

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-005

PROCEDURAL HISTORY

On January 7, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from an attorney (Complainant) providing representation to the parents of three students (Student A, Student B, and Student C) attending the Seattle School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Students' education, and the education of all students in the District.

On January 8, 2021, 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 January 19, 2021, for Students A, B, and C, the Complainant submitted an authorization for release of records signed by each Student's Parents for all student records and responses generated or produced by the District, its attorneys, and OSPI related to this complaint.

On January 27, 2021, the District requested an extension of time to submit its response. OSPI requested the District submit its response no later than February 5, 2021.

On January 28 and February 5, 2021, OSPI received the District's response to the complaint and forwarded it to the Complainant on February 5, 2021. OSPI invited the Complainant to reply. The Complainant did not reply.

On February 19, 2021, OSPI requested additional and clarifying information from the District, and the District provided the requested information on February 22, 23, and 25, 2021. OSPI forwarded the additional information to the Complainant on February 26, 2021.

OSPI considered all of the information provided by the Complainant 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 January 8, 2020. 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 procedures to implement Student A-C's individualized education programs (IEPs) beginning September 4, 2020?
2. Did the District follow procedures for responding to the Parents of Student A-C's concerns, considering requests for in-person services, including:

- a. Making a student-specific decision;
 - b. Ensuring parent participation;
 - c. Providing parents prior written notice;
 - d. Considering a full continuum of placements, including home instruction; and,
 - e. Improperly removing decision make regarding a free appropriate public education (FAPE) from the IEP team by requiring "approval" outside the IEP team for in-person services?
3. Does the District's "Flow Chart for IEP Services in Fall 2020 (Revised October 2020)" violate the IDEA in that it allegedly systemically fails to consider unique student disability related needs in consideration of in-person services?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Specially Designed Instruction: The purpose of the IDEA is to ensure that all students eligible for special education have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1; WAC 392-172A-01005. Special education includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that

other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

IEP Must State Amount of Services: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student: to advance appropriately toward attaining the annual IEP goals; to be involved and progress in the general curriculum in accordance with present levels of educational performance and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). "The amount of services to be provided must be stated in the IEP, so that the level of [the district's] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (34 CFR Part 300, Question 35).

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

IEP in Draft Form Prior to IEP Meeting: School district staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the district must make it clear to the parents at the outset of the meeting that the services proposed by the district are only recommendations for review and discussion with the parents. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting as part of a full

discussion, of the student's needs and the services to be provided to meet those needs before the IEP is finalized. School districts must ensure that, if district personnel bring drafts of some or all of the IEP content to the IEP meeting, there is a full discussion with the parents, before the student's IEP is finalized, regarding drafted content and the student's needs and the services to be provided to meet those needs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12478 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 32).

Reasonable Delays in Implementation: Reasonable delays in implementing an IEP while a school district conducts assessments and negotiates with parents are not material. See *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1189 (W.D. Wash. 2002) (finding that implementation delay that occurred at "behest of the parents...was reasonable and was not...error"); cf. *Tracy N. v. Haw. Dep't of Educ.*, 715 F. Supp. 2d 1093, 1112 (D. Haw. 2010) (finding that delay in determining student's educational placement was reasonable because there were "ongoing discussions regarding placement in response to [the student's mother's] concerns, a reassessment of [the student's] cognitive and academic skills, and a reevaluation of [her] behavior").

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5). Regarding parent participation when determining educational placement, the placement team, which includes the Parent decides the type of placement appropriate to meet the student's needs, the placement team may delegate the classroom assignment to the school administration where there is more than one classroom that fits the description of an appropriate educational program for the student. However, that determination must be consistent with the placement team's decision about the appropriate educational setting for the student. See *Letter to Fisher*, 21 IDELR 992 (OSEP 1994); and *Letter to Wessels*, 16 IDELR 735 (OSEP 1990).

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

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a

placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994).

Educational placement decisions must be determined annually, or sooner if appropriate, and be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options that provide 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 the student needs, based on the student's IEP and LRE requirements. Unless the student's IEP requires some other arrangement, the student must be educated in the school that the student would attend if not disabled. If the student needs other arrangements, placement must be as close as possible to the student's home. A student should not be removed from his or her age-appropriate general education classroom solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060. Districts must ensure that students eligible for special education participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of each student. 34 CFR §300.117; WAC 392-172A-02065.

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. WAC 392-172A-01175.

ISSUES ONE & TWO: IEP IMPLEMENTATION & RESPONDING TO REQUEST FOR IN-PERSON SERVICES

FINDINGS OF FACT

Student A

1. Student A attends a high school in the District and is eligible for special education under the category of other health impairment (OHI). Student A has a diagnosis of Angelman Syndrome, a history of seizures, is non-verbal, and receives specially designed instruction and related services in the areas of communication, functional reading, functional writing, functional math, social/behavior, adaptive/life skills, occupational therapy, physical therapy, and speech and language pathology. Student A's individualized education program (IEP) also provides her with

full-time 1:1 paraeducator support to assist with mobility through the school building, toileting, eating, and performing other personal care skills.

Summer 2020

2. On August 31, 2020, the parent of Student A (Parent A) emailed Student A’s special education teacher and explained that the Student had struggled to engage in online learning during spring of 2020. She added that Student A had regressed behaviorally, academically, and emotionally and stated that while Student A had received a touchscreen laptop near the end of the 2019-2020 school year, Student A was unable to utilize it because the lessons were not programmed into it and the family received no personalized support regarding how to use it. Parent A reminded the special education teacher that Student A was significantly impacted by her disability and requires a full-time, in-person, 1:1 paraeducator to access the curriculum and materials successfully, as well as for safety reasons and for basic functioning. Parent A added that both parents in the household work full time and do not possess the skills, training, nor background to provide the specialized instruction or support Student A required, and that both parents believe in-person instruction with in-person personalized support is required for Student A to be successful in school. Parent A also stated in her email that “without District-provided trained and personalized support at school and at home, learning will not be accessible.”

3. On September 1, 2020, Student A’s special education teacher offered to meet with Parent A the week of September 8, 2020, to discuss how to support Student A during remote learning. Student A’s special education teacher also invited Parent A to attend the first day of class, along with Student A’s service providers, and provided Parent A with a link to Student A’s virtual classroom.

4. On September 3, 2020, Student A’s special education teacher provided Parent A the name of Student A’s 1:1 paraeducator for the 2020-2021 school year, the schedule for the first full week of school, and the schedule the class would be following beginning September 14, 2020.

5. From September 4-11, 2020, Student A’s schedule was to be as follows:

	9/4/2020	9/8/2020	9/9/2020
9:00-9:55	Period 1 Community building SEL – address summer issues Optional small group	Period 3 Community building SEL optional, or build community Optional small group time	Period 5 Community building SEL optional, or build community Optional small group time
10:00-11:00	Period 2 Community building SEL optional, or build community Optional small group time Asynchronous tech for day	Period 4 Community building SEL optional, or build community Optional small group time Asynchronous tech for day	Period 6 Community building SEL optional, or build community Optional small group time
	9/10/2020	9/11/2020	
9:00-9:35	Period 1 Community building SEL determined by IC	Period 4 Community building SEL determined by IC	

9:45-10:20	Period 2 Community building SEL determined by IC	Period 5 Community building SEL determined by IC	
10:30-11:05	Period 3 Community building SEL determined by IC Asynchronous tech for the day	Period 6 Community building SEL determined by IC Asynchronous tech for the day	

Beginning September 14, 2020, Student A's class would follow the school schedule on Mondays, Tuesdays, Thursdays, and Fridays (below), which provided for three class periods per day of live remote group instruction with small group instruction and optional (as determined by the special education teacher) individual 1:1 or small group support offered in the afternoon. Asynchronous learning activities were provided when small group or 1:1 lessons were not offered.

Time	Mon/Thurs	Tues/Fri		Time	Wed
9:00-9:50	Period 1 (Concert Band)	Period 4 (Adaptive PE)		9:00-9:35	Check in/Community
10:00-10:50	Period 2 (Dance)	Period 5 (Life Skills)		9:40-10:10	Period 1 asynchronous or small group
11:-11:50	Period 3 (Life Skills)	Period 6 (Life 6)		10:15-10:45	Period 2 asynchronous or small group
11:50-12:35	Lunch & Enrichment	Lunch & Enrichment		10:50-11:20	Period 2 asynchronous or small group
12:35-1:25	Period 1 asynchronous or Period 1 small group	Period 4 asynchronous or Period 4 small group		11:20-12:05	Lunch and enrichment
1:30-2:20	Period 2 asynchronous or Period 2 small group	Period 5 asynchronous or Period 5 small group		12:05-12:35	Period 3 asynchronous or small group
2:25-3:15	Period 3 asynchronous or Period 3 small group	Period 6 asynchronous or Period 6 small group		12:40-1:10	Period 4 asynchronous or small group
3:15-3:50	Enrichment activities (Counseling, library, etc.)	Enrichment activities (Counseling, library, etc.)		1:15-12:45	Period 5 asynchronous or small group

- Also, on September 3, 2020, Parent A requested an IEP team meeting to review Student A's IEP and to discuss Student A's need for in-person services, including what process the District used to qualify a student for in-person services. In her email, Parent A stated that Student A had not received a free appropriate public education (FAPE) since March 2020, that the Student's IEP had not been adhered to, and that Student A had regressed behaviorally, academically, and emotionally, and accordingly could not meaningfully meet her IEP goals while in a remote setting, utilizing only online and distance learning tools.

