, 2020, the Parent responded, stating, in part:

It is my understanding though that the District did not do any testing of its own of Student prior to wanting Student to come back to the District high school full-time, so by not having any testing, you have no valid up-to-date [present levels] for Student's IEP goals...At the moment, I don't think an IEP meeting is needed, at least until we know when school will be restarting and only after appropriate testing is done to show valid current up-to-date results. However, prior to do any new testing, I would like [to] suggest two things. One: there are multiple errors on the most recent IEP and the IEP progress report. All that needs [to be] addressed. Two: prior [to] the testing or shortly after testing, a review of the current goals to determine if different goals [are more appropriate, needs to be conducted]...Based on [the testing that has been done, for example], Student seems to have regressed [in his

math skills], especially on simple division and [he] was [also] forgetting to carry [over number when completing math calculations].

65. On March 26, 2020, special education teacher 1 emailed the assistant principal, stating, in part: “[Attached] is [Student’s first] semester progress report. Please review it and let me know if anything needs to be adjusted.”

According to the progress report attached to special education teacher 1’s email, as of January 31, 2020, the Student had made the following progress on his adaptive, speech language, and social/emotional goals:

- **Behavioral Instruction:** Sufficient Progress: When given the daily writing prompt as an entry task Student is able to enter the classroom and ask clarifying questions more than 90% of the time. He will typically work independently meeting minimum expectations with fewer than 2 prompts per class period.
- **Speech:** Sufficient Progress: Compensatory word retrieval strategies that have been worked on are: naming synonyms, antonyms, and category members. Student can independently name synonyms with 50% accuracy, antonyms with 90% accuracy, and 3-5 members in a category/group with 10% accuracy.
- **Social/Emotional 1:** Insufficient Progress: Over the past 3 therapy sessions, Student can determine if his response during social situations with an adult are appropriate or not by looking at the adult’s social cues in 0% of opportunities. He is not currently verbally stating if it is appropriate or not. Performance is significantly impacted by participation, compliance, and mood.
- **Social/Emotional 2:** Emerging Skills: Performance on this goal is heavily dependent on mood. When Student is happy, he engages very well with the speech language pathologist and uses appropriate tone of voice, body orientation, facial expressions, and sarcasm in 80% of opportunities. Accuracy decreases to 0% of opportunities when upset. When this occurs, Student struggles with participation during sessions. He typically puts his head down and ignores the SLP.
- **Adaptive Skills 1:** Emerging Skill: Student demonstrates ability to independently complete 1/3 steps at this time (creating a goal). He requires prompts and assistance with the planning steps and materials needed to come up with performing the goal. OT will continue to support this goal.
- **Adaptive Skills 2:** [No progress reported as of January 31, 2020—and no progress noted at all on draft attached to special education teacher 1’s email of March 26, 2020 to the assistant principal.]<sup>15</sup>

66. According to the Parent’s complaint, she had the following problems with the second quarter progress report:

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<sup>15</sup> Special education teacher 1’s March 26, 2020 email also included information on the Student’s progress—as of January 31, 2020, on the following goals in his December 2019 IEP: written expression (“Due to time at LMB Student has not received instruction in this area”); basic reading skills (emerging skill); math problem solving (“Due to time at LMB Student has not received instruction in this area”); reading comprehension (“[this] instruction is being provided by LMB”); written expression 2 (emerging skill); and reading fluency (“reading instruction is being provided by LMB”).



- **Behavioral Instruction:** "This section is totally blank with no comment and no updates of any kind or progress noted."<sup>16</sup>
- **Adaptive Skills 2:** "This section is blank just like the goal for behavioral instruction. There are no comments or updates or progress noted."
- **Speech:** "You cannot go from 0% to 80% unless you did a baseline and Student really scored 0%. Since there are three items noted in the comments—synonyms, antonyms, and 3 to 5 members in a category/group—then each of them should be separate if necessary and/or they should have tested Student for a baseline and determined which ones were necessary."

67. On April 30, 2020, OSPI's investigator interviewed special education teacher 3. The investigator's notes from that meeting are as follows:

**Nature of Individual Skills Class**

All students in the class have social emotional or behavioral goals. The class has between 13 or 16 students in any particular period, with 16 students being the maximum.

A lot of students in the classroom have similar goals. Students are grouped together based on similarity of goals.

Special education teacher 3 was supported in the Individual Skills classroom with one full-time paraeducator and one half-time paraeducator.

The class is generally structured as follows: class begins with a group discussion on a quote on the board. Special education teacher 3 described this as a guided, collaborative, verbal conversation. The length of the verbal conversation depends on the nature of that conversation—e.g., how complex the topic is, how passionately the various students engage on the topic. Special education teacher 3 and the paraeducator provided the students, including the Student, with individualized instruction on how to respectfully, verbally disagree with other people. Students would occasionally verbalize that they did not participate, and this was permitted, so long as the students were able to verbalize, respectfully, why they did not want to participate that particular day and/or for that particular portion of the activity.

Following the verbal conversation, the students were given 15 minutes to write—on the quote and/or the group's verbal conversation.

Following the writing exercise, the students were allowed to engage in an activity of their choice—called 'choice time.' This usually involved the students working on games that required the students to work with one another and work on socialization skills.

**Social emotional goals 1 and 2 mention an SLP. Did an SLP work with the Student on his social emotional goals at all? And, if so, when?**

An SLP worked with students in the classroom once a week—on Wednesdays.