2020-2021 School Year

- The District's first day of school was September 4, 2020.
- At the beginning of the 2020-2021 school year, Student A's November 26, 2019 IEP was in effect and included goals in communication (combining two words, expanding use of signs,

using prepositions); functional reading (location identification, answering “wh” questions, orientation of objects); social behavior (greeting a peer, commenting); adaptive/life skills (community signs, 2-step directions, zippers, classroom mobility, phone use, face wiping); functional math (functional numbers, functional number sequence); and functional writing (letter tracing). Student A’s November 2019 IEP provided her with the following specially designed instruction and related services:

- 765 minutes weekly of social/behavior in the *general education* setting;
- 30 minutes weekly of social/behavior in a *special education* setting;
- 255 minutes weekly of functional math in a *special education* setting;
- 130 minutes weekly of functional reading in a *special education* setting;
- 125 minutes weekly of functional written language in a *special education* setting;
- 345 minutes weekly of adaptive/life skills in a *special education* setting;
- 450 minutes per year of physical therapy, provided by a physical therapist (PT) in a *special education* setting;
- 120 minutes per month of speech language pathology, provided by a speech language pathologist (SLP), in a *special education* setting; and,
- 800 minutes per year of occupational therapy, provided by an occupational therapist (OT) in a *special education* setting.

The Student’s IEP also provided Student A with a 1:1 paraeducator as a supplementary aid and service to assist the Student with walking and moving throughout school buildings, toileting, eating, and performing personal care skills.

9. On September 4, 2020, the special education teacher emailed Parent A an invitation to an IEP team meeting scheduled for October 14, 2020. In her email, the special education teacher explained that from September 4 until October 14, 2020, she would meet with Student A virtually and assess her needs and progress on her IEP goals. The official meeting notice included with the District’s response indicated the purpose of the scheduled IEP meeting was to review Student A’s IEP and discuss transition services. The meeting notice did not specifically mention the Parent’s request for in-person services. In the complaint filed, the Complainant opined the six weeks between Parent A’s request for an IEP meeting on September 3, 2020 and the scheduled date of October 14, 2020 unreasonably delayed the process of making a decision regarding Student A’s need for in-person services and did not take into account Student A’s unique needs—including that Parent A had been communicating with the District since spring 2020 that Student A had not been able to access or benefit from remote learning.
10. Also, on September 4, 2020, Parent A attempted to assist Student A with joining a life skills class online from 9:00-11:00, but was unable to do so due to technical difficulties accessing Schoology—the District’s online learning platform. In an email to the special education teacher, Parent A relayed she assisted Student A with joining via her phone instead. The special education teacher informed Parent A that same day that she would like to meet with Student A in a more individualized/small group setting on September 9, 2020 and asked for Parent A’s preference for a time. That same day, the SLP completed a virtual observation of Student A and also more generally introduced herself to the parents of all students assigned to her by

the District, including Parent A, notifying them that she would be collecting data samples the first week of school, and would begin scheduling speech services for students on September 14, 2020. The SLP explained to parents that sessions “come in a variety of formats, depending on student needs: including live virtual sessions, 1:1, small groups, push-ins to the whole classroom, or maybe even some afternoon home assignments.”

11. On September 7, 2020, Parent A emailed the special education teacher’s co-teacher (special education teacher 2) to confirm the steps involved in applying for in-person services and relayed that in absence of in-person learning, Student A had “not been receiving a FAPE” and that Student A had not accessed “meaningful educational and related services” since in-person instruction ended in March 2020.
12. Also on September 7, 2020, the special education teacher emailed the Student A’s music teacher to inform him that Student A would be attending his first period concert band class with her 1:1 paraeducator and asked him to include both Student A and Student A’s 1:1 paraeducator in all communications. The special education teacher also invited the music teacher to Student A’s IEP meeting on October 14, 2020, for input regarding whether Student A would be able to access remote instruction for his general education class. Student A’s special education teacher also emailed Student A’s 1:1 paraeducators to request they collect one data point on each of Student A’s IEP goals each week, starting September 14, 2020 in preparation for Student A’s IEP meeting. The special education teacher also relayed that she was meeting with Student A’s family on September 9, 2020 at 11:00 am and requested the paraeducators also be present. The special education teacher encouraged the paraeducators to contact her with questions or for support with how to collect data on Student A.
13. According to the District’s response, beginning September 8, 2020, Student A’s 1:1 paraeducator was available remotely to support Student A during virtual classroom time. According to the Complainant and Parent A, Student A was unable to access the support provided without Parent A being present in-person to assist Student A in using her communication device and to help Student A with mobility and personal care needs necessary to access instruction.
14. Also, on September 8, 2020, the special education teacher emailed the special education supervisor (supervisor) to ask for guidance on how to respond to Parent A’s request for in-person services. The supervisor responded that a team meeting might be best and copied the District’s program specialist on the email. The program specialist responded and attached a flow chart (IEP Flow Chart)¹, which she indicated the District was “using this year as [the District] make[s] decisions about services.” The program specialist agreed a meeting would be a good idea. The program specialist requested a special education supervisor be invited to the Student’s upcoming IEP meeting, as well as the school nurse, as recommended by the IEP Flow Chart.

¹ See Appendix A.

15. On September 9, 2020, the special education teacher met virtually with Parent A. During the meeting, the special education teacher explained to Parent A that between then and the IEP meeting on October 14, 2020, Student A's team would be collecting data during remote learning sessions and assessing the extent to which Student A could access lessons and work on her IEP goals remotely. The special education teacher also provided Parent A with a link to Student A's virtual IEP meeting scheduled for October 14, 2020, and explained that the first step to qualifying the Student for in-person services was to attend the IEP meeting.
16. On September 9, 2020, following the meeting with the special education teacher, Parent A emailed the special education teacher and the supervisor and asked how the IEP meeting scheduled for October 14, 2020 would be different than a typical IEP meeting. Parent A also asked what steps would follow the meeting, including a review of the Parent or caregiver and a medical/safety review, which she relayed she had heard about in the special education parent community.
17. On September 10, 2020, the supervisor responded to Parent A that the IEP meeting would be a "typical IEP meeting to determine that the IEP adequately provides [Student A] with her needed services," and added that the District was still in its "Strong Start" phase and that "actual school" would begin the following Monday, on September 14, 2020.
18. On September 14, 2020, Student A was unable to attend 1st period due to accessibility issues. Parent A logged into dance and physical education with her phone because she was unable to access the class remotely on the Student's laptop. That same day, the special education teacher emailed Parent A that it was great to see Student A in class and added that the 1:1 paraeducator had a similar problem logging into another class remotely that day. She relayed that she would connect with the teacher to get the problem fixed.
19. On September 15, 2020, the PT emailed Student A's family with equipment vendor information regarding an evaluation for a new, larger wheelchair.
20. On September 15, 2020, the special education teacher informed Parent A that she wanted to provide more individualized support to Student A on Thursday afternoons. The special education teacher explained that she would use this time to see how Student A responded to 1:1 virtual instruction and to gather more information on the Student A's IEP goals. Parent A informed the District that the timing would work with her schedule.
21. Also, on September 15, 2020, the SLP asked if Student A was available on Wednesdays from 10:00-10:30 am to receive her speech therapy. Parent A indicated Student A was not available due to conflicts with Parent A's work schedule. The SLP offered to provide Student A's speech therapy on Tuesdays instead. Parent A provided a time on Tuesdays that she said would work best. According to SLP therapy logs, the SLP additionally completed a virtual observation of Student A on this date.
22. On September 16, 2020, a meeting was scheduled for September 23, 2020 to discuss the Student's assistive technology (AT) needs.

23. On September 18, 2020, the SLP informed Parent A she would provide Student A's speech therapy on Tuesdays from 10:00 to 10:30 am. The SLP provided the Parent with a link to virtual therapy, which was scheduled to begin September 22, 2020.
24. On September 22, 2020, Student A did not attend the first scheduled speech therapy session. The SLP offered to reschedule Student A's speech therapy time. Parent A explained that they were dropping a sibling off at college that day and were unable to attend the scheduled speech session.
25. On September 27, 2020, the special education teacher emailed Student A's general education teacher to request feedback regarding how Student A was doing in his class and what he viewed her strengths and needs to be. She provided the general education teacher with an example from one of Student A's previous general education teachers as a reference. That same day, the special education teacher contacted the Student's SLP, OT, and PT and asked for an update on the Student's present levels of performance for the draft IEP.

Later, on October 4, 2020, the general education teacher responded that he had very little interaction with Student A during remote instruction, and that when Student A was present, Parent A had to assist Student A in completing movements to respond. On October 5, 2020, the OT and PT called the special education teacher to discuss Student A's progress and goals for the upcoming IEP meeting. Following the meeting, the OT/PT emailed the special education teacher her notes, including that she felt Student A needed to learn how to request help and initiate conversation on a device.

26. On September 28, 2020, Student A did not attend a scheduled speech therapy session. When the SLP contacted Parent A to inquire about the absence, Parent A informed the SLP that Student A was absent for medical reasons and had been in the hospital. The SLP asked Parent A if she would like to reschedule and offered to work with the special education teacher to teach part of Student A's life skills class each week.
27. On September 30, 2020, the special education teacher invited Parent A to meet with her on October 8, 2020, to discuss Student A's IEP goals in preparation of the upcoming IEP meeting.
28. On October 1, 2020, some members of Student A's IEP team convened.² According to the prior written notice (PWN), Student A's parents were in attendance, along with a special education teacher, SLP, and assistive technology "AT" team lead. Following the IEP meeting, the special education teacher emailed the Parent a PWN regarding the Student's new communication device. The PWN indicated the meeting was held to discuss various options related to assistive technology to assist Student A in expressing her needs, and that the IEP team determined a "Pragmatic Organization Dynamic Display" (PODD) system would be appropriate for the Student.

² There is no documentation that a general education teacher or a District administrative designee were present at the meeting; however, a PWN did follow the meeting and referred to the meeting as an IEP meeting.

29. Also, on October 1, 2020, the SLP contacted the special education teacher and requested to meet that Friday at 1:30 to discuss some suggestions in response to the Student's draft IEP. The SLP relayed that she had thoughts about navigating the Student's new AAC software and Student A continuing to use American Sign Language (ASL).
30. Also, on October 1, 2020, the special education teacher told Parent A that she and another special education teacher were co-teaching a life skills class on Wednesday mornings. She explained that attendance was optional, and that Student A could also spend the time working offline on life skills, such as independent feeding, toileting, or communication skills. The special education teacher also emailed Parent A a copy of Student A's draft IEP. The special education teacher offered to meet with Parent A virtually over the weekend to discuss the draft. The Parent indicated she may have plans over the weekend and would get back to the special education teacher about meeting. It is unclear if a meeting occurred.
31. On October 5, 2020, the PT called the parents of Student A to discuss progress, goals, and concerns in preparation for the upcoming IEP meeting.
32. On October 7, 2020, Student A participated in a 30-minute virtual speech therapy session. That same day, training by the assistive technology staff was provided regarding use of Student A's new AAC software. That same day, Student A's scheduled group PT session was canceled due to the provider being sick.
33. Also, on October 7, 2020, Parent A emailed the special education teacher that she was not in agreement with the PWN dated October 1, 2020. Specifically, Parent A wrote that she believed the main reason for holding the IEP meeting was to discuss "the inaccessibility of online learning to [Student];" and "the lack of in-person personal support. ([Student A] requires a one-on-one aide.)" Parent A described Student A's behavior at home as "disruptive," noting Student A was engaging in "grabbing, screaming, and self-[injurious]" behavior, including biting, which Parent A wrote was worsening the longer Student A went without in-person services, including speech, occupational therapy, and physical therapy. That same day, the special education teacher responded, asking Parent A if she would like to meet the following day to review the most recent IEP draft.
34. On October 8, 2020, the special education teacher provided Parent A with an updated draft of Student A's IEP and again asked Parent A if she would like to meet the following morning to discuss the Student's IEP goals.
35. On October 11, 2020, Parent A emailed the special education teacher and attached a copy of the IEP draft with her comments. Parent A noted in the email that Student A's regression was not mentioned in the draft and that the draft contained only information and data collected prior to the COVID-19 pandemic. Parent A further expressed frustration that the draft IEP did not document Student A's inability to access online instruction during the COVID-19 pandemic and asked if her concerns would be addressed at the October 14, 2020 IEP meeting. Parent A wrote these concerns on the draft IEP attached to the email.

36. On October 12, 2020, the SLP provided Parent A with a draft of the communication portion of Student A's IEP goals with data on Student A's progress and proposal language for new IEP goals.
37. On October 13, 2020, Student A received 30 minutes of virtual speech therapy.
38. Also, on October 13, 2020, the special education teacher provided Parent A with information about Student A's high school and beyond plan. She also requested Parent A complete an assessment to help the team create an appropriate and informed transition plan.
39. Also, on October 13, 2020, Student A's OT asked Parent A whether she wanted to keep Student A's group occupational therapy sessions at 12:35 pm, or if the time was difficult for Student A and should be rescheduled. The OT informed the Parent that a certified occupational therapy assistant (COTA) had prepared activities to work on if they joined and provided a list of supplies needed for the session. Parent A expressed that Student A was frustrated with the online platform and that she accordingly did not force her to sit through sessions, and that at times, online learning resulted in the Student engaging in screaming and self-injurious behaviors. Parent A also informed the OT that due to her full-time work schedule; she was often not available during the day to assist the Student with logging on, accessing virtual sessions the way an in-person 1:1 paraeducator could. The OT agreed to keep Student A's time slot open in case the Student was able to attend and would continue to join the Student's special education classes remotely to provided support.
40. On October 14, 2020, the Student's IEP team convened. The following individuals were in attendance: Student A, Student A's parents, administrator/designee 1, administrator/designee 2, general education teacher, school nurse, OT, program specialist, SLP, paraeducator, assistant manager of student health, attorney for parents of Student A, attorney for District, and special education supervisor. The team updated Student A's present levels of performance and developed new annual goals.³ The IEP team also reviewed the data collected regarding Student A's performance during remote learning and discussed Student A's need for in-person services. No changes were made to the special education services required by the Student to receive a FAPE. However, regarding in-person services, the IEP team agreed Student A required in-person services and developed a schedule that offered Student A in-person services for 10 hours per week. According to the Complainant, the IEP team agreed the in-person services would commence October 26, 2020.

In her complaint, the Complainant relayed that at the IEP meeting, the parents additionally requested the IEP team consider providing Student A in-home, in-person services with in-person 1:1 paraeducator support for the hours the Student was not receiving in-person instruction at the school building, and that the IEP team consider Student A's need for recovery services and compensatory services due to the Student's regression caused by not having received in-person services since March 2020. The Complainant alleged the IEP team

³ A review of the revised IEP demonstrated that several of Parent A's comments and concerns were incorporated into the amended IEP.

responded that it was not providing any in-person services at this time, and that it was unable to respond to the request for recovery or compensatory services because it was unable to determine Student A's progress while Student was remote.

41. On October 15, 2020, the SLP provided Parent A with a revised version of Student A's communication goal based on feedback provided during the IEP team meeting.
42. On October 20, 2020, Parent A canceled Student A's remote speech therapy.
43. On October 21, 2020, the special education teacher emailed Parent A and informed her the District was still working out safety details for having students return for in-person services and that it appeared unlikely they would have the details worked out prior to the anticipated start date of October 26, 2020. The special education teacher relayed that she would update the Parent when they had all the necessary personal protective equipment (PPE), staffing, and protocols in place to begin providing in-person services.
44. Also, on October 21, 2020 Student A did not attend a scheduled PT virtual group motor class.
45. On October 26, 2020, the SLP asked Parent A whether they could meet virtually on Tuesday morning for speech sessions until in-person services could begin. The Parent responded that she had a work meeting and was unable to attend that week at that time. The SLP offered to reschedule the Student's speech therapy session for later in the week and stated she would continue to keep Student A's other weekly speech therapy slot open for her scheduled sessions.
46. On October 27, 2020, Parent A canceled the 30-minute scheduled speech therapy session.
47. October 28, 2020, Parent A emailed the special education teacher and requested she send the PWN from the October 14, 2020 IEP meeting.
48. On October 29, 2020, the special education teacher emailed Parent A the revised IEP and PWN. The PWN documented the IEP team's determination regarding Student A's need for in-person services, and stated the Student required in-person services and would receive them for 10 hours per week. The PWN did not include language about a request by Student A's parents for in-home assistance or mention a request for recovery services. The PWN stated, "The case manager has filled out the Initiation Form for in-person services as discussed in IEP meeting. No in-person services will take place until the proper COVID-19 related safety review has taken place and in-person services have been approved."

The Complainant relayed in her complaint that an "initiation form for in-person services" and the process of a COVID-19 safety review, including an "approval of in-person services," was not discussed at the October 14, 2020 IEP meeting.