**Part of the Parent's concern, as clarified in her reply, is that the Student just played games—and didn't receive specially designed instruction. Can you speak to this?**

The only time Student got to play games was during the 'choice time' portion of the class. And even during this time, the Student's social emotional goals were being worked on. For

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<sup>16</sup> OSPI notes: to the extent this statement refers to the progress reporting provided to the Parent via email on March 26, 2020, it is an inaccurate statement.

example, the only game Student was permitted to participate in was a specific form of 'Minecraft' wherein the students all worked together and constantly communicated with one another in terms of how to proceed. The students playing this 'minecraft' game sat at the same table together and special education teacher 3 or the paraeducator sat down with the students to assist them in their collaborative problem solving as they played the game together.

### **Student's Social Emotional Goals**

There were worked on throughout the Student's Individual Skills class.

#### **Adaptive Goal 1**

The 'get ready, go done' method was mostly done in the Student's ready classes at LMB—not in the Student's Individual Skills class. However, the Student still received individualized instruction on transitions during the Individual Skills class. Furthermore, according to special education 3 teacher, the Student had little difficulty with transitions. Special education teacher 3 said, if Student knew what the schedule and behavior expectations were, he did very well.

#### **Adaptive Goal 2**

Once a week, typically on Fridays, the Student would work on filling out a job application by himself. Special education teacher 3 printed off a bunch of job applications, and each Friday the Student would work, by himself, on filling these out. When Student needed help, special education teacher 3 would assist, but this was rare and only for specialized questions such as: 'What is your availability for working hours?' Student would complete more than 80% of the forms by himself. When needed, Student would consult his phone to independently retrieve demographic information. The Parent was frustrated because she believed adaptive goal 2 was written in such a manner that Student should not have been permitted to consult his phone to retrieve demographic information. Special education teacher 3 believed this still constituted 'independently filling forms out' because she was not assisting the Student on the occasions when he would consult his phone to retrieve demographic information.

68. On May 4, 2020, OSPI received answers to questions its investigator asked the District concerning the Parent's request for access to certain educational records of the Student. Those questions (bolded) and answers (not bolded) appear here:

**Concerning the District's policy...regarding email retention: does the District, as a matter of course, store emails in a central...organized according by the student those particular emails pertain to? Or, are emails simply retained by retention settings on outlook on each individual staff member's outlook account?**

The District as a matter of course stores emails in a central location.

**For the following 'notes' mentioned in the Parent's 7/7/19 request, can the District tell me whether any such notes were "maintained" by the District in a central location...that was specific to the Student? Or, rather, would any such 'notes,' to the extent they existed, have been in the "sole possession" of the maker of the note?**

If notes even existed related to the record requests listed below, none were maintained by the District in a central location that was specific to the Student. If notes in any of these categories existed, they would have been in the sole possession of the maker of the note.

**Following her 7/7/19 request, was the Parent ever provided with a copy of Records 11-13?**

The parent was provided the scoring sheets for these tests for her son, but she wanted the test protocols themselves, which the school district is not allowed to distribute.

**Concerning Record 15—and, in particular: whether this represented a reasonable request from the Parent for an explanation of the Student’s grades that she had been provided with.**

**Does the District’s website have any information on how grading is done—either for 10<sup>th</sup> graders specifically or high school students generally?**

No.

**In response to Record 15, did the District provide the Parent with an explanation re: grading?**

The school district’s obligation in regard to the Parent’s record request of July 2019 was to provide responsive records if they existed. It was not obligated to create records that did not exist, and therefore was not obligated to create a “statement from each of the Student’s teachers regarding how his grades for their classes are computed”, which was the Record 15 request. Individual teachers may have provided the parent with an explanation of their respective grading criteria at other times, but that was not done by the school district in response to the record request of July 2019.

69. The District’s final day of school—and the end of the second semester, will be June 18, 2020.

## **CONCLUSIONS**

**Issue 1: FERPA** – The Parent alleged the District did not follow proper procedures for responding to her July 7, 2019 request for access to certain records. In her request, the Parent did not specify whether she was making a request for access to the Student’s educational records under the Family Educational Rights and Privacy Act of 1974 (FERPA) or a request under the Public Records Act (PRA). The District treated the Parent’s request as one under the PRA. OSPI does not have authority through the special education citizen complaint process to investigate allegations the PRA was not followed. However, a parent need not use special language in making a request to access education records under FERPA. For these two reasons, in this special education citizen complaint, OSPI will only be investigating the Parent’s record request via FERPA and State special education regulations addressing records.

FERPA gives parents the right to inspect and review their children’s education records. Education records are broadly defined as those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution. Education records include, but are not limited to: grades, transcripts, class lists, student course schedules, health records (at the K-12 level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, and email.

The term educational records does not include records of district staff if those records are in the sole possession of the maker of the records. FERPA's sole possession exception is strictly construed to mean 'memory-jogger' type information. For example, a memory-jogger is information that a school official may use as a reference tool and, thus, is generally maintained by the school official unbeknownst to other individuals. The term 'educational records' also excludes: records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement.

A test protocol or question booklet which is separate from the sheet on which a student records answers and which is not personally identifiable to the student would not be a part of his education records. However, if a school were to maintain a copy of a student's test answer sheet with personally identifiable information, this would be an education record and the parent would have a right under the IDEA and FERPA to a reasonable request for an explanation and interpretation of the record. The explanation and interpretation by the school could entail showing the parent the test question booklet, reading the questions to the parent, or providing an interpretation for the response in some other adequate manner that would inform the parent.

Emails only constitute 'educational records' to the extent they are maintained by the district in a central location and in relation to specific students.

Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an IEP, hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made.