49. On November 3, 2020, the SLP reminded Parent A that Student A's speech session would be provided that day from 10:00 to 10:30 am. The Parent informed the SLP that due to her work obligations, she would not be able to provide the necessary support for the Student to attend.

The SLP offered to meet at another time, but there was not a time during the school day that correlated with the Parent's work schedule.

50. On November 4, 2020, a progress report was provided to the parents, which reported a "1" (minimal or no progress) on every IEP goal. Comments reported for most goals that due to issues with the Student's communication device or not being able to see or interact with the Student, that data on the Student's progress was unable to be maintained.
51. On November 4, 2020, the PT emailed Parent A and asked if Student A would be participating in partner physical education on Mondays and Thursdays and motor group on Wednesdays. Parent A did not respond.
52. On November 6, 2020, the special education teacher emailed Parent A they were still in the process of preparing to return to in-person services for Student A.
53. On November 10, 2020, the SLP reminded Parent A that Student A was scheduled to receive speech services virtually from 10:00 to 10:30 am. The Parent responded to the SLP that the Student did not fall asleep until 4:00 am, and likely would not be able to attend. The SLP offered to provide the Student speech therapy on Friday instead.
54. On November 13 and 20, 2020, Student A received 30 minutes of virtual speech therapy.
55. On November 30, 2020, the PT spoke with the Student's paraeducator for 30 minutes regarding Student A's movement patterns and mobility needs.
56. On December 4, 2020, Student A did not attend a scheduled speech therapy lesson.
57. On December 11, 2020, Parent A informed the SLP that Student A would not be participating in speech therapy that week or the following week due to work obligations and an inability to provide support while also working.
58. On December 11, 2020, the Student did not attend a scheduled speech therapy lesson. That same day, the Parent emailed the SLP and informed her the Student would not be accessing any virtual speech therapy until in-person services could be provided. Student A subsequently did not attend scheduled virtual speech therapy sessions on December 18, 2020, January 8, 15, 22, and 19, 2021, and February 5, 2021. The SLP offered to provide Parent A asynchronous activities for Student A to complete during December 2020 and January 2021, but the Parent declined.
59. On December 17, 2020, the special education teacher asked Parent A if she would be interested in Student A attending extended school year (ESY) services that summer.
60. On February 8, 2021, Student A began to receive some in-person services with 1:1 in-person paraeducator support for periods two and three on Mondays and Thursdays, and periods four, five, and six on Tuesdays and Fridays. Student A also began receiving virtual speech services on Tuesdays at 11:00 am with paraeducator support. During in-person services, Student A's

special education teacher reports that Student A “is able to engage in remote instruction and use her communication device to work on her IEP goals.” The special education teacher reported in a statement provided to the OSPI complaint investigator that Student A is currently working on other adaptive behavior goals, including making progress on greetings, opening Ziploc bags during lunch, holding objects in a specific orientation, and typing in numbers. These activities correspond with Student A’s IEP goals.

61. On February 9, 2021, Student A began receiving in-person services from the PT and SLP. This same day, the SLP and PT worked with Student A’s 1:1 paraeducator and special education teacher to provide training on how to support Student A’s speech and mobility needs while receiving in-person services. This included training on Student A’s goal for transitioning from standing to sitting by using her hands on the table, or the arms of the chair with contact guarding by an adult.
62. On February 11, 2021, the PT trained with one other paraeducator on mobility and transfers with Student A. This included classroom mobility and training on taking short walks outside near the classroom. This same day, the PT picked up Student A’s custom gait belt and Rifton compass chair and brought it over to the school building for the Student to use during in-person instruction.
63. On February 12, 2021, the SLP worked with Student A’s iPad to make it easier to work with Student A on IEP goals. The PT also came into the school building to assist staff with learning about Student A’s mobility needs considering the inclement weather (snow/ice).
64. On February 22 and 23, 2021, the District responded to requests from the complaint investigator for additional information about the specially designed instruction provided to Student A during remote instruction and about Student A’s ability to make progress on IEP goals during this time. The District provided examples of specially designed instruction incorporated by the special education teacher into the activities developed and included in the presentations for small group lessons Student A was scheduled to attend. These included power point slides, instructing students to sign, write and trace their name, identify dates on a calendar, and identify community signs on the screen (such as “walk” or “stop”, etc.). These aligned with Student A’s IEP goals. However, a statement included by Student A’s special education teacher noted that providing specially designed instruction during remote instruction was “a challenge due to the lack of support from Parent.” Student A’s special education teacher added that, “Student A is nonverbal, requires support for mobility and is unable to independently gather materials. Many of [Student A’s] IEP goals center around her communication device,” and, the special education teacher wrote that “[Student A] was never observed using her communication device at home during remote instruction.” Student A’s special education teacher confirmed that Student A did not attend remote instruction on numerous occasions and that when Student A did attend, she was often not able to receive specially designed instruction due to her inability to engage with the virtual platforms without support of an adult. The special education teacher’s written testimony supported the documentation which showed Student A’s parents had to work during most school days and could not consistently attend scheduled classes to provide Student A with the physical motor

assistance required to consistently access or engage with her communication device or virtual learning platforms necessary to access her special education services. The special education teacher reported that it was difficult to get a baseline measurement on most of Student A's IEP goals and that it did not appear Student A had made any progress on any IEP goals.

Student B

65. Student B attends a middle school in the District and is eligible for special education under the category autism. Student B receives specially designed instruction and related services in the areas of functional math, functional reading, and functional written language.

Summer 2020

66. On August 6, 2020, the principal at Student B's elementary school informed all parents that the District was acquiring iPads for students who were in kindergarten, first, and second grade, and laptops for students in third, fourth, and fifth grade, which would be distributed prior to the first day of school.
67. On August 7, 2020, the Parents of Student B (Parents) emailed the principal that although Student B was in fourth grade, he required an iPad in lieu of a laptop. The Parents also asked about getting Student B priority for in-person learning. The principal responded to the Parents that he would advocate for Student B to receive an iPad and would provide more information about in-person services when it became available.
68. On August 24, 2020, the Parents emailed the principal and relayed that Student B required in-person services in the fall and requested information about their options. The principal explained that Student B's special education teacher would be reaching out to schedule an IEP team meeting within the first 30 days of school to discuss Student B's needs and to determine how Student B would receive services in the fall. The principal explained that in-person learning was still being negotiated with the District's labor partners and that he would update the Parents when he received information about available options in the fall.
69. On August 28, 2020, the Parents told the principal that they were waiting for a response about whether Student B would be educated in-person. The Parents stated they would not permit the District to update Student B's IEP in a way that allowed for remote learning. The principal relayed that he did not have any new information to share.
70. On August 31, 2020, Student B's special education teacher asked the Parents for their availability for an IEP meeting during the week of September 4, 2020.
71. On September 3, 2020, the principal delivered the iPad and supplies to Student B's home.

2020-21 School Year

72. The District's first day of school was September 4, 2020.

73. At the start of the 2020-2021 school year, Student B was eligible for special education under the category of Autism, was in the fourth grade, and attended a District elementary school. At that time, the Student's February 6, 2020 IEP was in effect, which included measurable annual goals in the areas of adaptive/life skills (keeping the pants up, toileting); communication (communication 1, communication 2); functional math (digital clock, more than/less than); functional reading (reading comprehension); written language (narrative, keyboarding, invitations); and social/behavior (playing games).

Student B's February 2020 IEP provided the Student the following specially designed instruction and related services in a *special education* setting:

- 90 minutes monthly in communication;
- 300 minutes weekly in adaptive life skills;
- 100 minutes weekly in functional written language; and
- 60 minutes monthly of occupational therapy.

Student B's IEP included the following specially designed instruction and related services in the *general education* setting:

- 270 minutes weekly in functional math;
- 270 minutes weekly in functional reading;
- 240 minutes weekly in functional written language; and
- 300 minutes weekly in social/behavior to be provided by special education staff.

Student B's IEP stated Student B "will not participate with nondisabled peers in the general education class...[Student B] will be with his typically developing peers for 75% of the school week. He will receive specially designed instruction in both special education and general education settings from a special education program with an approximate ratio of 7 students: 1 teacher: 2 instructional assistants."

Student B's IEP included several accommodations and modifications, including access to a visual daily schedule,⁴ frequent checks for understanding,⁵ frequent positive reinforcement of

⁴ Student B's special education teacher explained that when in a remote setting, he ensured the curriculum and names of instructors for each class were displayed in visuals shown to Student B on Student B's home screen. The special education teacher also helped prepare Student B for each transition during remote instruction by having a verbal interaction with Student B a few minutes before the transition. The special education teacher relayed that Student B could suggest changes in the virtual schedule and at times did, especially during his 1:1 remote time from 9:30-10:45. During in-person class, Student B was also provided with his regular visual daily schedule, which was made available at the front of the classroom.