Here, on July 7, 2019, the Parent emailed the District's special education records office. In her email, the Parent requested the following records:

- **Record 1:** Student's school photo.
- **Record 2:** The school photo for another student.
- **Record 3:** "Copies of any and all notes and emails regarding [an] alleged incident [that took place] on September 19, 2018 by [a certain] female student."
- **Record 4:** "Any and all notes and emails between staff...regarding [the] allegation that my son was at [this other student's] bus stop at any time during September 2018 through January 2019."
- **Record 5:** "All emails and notes regarding the restraining order against my son."
- **Record 6:** "All emails concerning Student from January 2019 [through the end of the 2018-2019] school year."
- **Record 7:** Notes from the Student's visits to a behavioral interventionist.
- **Record 8:** The speech language pathologist's notes on the Student "for the entire school year."
- **Record 9:** The occupational therapist's notes on the Student.
- **Record 10:** "Copy of point sheet that was attempted—[as] noted in Student's IEP."
- **Record 11:** Reading IEP test results for the 2018-2019 school year.

- **Record 12:** Writing IEP test results for the 2018-2019 school year.
- **Record 13:** Math IEP test results for the 2018-2019 school year.
- **Record 14:** Copy of the case manager's May 2019 notes concerning the Student's "transition questions."
- **Record 15:** A "statement from each of Student's teachers regarding how his grades for their classes are computed."
- **Record 16:** "The curriculum vitae, including copies of any degrees [and] certifications," for three different teachers.

Record 1: The District provided the Parent with Record 1 within 45 days of July 7, 2019 on July 31, 2019. Therefore, as per Record 1, the District adhered to FERPA requirements.

Records 2 and 16: The District was not obligated to provide the Parent access to these two records because, on their face, they do not fall within FERPA's definition of 'educational records' and additionally, one request pertained to another student.

Records 3-6: Records 3-6 concerned a request for emails and notes. As per the emails, in this case, the emails likely would constitute 'education records' and the Parent would need to be permitted to access them. For example, the District explained it "as a matter of course stores emails in a central location." In order for OSPI to conclusively determine whether they constitute 'educational records' under FERPA, though, OSPI would also need to know: were the emails stored in a central location that was exclusive to this Student? Only if that was also true, would the requested emails constitute 'educational records' under FERPA. Regardless, the District provided the Parents with the emails.

The District did provide the Parent with a copy of Records 3-6, but the District provided these records to the Parent more than 45 days after her July 7, 2019 request: Record 3 and 6 (provided to the Parent on November 8, 2019); Record 4 (provided to the Parent on October 1, 2019); and Record 5 (provided to the Parent on August 29, 2019).<sup>17</sup> Therefore, in terms of the emails referenced in Records 3-6, this was likely a violation of FERPA. The District's special education director will be required to email select staff the following message: "This is a friendly reminder that the District must comply with a parent's request to access 'educational records' under FERPA within 45 days of the parent making his or her request."

As per the notes, in this case, these would not constitute 'educational records' under FERPA and the District was not obligated to provide the Parent with access to the same. For example, the District explained: "If notes even existed related to the record requests...none were maintained by the District in a central location that was specific to the Student. If notes in any of these categories existed, they would have been in the sole possession of the maker of the note."

Records 7-9 and 14: The District was not required to provide the Parent with access to Records 7-9 or 14 under FERPA as, according to the District, any such notes would have been in sole possession of the maker of the note, and not kept in a central location specific to the Student.

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<sup>17</sup> In relation to Record 5, it is important to note: the District was not obligated, under FERPA, to provide the Parent with access to: records maintained by a law enforcement unit of the District that were created by that law enforcement unit for the purpose of law enforcement.

Record 10: With Record 10, the Parent requested a “copy of [a] point sheet that was attempted—[as] noted in Student’s [May 2019] IEP.” The District, though, explained: “point sheets are used by teachers and parent educators to inform overall progress reports, but [they] are not retained.” Therefore, Record 10 would not fall within the definition of ‘education records’ and the District was under no obligation, according to FERPA, to provide the Parent with a copy of the same.

Record 11-13: With Records 11-13, the Parent requested a copy of reading, writing, and math IEP test results. The District states it provided the Parent with a copy of these records. However, the District notes the Parent also desired a “copy of the test protocols themselves,” and the District did not provide the Parent with a copy of the same. While the District is correct—the test protocols, if they were not specific to the Student, were not ‘educational records’ under FERPA, the Parent, under the IDEA and FERPA, does have a right to a reasonable request for an explanation and interpretation of Records 11-13. The explanation and interpretation must be in a manner adequate to inform the Parent. It is likely that, in requesting the test protocols for Records 11-13, the Parent was requesting an explanation and interpretation of Records 11-13. To OSPI, this appears to be a reasonable request. Therefore, the District will be required to email the Parent a brief, written statement, explaining the reading, writing, and math IEP test results that were provided to her as part of Records 11-13.

Record 15: With Record 15, the Parent requested “a statement from each of Student’s teachers regarding how [Student’s] grades for their classes are computed.” The District did not provide the Parent with the requested statements. The District stated this was not something that existed as part of students’ educational records and therefore was not part of this Student’s educational record. In a sense, the Parent was asking the District to provide her with new information. Therefore, while it may be reasonable for the Student’s teachers to provide information about grading, the failure to provide this is not a violation of FERPA.

**Issue 2: IEP Implementation** – The Parent alleged that, in the fall semester, the District did not implement the following portions of the Student’s individualized education program (IEP): specialized instruction in adaptive and social/emotional. A 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, the May 2019 IEP provided the Student with specially designed instruction in adaptive and social/emotional for 55 minutes 5 times a week. Under the IEP, these two areas of specially designed instruction were to be provided concurrently. Furthermore, the August 2019 Settlement Agreement, while it excused the District from providing some specially designed instruction, it did not excuse the District from the provision of specially designed instruction in these two areas.