⁵ Documentation showed Student B required checks for understanding to be in-person in order for the accommodation to be effective. Student B's special education teacher clarified in written statements provided to the investigator that "When [Student B] is in his general education class, his comprehension of what is happening is checked and remediated," by him. He explained that Student B had not been going to his general education class via remote from his home, but that a teacher was made available to accompany him virtually should he do so to help provide checks for understanding and interventions.

appropriate behavior,⁶ prior notice of transitions or changes in routine, student-selected breaks, and dictation to a scribe when in the general education setting.

74. On September 4, 2020, the special education teacher provided the Parents with a schedule of Student B’s general education classes for September 4-11, 2020, and links to Student B’s remote learning. Student B’s special education teacher also informed the Parents that he would be in the special education classroom with support of a paraeducator from 9:00 to 9:45 a.m. and 11:15 to 11:45 a.m. Student B’s OT and SLP both observed Student B during the first week of school. Student B’s schedule for September 4-11, 2020 was as follows:

Start Time	Where Student B can be during Remote Learning
8:30	(Social) Check-in (Student B can be part of class)/ <i>general education</i> virtual classroom
9:00	Warmups/ <i>special education</i> virtual classroom
9:15	Welcome, calendar/ <i>special education</i> virtual classroom
9:30	Counting, weather/ <i>special education</i> virtual classroom
9:45	(1:1) Math
10:00	(1:1) Math
10:15	(1:1) Literacy
10:30	(1:1) Literacy
10:45	Offline
11:15	Peer calls? – social
11:30	Lunch
12:00	Asynchronous social stories and practice
12:30	Asynchronous social stories and practice/(Wednesday) Library or PCP ⁷ Level of Support?
1:15	Break
1:45	PCP/Library-Level of Support?
2:30-2:45	Gathering, stories of the day, songs/ <i>special education</i> virtual classroom

75. On September 10, 2020, Student B’s IEP team convened to develop a new annual IEP for Student B and to consider the Parents’ request for in-person services. The following people attended: Parent B, principal, special education teacher, special education supervisor (supervisor), general education teacher 1, general education teacher 2, OT, private board certified behavior analyst (BCBA), program specialist, and SLP. At the IEP meeting, the team discussed how Student B engaged in remote learning during the spring of the 2019-2020

⁶ Student B’s special education teacher relayed that frequent positive reinforcement of appropriate behavior was an important component of Student B’s special education support. Student B’s special education teacher ensured delivery of this accommodation to Student B in remote and in-person settings. Student B’s special education teacher provided detailed written instructions for all Student B’s teachers and services providers working with Student B regarding how to implement this accommodation at a rate of 30 positive reinforcements an hour.

⁷ “PCP” stands for “Planning, Conferencing and Preparation.” During this period, Student B received social support to help prepare for interactions with peers during later class periods.

school year and Student B’s current ability to access remote services. The Parents shared that Student B had initially engaged in some of his special education classes, and that while they had planned to have Student B participate in some of his general education classes, he had not yet done so. Student B appeared to have difficulty attending to the general education classroom, which utilized the “Zoom” platform. While the team agreed it was important for Student B to be involved with his general education peers, the Parents also continued to express concern about Student B’s ability to access specially designed instruction. District members on the IEP team expressed a desire to collect data on Student B’s participation in the current virtual learning program—which some IEP team members felt was more robust than the remote learning models used from March to June 2020—to assess Student B’s current need for in-person services. The IEP team, including the Parents, agreed to the District collecting data for a two-week trial period and to hold a follow-up IEP team meeting on September 25, 2020, to review data collected and reassess Student B’s need for in-person services.

76. On September 14, 2020, the special education teacher provided the Parents with Student B’s updated remote learning schedule:

Time	Where Student B can be during Remote Learning
8:30-9:00	“[Student B] to [general education teacher’s] welcome. [Special education teacher] and [paraeducator] will get access to breakout rooms and ‘step out’ into them with [Student B] when needed. Otherwise, [Student B] participates to see and be seen. This is [general education teacher’s] 4 th grade MS Teams Meeting.”
9:00-9:20	Special education Room [Pull Out] calendar time ⁸
9:20-9:30	Break (special education room)
9:30-9:50	1:1 Language Arts Instruction [Prep for interaction with peers later]
10:00	Recess [1 call]
10:15-10:40	1:1 Math
10:40	Games/Whiteboard
10:50	Restroom Train, Break
11:15-12:00	Lunch and 2 calls with MS Teams, calls with friends [assisted]
12:20-12:45	Special education Room Seesaw 1:1 Write stories: Social Stories by and for [Student B]
12:45-1:00	Break
1:00-1:10	Prepare for PCP or contact with peers
1:10	Break [maybe another video call to Student B from general education class]/ (on Wednesday, school ends at 1:20)

⁸ On Mondays, Wednesdays, and Fridays, from 9:00 to 9:30 am, Student B’s schedule provided for the SLP to attend his special education classroom to work with Student B and one other student. According to a statement provided by the SLP, Student B’s attendance varied during remote instruction. During in-person sessions, which began in December 2020, Student B received in-person assistance logging into the special education virtual classroom attended by the SLP. The SLP reported that during remote instruction, she or the special education teacher would call Student B on MS Teams during the session in an attempt to engage Student B to join if it was noticed that Student B was not in attendance during session time, but that this strategy varied in effectiveness.

1:40-2:30	PCP Assisted by special education staff
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77. On September 14, 16, 18, and 21, 2020, Student B's special education teacher collected data and took notes on Student B's performance during remote learning for each period of the remote virtual school day. The special education teacher documented what interventions were attempted to engage Student B, how long each intervention was tried, and the outcomes.
78. On September 17, 2020, the District sent the Parents PWN that the IEP team had met and was proposing to collect data about Student B's engagement, participation, and ability to learn remotely using "more opportunities than were available in the spring," and then meet again to discuss the data and to determine Student B's least restrictive environment. The PWN additionally stated the IEP team had agreed to make no changes to IEP services, annual goals, service minutes, and accommodations from the previous IEP.
79. On September 18, 2020, the Parents emailed the special education teacher in response to the PWN provided on September 17, 2020, stating that "We have not agreed on the method-venue-and minutes of service delivery. Otherwise, we are agreeing to a very similar IEP to that from February."
80. On September 23, 2020, the special education teacher emailed Parent B that he had spoken with a different staff member regarding in-person services and that the "best situation we [the District] is offering is much more limited than we [members of the IEP team] were thinking."
81. On September 25, 2020, Student B's IEP team reconvened virtually to review the data collected and discuss Student B's need for in-person services. The Parents, principal, special education supervisor, general education teacher, OT, Certified Occupational Therapy Assistant (COTA), special education teacher, school nurse, and SLP attended. At the meeting, the team reviewed data collected during remote learning and observations from Student B's teachers and service providers. Student B's special education teacher reported that Student B could sit next to the monitor from 8:30 to 10:45 am, but often lost focus, used different modalities than hearing and visual, and often had issues with technology, including that even when staff could see Student B touch the screen, no information would come through. Student B's special education teacher further noted the Student was unable to interact with his general education class since the general education teacher switched to Zoom and the Student had no longer been participating or attending general education virtual sessions. The general education teacher noted that while Student B's goals were designed to "integrate [Student B] into his community; the general education piece is not working." The District's COTA also reported that Student B "was unable to access OT services remotely," and recommended in-person occupational therapy services. Student B's overall academic progress was reported as "stagnant." Student B's SLP, however, reported that "Student [B] was able to attend and participate in remote speech services and recommended continuing remote communication instruction."

The IEP team recommended Student B receive 300 minutes per week of specially designed instruction in adaptive skills, 100 minutes of specially designed instruction in functional written

language, and 60 minutes per month of occupational therapy minutes in person. Each of these were to be in the special education setting, which would be provided in the school building. At the meeting, Parent B requested Student B receive in-person support to access to his general education classes as well. Student B's special education teacher also recommended in-person support to Student B for this purpose. The IEP team responded that the District was only considering the provision of in-person services to help the Student access the special education setting at that time and would not discuss in-person services to assist the Student in accessing general education classes.

82. On September 29, 2020, the District provided the Parents PWN that the District had agreed to "take the minutes assigned to [Student] in a pull-out special education setting and fulfill those minutes with in-person services during the COVID-19 remote-learning period." The PWN documented that the IEP team had determined Student B needed in-person service delivery to obtain an appropriate education." The PWN documented several factors the IEP team had considered when making their determination and also noted Parent B had requested in-person support for the Student during his general education minutes, and that "Team replies we are not looking at General Education minutes at this time." The PWN additionally documented that the program specialist "says that she will support [special education teacher] to fill out the in person services form." According to the Complainant, the Parents were not aware of this form or "if any secondary process needed to approve such form," at the IEP meeting.
83. The amended IEP accompanying the PWN indicated that Student B would spend approximately 52% of his time in the general education setting. However, the service matrix listed the same specially designed instruction service twice, which resulted in the Student receiving 860 minutes of specially designed instruction per week in the special education setting. The Student's previous IEP provided the Student with 437.5 minutes in the special education setting per month.
84. On September 30, 2020, Student B was absent during a scheduled 30-minute remote speech session.
85. On October 7, 12, 14, 19, and 26, 2020, Student B attended remote speech sessions for 30 minutes each session. Data was collected by the SLP on Student B's engagement and performance during each session.
86. On October 15, 22, and 29, Student B was absent from a remote occupational therapy session.
87. On October 19, 2020, the Parents asked for an update on when Student B's in-person services would begin.
88. On October 30, 2020, Student B was absent for a scheduled speech therapy session. On the same day, Student B logged in 15 minutes late for a scheduled 1:1 virtual occupational therapy session to address functional writing IEP goals. The OT met that day with Student B's special

education teacher to discuss best strategies for collaboration and engaging Student B remotely.

89. On November 2, 9, and 16, 2020, Student B attended remote speech therapy sessions for 30 minutes each. Data was collected by the SLP on Student B’s engagement and performance during each session. Student B was absent from speech therapy sessions on November 4, and 13, 2020.
90. On November 10, 2020, the special education teacher and SLP collected progress data on the Student’s performance on his IEP goals. Progress data indicated Student B was making progress on his communication goals, but inconsistent progress on math goals and no progress on other IEP goals. It was further noted that Student B was waiting for assistive technology to be delivered to assist with writing goals. Some concerns were noted regarding the Student’s performance in adaptive behavior, including that Student self-reported difficulties in toileting goals.
91. On November 12, 2020, the principal notified Student B’s Parents that in-person services would begin on November 12, 2020 from 8:30 am to 12:45 pm on Mondays and Fridays. The Parents requested in-person services begin November 30, 2020 instead due to one of Student B’s Parents having been exposed to coronavirus. The District agreed to delay commencement of in-person services.
92. On November 12 and 19, 2020, Student B was absent from a scheduled virtual OT session.
93. On November 20, 2020, the following scheduled was developed for Student B for use during in-person instruction:

Time	Activity	Brief Explanation	Notes
8:30	“General education homeroom ONLINE.”	Assist Student B – Do not hesitate to use direct instruction	“We want [Student B] as an active participant in his homeroom. Arrange communication partners for later in the day. Respond to activities in a meaningful way.”
9:00 ⁹	“Calendar [warm-ups]. Then, stretch/movement; music/dance; happy time (get water down the hall, use restroom).”	“Days of Week, Month, Weather.”	“Model, then let [Student B] list days of the week. Show the date and give date give [Student B] time to read it. Count numbers [Student B touch, see, say] in groups of 10 from 0-60]”
9:20	Find/See/Say #'s	Say numbers in digital clock format	“Put cards in different visible parts of the room. [Student B] has to get a number from 1-12 and another number from :00 to

⁹ Student B continued to get speech therapy on Mondays, Wednesdays, and Fridays from 9:00 to 9:30 to assist with communication IEP goals.

	"This is a playful turn taking, interactive activity. Sell it by modeling sustainable enjoyment."		:59, bring them to the table, put them together and read what it says. Then it's your turn! Have fun/be fun! Vary tone of voice."
9:40	Greater/Less than	Making sense of #'s	
10:00	Snack/Restroom	Sustenance	"Time-timer so [Student B] knows when it will end."
10:20		Language Arts	
11:00	Sequencing Stories	How to tell a story	"Copy a few pages from a short story. Read story [ask questions along the way]. Then give [Student] the pictures and have him put them in order. Then have [Student B] explain as well as he can."
11:20	"Peer Calls – This is a joint effort between us and general education teacher. General education teacher should assign a peer friend for the day's activities"	Online with MSTeams. Work out how to arrange this	"Play and interact with peers using a game from the daily repertoire... or one suggested by the peer [e.g. follow the leader, sequence the story, or a fantasy game hand puppets."
11:40	Recess	Movement	See Movement above
11:55	Discrete Trail Training on TouchChat	Assistive Tech: ...Designed to write messages to peers and others	"First phase in using TouchChat is becoming fluent in what words and picSym/expressions are what. And then training how to navigate it. Errorless learning: Densely reinforce but NO PROMPT DEPEDENCE"
12:15	"Review day's activities and Make Picture Symbol Schedule for next time"	Understanding past and scheduling the future	"Go over the activity order of today. Make picture symbols [picSyms] together or use previously created picSyms. Agree on their meaning. Put it in order for next session."
12:45			Go to transport home

94. On November 25, 2020, the Parents informed the District of a change in travel plans and notified the District that Student B would not be available for in-person services until December 4, 2020.
95. On November 26 and 27, 2020, the District was closed and there were no scheduled classes for Thanksgiving and Native American Heritage Day.
96. On December 2 and 9, 2020, Student B was absent for speech therapy.
97. On December 4, 2020, Student B began receiving in-person services from 8:30 am to 12:45 pm on Mondays and Fridays.

98. On December 4 and 11, 2020, the OT joined Student B and a substitute teacher who were engaged in in-person virtual learning. The OT engaged Student B in writing activities related to his IEP goals.
99. On December 11 and 14, 2020, Student B attended virtual speech therapy for 30 minutes with in-person support.
100. On December 18, 2020, the OT attempted to remotely join Student B's in-person learning session for a scheduled OT session, but Student B and his in-person teacher were unavailable.
101. The District was on winter break from December 21, 2020 through January 1, 2021.
102. On January 4, 2021, Student B did not attend services.
103. January 7, 2021, the Complainant filed this complaint on behalf of Students A, B, and C.
104. On January 21, 2021, Student B's IEP team agreed to increase his in-person services in response to services previously not accessed due to COVID-19. Student B currently receives in-person services from 8:30 am to 3:00 pm Mondays and Fridays. Student B also receives an additional 2 hours and 45 minutes of in-person services on Wednesdays.
105. On January 22, 2021, progress data was collected on Student B's performance on his IEP goals.
106. On February 10, 2021, the complaint investigator requested additional information from the District on how Student B was provided specially designed instruction during the provision of remote learning and what progress he made on his IEP goals. From September 4, 2020 through January 7, 2021. Student B's special education teacher provided the following information:
- **Adaptive/Life Skills (30 minutes of Remote Participation):** "At the beginning of the school year, [Student B] was unable to stay at the computer/remote for more than 15 minutes. Through reinforcement of engagement and through negotiation, we have been able to prolong [Student B's] on-screen time to extend from 9-10:45. On occasion, he would come for another remote engagement afternoon for about 30 minutes. [Student B] discontinued remote attendance in January."
 - **Adaptive/Life Skills (Pants Up):** "We have been reminding and reinforcing keeping pants in place during in-person remote instruction. We are also pairing it with 'mask-in-place' as it is also a clothes placement goal and is relevant to future participation with other students when in-person classes re-open."
 - **Adaptive/Life Skills (toileting):** "During remote services, we would verbally remind [Student B] to get the urine in the toilet when sending him to a bathroom break. At school, we make the same reminder. At school, at least, missing the toilet as not been a regular problem."
 - **Social/Behavior (peer interaction):** "We have been set up remotely to enter [Student's] homeroom each morning from 8:30-9:00 AM to facilitate interaction with peers. These are not times that [Student B] has been attending remotely. During in-person days, [Student is supported [in the in-person classroom] to participate in [Student B's] homeroom."

- i. Example: "remotely, we were ready to assign a 'breakout room' and enter the class with [Student B]. During in-person services when in class before 9AM, [Student B] sits in a cubicle by the teacher and 'enters' [general education teacher's] remote classroom."
- **Social/Behavior (playing games):** "We've wanted to get peers to work with, and play with, [Student B] for 7 minutes. [Student B] has started to see and be seen by peers for the first time beginning with in-person services when arriving before 9AM. This began happening in January and [Student B] has been supported to be part of the MSTeams classroom during the first ½ hour in order to see and be seen by peers. We are intentionally playing games that would be peer appropriate during in-person services. The purpose is to maintain the skills to play turn-taking games with peers when that is allowed. Also, we have introduced a writing machine that we hope will help facilitate messages that [Student B] can write, eventually."
- **Functional Reading (reading comprehension):** "We wanted [Student B's] peer tutors to read simple picture books for him and have [Student B] answer questions every page. During remote learning, [Student B] did not respond to online books with questions. During in-person learning, [Student B] is responding with 1-2 word responses when the teacher asks a question."
 - i. Examples: "[Student B] did not go to his [general education] homeroom from home. At school, [Student B] and a teacher are entering [general education teacher's] classroom, so other students will remember him. Also, the teachers are reading books and asking [Student B] questions, which he answers."
- **Functional Writing (narrative):** "During remote services, [Student B] would make requests from an array of 2-3 verbal choices on what to do or what game, or song, to play. During in-person services, we got [Student B] and our team an iPad and a program that writes by pressing picture symbols. During in-person services, teachers have been demonstrating how pressing a picture-symbol activities a word to be written [and also spoken so [Student B] can hear what he writes]. [Student B] has just begun requesting picture symbols to be used by his teachers. But, quickly, he has wanted to write with the picture symbols himself. He is now at the entrance stage of this process."
 - i. Example: "[Student] takes the writing machine and chooses a picture he wants written. He hears what is being written. This is exploration...identification...at this point."
- **Functional Writing (keyboarding):** "During in-person services, [Student B] is asked to write the picture-symbol schedule for the day. He has been instructing the teacher what picture-symbol to use and where to place them. During remote learning, [Student] was not present at these times."
 - i. Examples: "The schedule of the day is made in picture symbols, which are placed in order on the blackboard. [Student B] participates in reading the schedule and helping to write it for the next in-person day."
- **Functional Math (Reading a digital clock):** "In remote as well as in-person services, [Student B] participated in see-say clock number activities. Hours were presented from 1-12 and minutes were displayed from :01 to :30 and [Student B] would learn to say them and then, eventually, start to say the hour and minutes in one phrase."
- **Functional Math (more than/less than):** "In remote as well as in-person services, [Student B] has been given numbers 1 to 5 and been asked to display knowledge of greater than or less than. [Student B] has developed a strategy in remote learning to do so. Similar activities are being used in-person services."
- **Communication (communication goal 1):** "During remote services, [Student B] would verbally verify [yes/no] if a sequencing and/or retelling of a story was accurate. During in-person services, [Student B] is sequencing pictures to show the proper sequence of a story."