According to the District, during the fall semester, these two areas of specially designed instruction were provided to the Student during his 55-minute Individual Skills class, which met Monday, Tuesday, Thursday, and Friday, and which was taught by special education teacher 3.

On April 30, 2020, OSPI's investigator conducted a detailed interview of special education teacher 3. Despite the fact that there were compliance issues with the progress reporting in this case (see Issue 4, below), the interview with special education teacher 3 showed the Student's May 2019 social/emotional and adaptive skills goals were worked on diligently during the Individual Skills class. For example, social/emotional goals 1 and 2 concerned the Student's ability to read others' emotions and, in return, provide an appropriate communicative response, both physically and verbally. Adaptive skills goal 1 concerned the Student's ability to work on transitions. Adaptive skills goal 2 concerned the Student's ability to independently fill out applications. The interview with special education teacher 3 showed that each of these goals was diligently worked on during the Student's Individual Skills class.<sup>18</sup> For example, the investigator's notes from his interview of special education teacher 3 read, in part:

The class is generally structured as follows: class begins with a group discussion on a quote on the board. Special education teacher 3 described this as a guided, collaborative, verbal conversation. The length of the verbal conversation depends on the nature of that conversation—e.g., how complex the topic is, how passionately the various students engage on the topic. Special education teacher 3 and the paraeducator provided the students, including the Student, with individualized instruction on how to respectfully, verbally, disagree with other people...

Following the verbal conversation, the students were given 15 minutes to write—on the quote and/or the group's verbal conversation.

Following the writing exercise, the students were allowed to engage in an activity of their choice—called 'choice time.' This usually involved the students working on games that required the students to work with one another and work on socialization skills.

...

The only time Student got to play games was during the 'choice time' portion of the class. And even during this time, the Student's social emotional goals were being worked on. For example, the only game Student was permitted to participate in was a specific form of 'Minecraft' wherein the students all worked together and constantly communicated with one another in terms of how to proceed. The students playing this 'minecraft' game sat at the same table together and special education teacher 3 or the paraeducator sat down with the

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<sup>18</sup> In her reply, the Parent provided OSPI with a copy of a January 28, 2020 email from the principal, wherein he identified (after reviewing the Parent's complaint and interviewing certain staff members): "In regards to your curriculum complaint about the curriculum description in the course catalog not matching the curriculum delivered in the classroom, I agree with you and I will direct special education teacher 3 to more closely align the activities and skills development in class with Student's IEP goals." For three reasons, though, this statement by the principal does not mean the Student's IEP goals were not being worked on in the Individual Skills class. First, the principal's statement is not entirely clear. For example, the complaint the Parent filed with the principal had two parts: a) an allegation that the course catalogue description did not accurately describe what was occurring in the Individual Skills class; and b) that the Student's IEP goals were not being worked on in the Individual Skills class. From the principal's email, he clearly found some validity to the Parent's concerns, but it is not clear as to which of the Parent's two allegations—and/or both of the allegations. Second, minor deviations from the IEP are permitted under the IDEA. And third, as detailed above, OSPI's investigator's interview with special education teacher 3 showed the Student's social/emotional and adaptive goals were being worked on during the Individual Skills class.

students to assist them in their collaborative problem solving as they played the game together.

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### **Adaptive Goal 1**

The 'get ready, go done' method was mostly done in the Student's ready classes at LMB—not in the Student's Individual Skills class. However, the Student still received individualized instruction on transitions during the Individual Skills class. Furthermore, according to special education 3 teacher, the Student had very little difficulty with transitions...

### **Adaptive Goal 2**

Once a week, typically on Fridays, the Student would work on filling out a job application by himself...Student would work, by himself, on filling these out. When Student needed help, special education teacher 3 would assist, but this was rare and only for specialized questions...Student would complete more than 80% of the forms by himself. When needed, Student would consult his phone to independently retrieve demographic information. The Parent...was frustrated because she believed adaptive goal 2 was written in such a manner that Student should not have been permitted to consult his phone to retrieve demographic information. Special education teacher 3 believed this still constituted 'independently filling forms out' because she was not assisting the Student on the occasions when he would consult his phone to retrieve demographic information.<sup>19</sup>

Still, OSPI did find two implementation issues with these areas of specially designed instruction.

First, special education teacher 3 stated: The 'get ready, go done' method was mostly done in the Student's ready classes at LMB—not in the Student's Individual Skills class (paraphrase). Though, again, the Student worked on transitions during the Individual Skills class. In sum, the Student's adaptive goal specified the 'get ready, go done' method, adaptive goal 1 appears to have been worked on, in part, at the District high school, but, at the District high school, the 'get ready, go done' method was not used. The 'get ready, go done' method was utilized when the Student attended LMB. Therefore, there has been no material violation of the IDEA on this score. However, as the Student's IEP team will be required to meet as part of the corrective actions for this complaint, one issue the IEP will have to address: should adaptive goal 1 continue to include the 'get ready, go done' method?

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<sup>19</sup> As concerns the Student's second adaptive skills goal, and the Parent's concern that special education teacher 3 was providing the Student with more assistance than was permitted under the language of the goal, OSPI notes the following: 1) adaptive skills 2 includes the language, "when given personal information"—thereby explicitly stating the Student is *to be given* some demographic information; and 2) the nature of specially designed instruction is such that it envisions special education teachers working with students with IEPs to provide instruction and so as to improve their performance on goal areas. From OSPI's investigator's interview of special education teacher 3, it appears adaptive skills 2 was appropriately implemented—with the proper balance of individualized instruction and also allowing the Student to independently work on the goal. If the Parent believes the Student's needs require a revision to adaptive skills 2 (the draft December 2019 IEP includes a similar adaptive skills goal), then OSPI recommends the Parent make this request in advance of the IEP meeting that will be required as a result of this decision. See below.



Second, according to both the August 2019 Settlement Agreement and the May 2019 IEP, the Student was supposed to receive 55 minutes of concurrent specially designed instruction in social emotional and adaptive skills 5 days a week. However, in the fall of 2019, the Student only attended the District high school, part of the day, 4 days out of the week—the Student did not attend the District high school on Wednesdays. Therefore, throughout the fall semester (August 29, 2019 through January 28, 2020), the Student missed approximately 17 hours of concurrent specially designed instruction in adaptive skills and social emotional.<sup>20</sup> This represents a material failure to implement this portion of the 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, from the progress reporting that was done, as well as OSPI's investigator's interview with special education teacher 3 the following information is generally known: the Student's progress on his May 2019 social emotional and adaptive skills goals was mixed—he appears to have made some progress in each goal area but also experienced some challenges and regressions.

Therefore, as compensatory education, the District will be required to provide the Student with approximately 1/3 of the total instruction he was supposed to have received in these areas (17 hours): 6 hours. During these 6 hours of compensatory education, specially designed instruction in social emotional and adaptive skills will be provided concurrently—meaning, the total will be 6 hours. Due to the public health crisis with COVID-19, these 6 hours may be provided remotely (e.g., videoconferencing or telephonically) or via regular, in-person instruction at the District—when and if it is determined that services can safely resume at school buildings.

**Issue 3: Accuracy of Student's IEP** – The Parent alleged the Student's May 2019 IEP (which was in effect from September 2019 through mid-December 2019) did not accurately reflect the Student's part-time attendance at LMB (the out-of-District educational facility).

IEPs must include the special education services, related services, and supplementary aids to be provided to the student. IEPs must be implemented as written. Furthermore, each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation and each provider must be informed of their respective, specific responsibilities related to implementing the student's IEP.

Here, the District acknowledges the Student's May 2019 IEP was not amended to reflect the Student's part-time attendance at LMB in the fall of 2019, stating:

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<sup>20</sup> This time period represents approximately 19 weeks. 19 multiplied by 55 minutes missed each week equals: 1,045 minutes. 1,045 minutes divided by 60 equals: approximately 17.42 hours.

[The Student's part-time enrollment at LMB] was not a 'part-time placement at an out-of-District location,' as that phrase is included in the issue statement [for this special education citizen complaint], but rather an entity and schedule chosen by the Parent. The District did not place the Student at LMB. The 2019 Settlement Agreement addresses which parts of that IEP would be implemented, and which would not, during the time the Student received services at LMB.

Here, then, the District should have taken the following action:

- Issued a prior written notice at the start of the 2019-2020 school year that stated: i) FAPE was represented by the May 2019 IEP; ii) listed the services the Student was receiving at LMB, as per the August 2019 Settlement Agreement—indicating the services the Parent was essentially declining from the District; and iii) included a statement of the Student's schedule at both the District high school and the LMB.

Because the record suggests this action did not take place, this represents a violation of the IDEA. However, this was only a minor violation of the IDEA: the record also supports a finding that pertinent District staff knew which services the Student was going to receive at LMB and which services the Student was going to receive at the District high school. Furthermore, the August 2019 Settlement Agreement was clear on which services the District was not going to be required to provide. Therefore, no remedial action on the part of the District is warranted. However, OSPI recommends the Student's IEP team review Question 1 in the TIP portion of OSPI's February 2016 Monthly Update, which will be emailed to the District with a copy of the instant decision.

**Issue 4: Progress Reporting** – The Parent alleged the District, in the fall of 2019, did not provide progress reporting in the time and manner specified in the Student's May 2019 IEP. Progress reports must be provided to parents in the manner and time specified in a student's IEP.

Here, the August 2019 Settlement Agreement excused the District from its obligation to provide the following aspects of FAPE to the Student: specially designed instruction in math, reading, and written expression. Therefore, the specially designed instruction the District was obligated to provide during the fall semester was in social emotional, adaptive skills, and behavioral instruction. It was the goals for these three areas of specially designed instruction, then, that the District was obligated to provide progress reports to the Parent.

According to the May 2019 IEP, the measurable annual goals for these areas of instruction were as follows:

- **Social/Emotional 1:** By May 19, 2020, when given communication opportunities, Student will use his understanding of emotions and actions of others to determine if his response is appropriate, improving pragmatic language skills 40% accuracy baseline (new skill) to 70% accuracy, as measured by speech language pathologist data and teacher observation.
- **Social/Emotional 2:** By May 19, 2020, when given communication opportunities, Student will note tone of voice, local volume, body orientation, facial expressions, sarcasm to determine implied meaning, improving pragmatic language, oral expression, and non-literal language, from 40% accuracy (new skill) to 70% accuracy as measured by speech language pathologist data and teacher observation.

- **Adaptive Skills 1:** By May 19, 2020, when given a new assignment or task and instruction in the 'get ready, go, done' method, Student will follow the three steps to complete the assignment improving independence in goal-setting and planning from not using the 'get ready, go, done' method to completing 2/3 steps independently as measured by classroom and therapy (OT) over 3 monthly data samples.
- **Adaptive Skills 2:** By May 19, 2020, when given personal information (including, but not limited to: name, address, phone number, birth date, parent contact information, etc.), Student will write into a form improving adaptive skills from three items independently to seven items independently as measured by teacher-collected data and student work.
- **Behavioral instruction:** By May 19, 2020, when given classroom assignment Student will complete assignment improving behavior from needing adult proximity and multiple reminders to completing with 2 or less reminders as measured by teacher data.