- **Communication (communication goal 2)** "This is always done remotely because our SLP attends [Student's] in-person class by remote, Student is read a story and provided choices with which to answer content questions. [Student B] chooses and then verbally repeats the choices he made."

Student C

2020 Summer

107. On August 28, 2020, the school nurse contacted the Parent of Student C to obtain updated health and medical information to prepare a health care plan in preparation for the upcoming school year.
108. On September 2, 2020, the Parents of Student C requested an IEP meeting via a phone call. A meeting would later be scheduled for October 12, 2020.

2020-2021 School Year

109. The District's first day of school was September 4, 2020.
110. At the start of the school year, Student C was eligible for special education services under the category other health impairment (OHI) and attended a middle school in the District. Student C's January 2020 IEP was in effect and included measurable annual goals in the areas of adaptive/life skills (object retrieval, stairs, toothbrushing); communication (communicating physical sensations, directing requests to a specific communication partner); functional math (algebraic equations, ratio and proportional relationships, time); functional reading (comprehension, nouns and verbs, rhyming word families); functional written language (create a paragraph, handwriting); and social/behavior (conversations, greeting). The Student's IEP provided the following specially designed instruction and related services:
- 257 minutes weekly in social/behavior, in the *general education setting*;
 - 153 minutes weekly in adaptive/life skills, in the *general education setting*;
 - 401 minutes weekly in functional math, in a *special education setting*;
 - 231 minutes weekly in functional reading, in a *special education setting*;
 - 142 minutes weekly in functional written language, in a *special education setting*;
 - 349 minutes weekly in social/behavior in a *special education setting*;
 - 226 minutes weekly in adaptive/life skills in a *special education setting*;
 - 150 minutes per month of speech language therapy, provided by a SLP in a *special education setting*; and,
 - 100 minutes per month of occupational therapy, provided by an OT in a *special education setting*.

Student C's IEP additionally provided the Student with 200 minutes yearly of physical therapy and a full time 1:1 paraeducator support as a supplementary aid and service in all special education and general education settings. The Student's IEP documented the Student's need for full-time adult support for all areas of personal hygiene and adaptive life skills, including dressing, washing her hands, toileting, and toilet training, changing her pull-ups, feeding,

training with oral food and oral safety. Student C has a G-tube and requires full assistance to eat. Student C's IEP further noted she requires assistance with walking up and down stairs and safely navigating school buildings.

111. On September 8, 2020, Student C's SLP emailed Student C's special education teacher information about Student C, including her service delivery model, frequency/duration of services, and communication goal areas.
112. On September 9, 2020, Student C's OT attended some of OT's scheduled virtual classes to observe Student C.
113. On September 10, 2020, Student C's OT observed Student C's participation challenges during virtual instruction and noted that Student C was using a different chair for class that may have been contributing to her participation difficulties. The OT noted that she would reach out to the Parent regarding continuing accommodations for optimal school participation.
114. On September 14, 2020, Student C participated in a "movement for life" OT/PT group class during her life skills class. According to the OT notes, the Parent had placed Student C in a padded rocking chair, which had improved Student C's participation from the previous class. It was also noted that Student C got up once to leave the table and that the Parent did not bring Student C back to the table to participate after that. The PT reported in therapy logs that the Parent reported concerns that if Student C stood up for standing activities for physical therapy, she would leave. Accordingly, Student C was given the accommodation of an alternative sitting activity. Student C's progress was documented as "inconsistent" for occupational therapy and "maintaining progress" for physical therapy for the session.
115. On September 15, 2020, Student C participated as an observer in partner physical education (PE). The Parent was present to redirect Student C back to her chair when she got up during class. Student C's progress was documented by the PT as "maintaining progress."
116. On September 16, 2020, Student C's special education teacher provided the Parent with Student C's temporary schedule for the week and links to access her remote instruction. That same day, Student C's OT also contacted the Parent about enrichment activities regarding motor skills and mobility support for Student C. She explained to the Parent that because Student C's educational environment was currently at home, she could provide support to parents. The OT also told the Parent that she would be participating in partner PE class on Tuesdays and that Student C's OT would be providing a "movement for life" group during life skills classes on Mondays.
117. On September 17, 2020, Student C participated in a 30-minute "movement for life" OT/PT class. The OT documented in her therapy notes that new exercises were provided to students to practice, and that Student C needed help to raise her arms and was unable to stand without help. The OT documented Student C was "maintaining progress" on her goals.

118. On September 18, 2020, Student C’s SLP contacted the Parent to schedule Student C’s speech and language services for the semester. The SLP explained that speech therapy would begin on September 21, 2020, and that the Student would receive speech and language services on Mondays and Thursdays from 2:20 p.m. to 2:40 pm. The SLP explained that if two sessions per week were too much, they could adjust the schedule or provide one “live” session per week and one “on demand” (asynchronous) activity.
119. On September 21, 2020, the SLP provided the Parent with a link for Student C’s afternoon speech session. The Parent replied that she needed to find different times for Student C’s speech therapy because Student C had been in virtual learning since 9:00 am and was finished for the day due to “screen overload.” The Parent also indicated that due to her work schedule, she was unavailable to help assist Student C on Thursdays.
120. Also, on September 21, 2020, Student C participated in a 40-minute “movement for life” OT/PT class. Student C left the group several times before leaving the group early. Student C’s progress was reported by the OT as “inconsistent.” The PT observed that Student C “needed assistance to redirect back to the activity, and physical assistance to complete the movements,” but recorded Student C’s progress level as “maintaining” progress.”
121. On September 22, 2020, the school nurse spoke with the Parent to obtain medical information regarding Student C. The school nurse provided a general overview of the process for determining qualifying for in-person learning. The Parent responded that she understood the process. Following the meeting, the school nurse reported to Student C’s school team that Student C was a high risk individual, would need a 1:1 aide, was unable to wear a mask, and that staff would require appropriate personal protective equipment (PPE) to work with Student C. Student C was absent from her movement for life class that day.
122. Beginning September 28, 2020, Student C’s schedule was as follows:

	Monday	Tuesday	Wednesday	Thursday	Friday
9:00-9:45	Office Hours	Office Hours	Office Hours	Office Hours	Office Hours
9:45	Social Conversation	Social Conversation	Social Conversation	Social Conversation	Social Conversation
9:55-10:45	Home Room	Home Room	Home Room	Home Room	Home Room
10:45	Transition	Transition	Transition	Transition	Transition
10:55-11:25	Life Skills for Movement ¹⁰	Band	Math	Life Skills for Movement	Band
11:25-11:45	1:1 Small Group	1:1 small group	1:1 small group	1:1 small group	1:1 Small Group

¹⁰ During “Life skills for movement” (also referred to throughout as “movement for life”), Student C received joint support from the OT and PT virtually. During this time, Student C was supported in the home by the Parent when the Parent was available, and the Student was able to participate. Both the OT and PT maintained service provider logs of each session where Student C was present where they documented their observations of Student C, including her engagement and participation levels, progress on IEP goals, and support received by the Parent.