The May 2019 IEP stated the Student's progress on the foregoing measurable annual goals would be reported on a quarterly basis by providing the Parent with a copy of the goal page.

The District's first quarter ended on November 8, 2019. Sometime during the week of November 18, 2019, the District provided the Parent with a first quarter progress report that read, in part:

- **Social/Emotional 1:** "Student is participating in weekly group discussions developing listening and empathy skills as well as age appropriate conversation skills."
- **Social/Emotional 2:** "Student is showing improvement with receptive body language and age appropriate responses."
- **Adaptive Skills 1:** No entry.
- **Adaptive Skills 2:** "Student has developed skills to fill out and develop contact information completing more than 80% form accuracy with 0% support from staff."
- **Behavioral Instruction:** "Student is doing a great job entering classroom and [he is] starting assignments with little-to-no prompts, 100% of the time."

The first quarter progress report appears to have been provided to the Parent in a timely manner—November 18, 2019 represents a date not too long after the end of the first quarter. And, presumably, teachers need time after the end of the quarter to compile their records and data—and create reports, on respective students. In terms of the substance of the first quarter progress report, OSPI finds the following:

- **Social/Emotional 1:** The entry for this goal describes some of the activities the Student participated in during class, but it does not provide the Parent with clear and specific information on the Student's progress on the goal. This is a violation of the IDEA.
- **Social/Emotional 2:** The entry for this goal does state the Student is making progress on this goal. It is therefore compliant. However, there is a lack of specify in this entry. OSPI recommends districts report progress in the same manner as the goal is written. So, in this case, while it is permissible for the District to report, 'the Student is making progress,' the District could have reported, 'the Student has improved from a baseline of 40% accuracy to \_\_\_% accuracy, as measured by SLP data and teacher observation.'
- **Adaptive Skills 1:** There was no entry for this goal. This is a violation of the IDEA.
- **Adaptive Skills 2:** As with the entry for social/emotional 2, the entry for adaptive skills 2 does convey the Student was making progress on this goal. Therefore, it is compliant under the IDEA. However, it is written in a slightly different manner than the goal itself. For example, the progress report is written in terms of "accuracy" of information entered, whereas the goal is written in terms

of the number “of items” Student is able to independently enter into a form. Again, OSPI recommends that districts report progress in the same manner as the goal is written.

- **Behavioral Instruction:** The entry for this goal states the Student has mastered the goal.

In terms of the progress report for the second quarter, the District acknowledges that it “was unable to locate a record that [it] was sent to the Parent.” This, therefore, is a violation of the IDEA.<sup>21</sup> Select District staff will be required to complete an online training module on progress reporting.

**Issue 5(a): Content of the draft December 2019 IEP** – OSPI opened Issue 5(a) on the following: did the draft December 2019 IEP contain all the components required by WAC 392-172A-03090? Upon investigation, though, OSPI discovered the Parent’s allegation was more specific. For example, the Parent had several discrete issues with the content of the draft December 2019 IEP. The parent raised these issues in her January 23, 2020 email to the special education director and the District representative.

As a preliminary matter, OSPI notes the following: the December 2019 IEP was a **draft** IEP; the Student’s IEP team never completed its review of what constituted an appropriate IEP for the Student, despite attempts to schedule an IEP meeting (discussed below). Therefore, to the extent Parent’s concerns about the content of the draft December 2019 are valid, they do not represent violations of the IDEA.

Regardless, as the Student’s IEP team will be required to meet to complete its review of what constitutes an appropriate IEP for the Student, OSPI offers the following thoughts on the Parent’s concerns, as articulated in her January 23, 2020 email:

- Parent’s Concern: “Page 3: [This page] doesn’t mention any parents concerns ....”
  - OSPI’s Response: Parental concerns must be considered in creating a student’s IEP. See WAC 392-172A-03110. Furthermore, parents are considered integral members of students’ IEP teams. See WAC 392-172A-03095. WAC 392-172A-03090, though, does not require a parent’s concerns be separately listed in a student’s IEP. Here, the IEP does not list the Parents concerns. Therefore, OSPI recommends the Student’s IEP consider documenting the Parent’s concerns, where and as appropriate, in the finalized IEP.
- Parent’s Concern: “Page 14: for SLP last paragraph it states [Student’s] 30 minutes a week can be individually, small group, large group or in the classroom. I believe this is incorrect. It should be individually or possibly small group (meaning 1-2 people). In large groups or in classroom he isn’t receiving instruction specific to his goals necessarily.”

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<sup>21</sup> On March 26, 2020, special education teacher 1 did email the Parent a copy of what she described as a first “semester progress report.” It appears, however, that the March 26, 2020 progress reporting was related to the goals in the draft December 2019 IEP. Though, it should be noted, for behavioral instruction, adaptive skills, and social emotional, the draft December 2019 IEP did include similar goals as those found in the May 2019 IEP. The March 26, 2020 progress report does appear to be more well-written than the progress reporting that was provided to the Parent at the end of the first quarter. For example, with the March 26, 2020 progress reporting, the progress reporting entries were more closely written in the manner in which the goals were written. However, it should be noted: there was no entry for the draft December 2019 IEP goal of adaptive skills 2 in the March 26, 2020 progress reporting.

- OSPI's Response: It is possible for students to receive specially designed instruction in large group settings—and/or some combination of individual, small group, or large group settings. The principal factor in determining what type of setting the Student needs to be provided instruction is: what are the Student's needs resulting from the Student's disability? The Student's IEP team may, as necessary, revisit the issue of which type of setting (individual, small, or large) is necessary for the Student to receive his SLP instruction.
- Parent's Concern: "The transition assessment...there is no mention of that outside assessment or reference to it which shows different skill settings and interests."
  - OSPI's Response: In terms of transition assessments, the draft December 2019 IEP only mentions a teacher's report. To the extent an outside assessment was recently conducted that provides information useful to the Student's IEP team in creating the 'Secondary Transition' portion of the Student's IEP, OSPI recommends that the same be documented in the actual IEP.

OSPI further recommends the Student's IEP discuss the following concerns and suggestions at the upcoming, required IEP meeting:

- Parent's Concern: "Page 5 Medical-physical...This section appears to be the 2<sup>nd</sup> paragraph verbatim from page 6 of [Student's] IEP last spring. The 1 and 3<sup>rd</sup> paragraph are not present. The section listed as May 2019 on the spring IEP MUST be present at all times on any of [Student's] IEPs or re/evaluations...The item missing from this section is [a doctor's report for indication of dysgraphia]."
- Parent's Concern: "Page 7: top of page stating [Student] has a previous goal to address personal information and completing forms...It...needs reworded to match the actual goal which doesn't include providing him the information."
- Parent's Concern: "Page 7: adaptive goal for filling out application...it should say something more like when given a blank form requiring personal info...He needs to be able to fill out a variety of forms that require this type of info..."
- Parent's Concern: "The reading comp goal states for [Student's] last testing he scored 20 correct restorations with 3 errors but the goal states to go from 20 correct restorations to 30 correct restorations in 3 minutes but doesn't state with how many errors."
- Parent's Concern: "Page 15: Goals for related Services for SLP. The 1st goal for using and improving accuracy of vocab it says he is supposed to go from 0% accuracy to 80% accuracy...0% is not accurate since no baseline was actually done."

When the Student's IEP team, including the Parent, meet to discuss the Parent's concerns about the content of the draft December 2019 IEP, OSPI reminds both the Parent and the District 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 Parent with prior written notice of the District's proposals or refusals, or both, regarding the Student's IEP. In the event of a disagreement with the Parent, the prior written notice should document why the District members of the IEP team believed a particular course of action was most appropriate—with reference to accurate, relevant data, as necessary.

**Issue 5(b): District's Response to Parent's Concerns about draft December 2019 IEP** – The Parent alleged the District did not adequately respond to her concerns about the contents of the draft December 2019 IEP.

Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Furthermore, parents are considered integral members of students' IEP teams. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the district is unable to convince the parents that they should attend. In this case, the district must keep a record of its attempts to arrange a mutually agreed on time and place. An IEP meeting may only be conducted without a parent if the district is unable to convince the parents they should attend. When a district is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, such as parental participation and timely annual review of an IEP, the Supreme Court and the 9<sup>th</sup> Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit.

Here, on January 23, 2020, the Parent articulated certain concerns with the content of the draft December 2019 IEP. Between January 23, 2020 and February 26, 2020, the District made approximately six different attempts to convene an IEP meeting that would have included the Parent, to discuss her concerns. The Parent did not respond to these attempts. Then, in a March 9, 2020 email, the Parent appeared to state she did not have time to attend an IEP meeting in the near future.

At that point, if the District thought it necessary, it could have held an IEP meeting without the Parent to further discuss her concerns. However, the question of whether this action was necessary was negated by two facts: a) as per the August 2019 Settlement Agreement, the Student's last week at LMB was that starting March 2, 2020; and b) soon thereafter—on March 16, 2020, the District stopped providing regular, in-person instruction due to the COVID-19 pandemic. On the basis of these facts, then, the Student's access to FAPE does not appear to have been negatively impacted by any potential failure on the District's part to meet without the Parent, and there has been no violation of the IDEA.

**Issue 6: IEP Development and Placement Procedures** – The Parent alleged the District did not follow proper IEP development and placement procedures in determining the Student would return to the District high school on a full-time basis beginning early March 2020. For both placement and IEP development decisions, the IDEA includes two principal requirements: 1) decisions reflect **a group's** determination—in the context of IEP development, the IEP team<sup>22</sup>, and, in the context of placement, "a group of persons, including the parents...knowledgeable about the student, the evaluation data, and the [different] placement options"<sup>23</sup>; and 2) decisions be based on the student's needs resulting from the student's disability.

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<sup>22</sup> See WAC 392-172A-03110.

<sup>23</sup> See WAC 392-172A-02060.

Here, the decision-making process in determining the Student would return to the District high school on a full-time basis in early March 2020 appears contradictory.

For example, portions of the record suggest the decision was based on the Student's unique needs resulting from the Student's disability: in a December 11, 2019 email thread, both the assistant principal and reading support specialist noted the Student's reading progress—while at LMB, was "impressive" and "beyond what [the District's] self-contained program [can] offer." Similarly, in a January 21, 2020 email, the assistant principal wrote, in part: "At the Student's [December 2019] IEP meeting, the district representative agreed that **since Student was making so much progress**, the District would continue funding [Student's] LMB [attendance]" (emphasis added).

However, other portions of the record suggest the decision conflicted with the Student's needs resulting from the Student's disability. For example, in a January 31, 2020 email to the Parent, the assistant principal noted the challenge of providing the Student with all of the specially designed instruction and related services the District was required to provide the Student in "the limited hours the Student is on campus." On February 26, 2020, the assistant principal emailed the Parent, stating, in part, the more time the Student spent at the District high school during the remainder of the 2019-2020 school year, the easier time the Student would have transiting to full-time enrollment in 2020-2021. On March 5, 2020, the District representative emailed the Parent, stating, in part: "As we discussed at the [December 2019] IEP meeting, a gradual transition [back to full time at the District high school] is preferred, but not required." Finally, no prior written notice and/or IEP amendment details the following: that **the Student's IEP team** determined the District was incapable of providing the Student with services similar to those he received at LMB.

Furthermore, some portions of the record suggest the decision to continue the part-time LMB enrollment was the result of a team decision. For example, the December 19, 2019 prior written notice stated: in February 2020, the Student would return to the District high school for 3-4 periods per day but continue to attend LMB (at the District's expense) for the remainder of the school day. Other portions of the record, though, suggest the decision was made on a more individual level—without the input of the full IEP team. For example, between January 2020 and March 2020, numerous emails were exchanged between different District staff and the Parent in an attempt to come to agreement on the Student's schedule at both the District high school and LMB; in other words, at no point during the 2019-2020 school year did the **Student's IEP team** determine which IEP services the Student would receive at each, respective institution, and when Student would receive those services.

Overall, it was unclear what decision was made, what the decision was based on, and whether the Student's IEP team made a decision about his placement and schedule. The foregoing facts represent improper IEP development and placement decision procedures, and thus, a violation of the IDEA.<sup>24</sup> Therefore, prior to June 19, 2020, **the Student's IEP team** will be required to meet.

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<sup>24</sup> In fact, in a January 31, 2020 email, the District's compliance specialist emailed the District representative and special education teacher 1, articulating a concern that proper procedures—in terms of deciding what services the Student would receive at LMB, and when—were not being followed.

## CORRECTIVE ACTIONS

By or before **May 29, 2020, June 12, 2020, and June 26, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions. Additional submissions will be made to OSPI ***within 5 school days*** following the completion of the compensatory education.

### STUDENT SPECIFIC:

#### **EMAIL TO PARENT TO INCLUDE BRIEF EXPLANATION OF RECORDS 11-13**

By or before **May 29, 2020**, the District will email the Parent a brief, written statement, explaining the reading, writing, and math IEP test results that were provided to her as part of Records 11-13.

The District will BCC OSPI's investigator on the above email.

#### **COMPENSATORY EDUCATION**

By or before **May 29, 2020**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 6 hours of social emotional and adaptive skills provided concurrently. During these 6 hours of compensatory education, specially designed instruction in social emotional and adaptive skills will be provided concurrently—meaning, the total will be 6 hours.

The District will provide OSPI with documentation of the schedule for services by or before **May 29, 2020**.

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.

Due to the public health crisis with COVID-19, these 6 hours may be provided remotely (e.g., videoconferencing or telephonically) or via regular, in-person instruction at the District—when and if it is determined that services can safely resume at school buildings.

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 **December 1, 2020**, including those needing to be rescheduled.*

***No later than 5 school days after the completion of the compensatory education***, 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 ***no later than 5 school days after the completion of the compensatory education.***

### **IEP MEETING**

Prior to **June 19, 2020**, the Student's IEP team will be required to meet. At the IEP meeting, the Student's IEP team must address the following topics:

1. What are the Student's needs resulting from the Student's disability?
2. Based on the Student's needs resulting from the Student's disability, what are appropriate measurable annual goals for the Student?
3. What specially designed instruction, related services, supplementary aides and services, accommodations, and/or modifications, does the Student require in order to make progress on those measurable annual goals?
4. Can the District provide the Student with the specially designed instruction, related services, supplementary aides and services, accommodations, and/or modifications he requires, with the resources available at the District high school?
  - o If not, does the District need to pay for the Student to attend LMB on a part-time basis?
    - If so, which services does the District need LMB to provide?
    - If so, ***the Student's IEP team*** needs to determine, in collaboration with both LMB and the Parent, the Student's schedule at both institutions.
5. As part of FAPE, will Student be receiving specially designed instruction in adaptive skills that utilizes the 'get ready, go done' method?
  - o If not, then adaptive skills goal 1 will need to be reworded so as to more accurately reflect the nature of the specially designed instruction the District will provide the Student in relation to this goal.
6. In addition to the above matters, the IEP team will also discuss the following concerns raised by the Parent:
  - o Whether the IEP should list or summarize the Parent's concerns;
  - o Whether the Transition Assessment portion of the IEP needs to be updated to include an outside transition assessment of the Student that was conducted in the recent past; and,
  - o Whether the IEP should include certain 'Medical-Physical' information found in the May 2019 IEP but not included in the draft December 2019 IEP.

OSPI strongly encourages the Parent and the District to consider utilizing the Facilitated IEP option through Sound Options.

After the meeting, the District will issue the Parent with a prior written notice that specifically lists: discussion items 4-6 above; the decisions made on each such item; and a short summary of the reason for each respective decision.

No later than **June 26, 2020**, 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.

**DISTRICT SPECIFIC:**

**TRAINING**

By or before **June 12, 2020**, the special education administrators and special education certified staff, including educational staff associates (ESAs), at the school the Student was enrolled in during the 2019-2020 school year will complete a mini training module on progress monitoring. The free training module has been developed by OSPI Special Education Division and eLearning for Educators in Canvas, an online learning management system. Access to the mini training module in Canvas can be found here <https://www.evergreen.edu/elearningforeducators/>. By or before **June 12, 2020**, the District will submit documentation that required staff have completed the training module.

**REMINDER EMAIL CONCERNING PARTICULAR FERPA REQUIREMENT**

By or before **May 29, 2020**, the District's special education director will email the special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2019-2020 school year the following message: "This is a friendly reminder that the District must comply with a parent's request to access 'educational records' under FERPA within 45 days of the parent making his or her request."

The District will BCC OSPI's investigator on the above email.

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.

**RECOMMENDATION**

OSPI recommends the Student's IEP team review Question 1 in the TIP portion of OSPI's February 2016 Monthly Update, which will be emailed to the District with a copy of the instant decision.

Dated this \_\_\_\_ day of May, 2020

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

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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