11:45-12:15	Math	ELA	ELA	Math	ELA
12:15-12:35	1:1 Small Group	1:1 Small Group	1:1 Small Group	1:1 Small Group	1:1 Small Group
12:35-1:05	Lunch	Lunch	Lunch	Lunch	Lunch
1:05-1:25	Read-Aloud	Read-Aloud	Read-Aloud	Read-Aloud	Read-Aloud
1:25-2:15	Science 1:1 Small group	Unified PE	Enrichment Activities	Science 1:1 Small Group	Unified PE
2:15-3:15	On demand	On demand	Enrichment Activities	On Demand	On Demand
3:15-3:5-	Enrichment Activities	Enrichment Activities		Enrichment Activities	Enrichment Activities

123. On September 28, 2020, the OT informed the Parent that she was having difficulty delivering Student C's life skills classes due to a lack of engagement by Student C. The OT asked for support from the Parent on ideas for how to engage Student C in the virtual content. The Parent replied that she did not believe Student C would be able to engage with the content or receive a benefit from the online format. The Parent indicated she had requested an IEP meeting to discuss Student C's need for in-person services.
124. Also, on September 28, 2020, Student C's special education teacher emailed an IEP meeting invitation to the Parent for a meeting scheduled for October 12, 2020, to discuss how to support Student C during remote learning.
125. Also, on September 28, 2020, Student C participated in a movement for life class for 15 minutes. The PT documented that Student C required physical assistance from the Parent for all movement, but only left one time during the session. Student C's progress was documented by the PT as "progressing."
126. On September 29, 2020, Student C participated in a partner PE class with the assistance of the Parent. The PT, who observed the session, documented that Student C "primarily observed but was absent at times." It was also noted that Student C required the physical assistance of an adult to participate in movements required by the class. Student C was reported as "maintaining" progress.
127. On October 5, 8, 12, 13, and 15, 2020, Student C attended "movement for life" virtual sessions. Notes maintained by the OT showed Student C interacted with some support from the Parent. Student C was absent on October 19 and October 26, 2020. The PT documented similar notes and recorded that in all activities, Student C required physical assistance by Parent to participate. Student C's progress fluctuated between "maintaining" and inconsistent."
128. On October 9, 2020, the Parent informed Student C's IEP team that she had requested the IEP team meeting to discuss how remote learning was not working for Student C, and to specifically discuss the creation of a plan to make in-person instruction happen as soon as possible.

129. On October 12, 2020, Student C's IEP team met to consider the Parent's request for in-person learning and to discuss how to support Student C during remote learning. The Parents attended virtually and expressed their belief that Student C needed to receive full-time, in-person instruction to receive the intended benefits of her IEP. The District members of the Student's IEP team indicated at the meeting that they felt they needed to first collect data on Student C's participation in remote learning during the current school year to assess her current need for in-person services. The IEP team agreed to collect data for two weeks and reconvene on October 26, 2020, to review the data and reconsider the Student's need for in-person services.
130. On October 20, 2020, Student C was absent from partner PE.
131. On October 21, 2020, the principal emailed Student C's special education teacher to inquire about where she was in the process of submitting Student C's name to the COVID-19 in-person services review board. That same day, the special education teacher responded that the form required that the case manager put days and times the Student would be in school and that she did not have that information. She further added: "I will not put any student's name into the system, as long as I am required to enter the amount of time and days a student will be coming into school, until the building has determined the process of serving all our students in-person." In her email, she expressed that she did not feel she had enough data to make a determination and that she felt it would take more time to work out ways to accurately assess Student C's progress. She indicated she was using a "different, more interactive method to assess [Student C's] progress," and that it was taking time to modify and create curriculum to meet Student C's IEP goals. She added:
- I have made suggestions to the parent regarding ways to help [Student C] use screens on her AAC device that will give us better information and she has disregarded that information. I am currently trying to arrange a time that she can get coached on how to make changed on [Student C's] device or that can bring the device to [school] that changes will be made for her. Perhaps this conversation warrants a conversation regarding moving forward.
132. On October 23, 2020, the Parent emailed the special education supervisor (supervisor) that it was her understanding that Student C's IEP team meeting scheduled for October 26, 2020 was to make a decision about in-person services and discuss a plan to begin in-person services by November 1, 2020. She asked about the status of the meeting. The supervisor informed the Parents that the IEP team was meeting to discuss the Parents' concerns about developing a plan for Student C and explained that the District had been planning to begin providing in-person services the following week, but that there had been a pause on moving forward with the plan. The supervisor told the Parents they would start in-person services as soon as possible.
133. On October 25, 2020, the school nurse emailed the supervisor and expressed safety concerns with providing Student C with in-person services. Specifically, the nurse indicated the special education teacher would not be providing Student C with in-person instruction, which may cause stress/anxiety for Student C, that Student C used a chew toy and drooled,

was unable to wear a mask, had a history of pulling glasses off of teachers and pulling hair, which could cause complications with PPE, and that she had a G-tube for feedings. The nurse concluded that she believed Student C was too high of a risk for transmission to ensure safety of staff.

134. On October 26, 2020, prior to Student C's IEP meeting, the school nurse emailed the school principal that she had spoken with the Parent and relayed that she felt the Parent was "aware that she is not being given the 'yes' or 'no' tonight [at the IEP meeting]. She understands that my data that I collected will have to go to the Special COVID Ops Team for final decision." She added that she did not see any "major red flags" regarding Student C's health and wellbeing other than that Student C was a "fall risk," but noted this would be reduced if Student C was educated in the portables and had a 1:1 to help prevent this. She also added that the Parent was likely to request that when proposing the number of hours, the District take into consideration the amount of time it takes to toilet, feed, clean, and transport Student C to maximize the number of hours Student C spends actually receiving education. The principal responded that she would like to recommend that the team recommends scheduling in-person services "outside of feeding & cleaning so we can focus on instructional content," that "transportation should be arranged outside of the designated instructional time," and that "toileting should be included in the instructional time to manage schedules."
135. Also, on October 26, 2020, Student C's IEP team reconvened to review data collected during remote learning and to discuss in-person services. The Parents of Student C attended the meeting virtually and participated. After reviewing the data collected, the IEP team proposed Student C receive in-person services for 2.5 hours, two days per week, during which time they proposed Student C would participate in three, 50-minute special education classes each day to receive her specially designed instruction in math, reading, and writing. The District IEP team members stated that the Student would then receive her life skills instruction and participate in two general education classes (music and physical education) through remote learning. The Parents agreed with the proposal to provide in-person services, but disagreed with the amount of time, requesting the IEP recommend all of the Student's minutes in-person. The IEP team considered three days per week of in-person services based on the Parents' request and agreed to reconvene at a later date to consider adding an additional day. The Parents expressed that they believed Student C should be provided four days per week of in-person services.
136. On October 27, 2020, Student C's OT wrote in her therapy log that Student C's mom "meets with OT every Wednesday at 1p to discuss dressing and other OT exercise recommendations. She follows through on the activities and reports that [Student C] continues to show gains in the areas of self-dressing that were addressed in the spring (i.e. putting on her shirt). We are now working on [lower body] dressing and pulling up pants after toileting and trip toilet training."
137. On October 28, 2020, the OT spent 30 minutes working with the Parent on assisting Student C with dressing.

138. Also on October 28, 2020, the assistant principal emailed the supervisor regarding how the IEP team determined the number of hours of in-person learning recommended. She wrote: The in-person services proposal was based on 3 SpEd classes * 50 minutes = 150 minutes (2.5 hours) for 2 days of [specially designed instruction] normally provided for math, reading and writing. That's a total of 300 mins/week. Life Skills instruction is provided remotely and [Student C] has 2 GenEd classes (music and PE). [Student C's] stamina is somewhat limited, but the family wanted more time allocated for feeding and toileting. I increased the minutes to 3 days * 3 hours or 9 hours/week to include [specially designed instruction] provided in Math, Reading/Writing and Co-taught science classes. We explained that the in-person service model is meant to supplement not replace remote learning, but that was not acceptable to the family. They continued to demand 12 hours of in-person services.
139. On October 29, 2020, the principal emailed the supervisor to inform him that the principal was submitting the request form on behalf of two students that day and that the form would be proposing 2.5 hours of specially designed instruction twice weekly, for a total of five hours or 300 minutes of specially designed instruction. The email stated that the minutes would only be targeting academic subjects and that the minutes being proposed were relatively close for all students being served by Student C's specific program. The supervisor added that she would not submit the form for Student C for five hours until after the meeting the following week, because Student C's family had not agreed to the proposal for five hours per week, even after the offer to increase to three hours three times per week. She added that the family was continuing to request twelve hours of in-person specially designed instruction.
140. On October 30, 2020, the school nurse emailed the District's COVID-19 determination team¹¹ and asked where she should send her health and safety review for Student C, noting that she had sent her review to the team the previous week, but realized the special education department had not yet sent their form to the District.
141. On November 3, 2020, Student C's IEP team met a third time to discuss the Parent's request for in-person services three days per week. The Parents of Student C attended virtually. At the meeting, the IEP team reviewed data from 1:1 virtual sessions provided during September, October, and early November, as well as observational data. Based on the data reviewed and input from the Parent, the IEP team proposed Student C receive in-person services for 2.5 hours, three days per week, to enable Student C to make progress on her IEP goals. The Parents expressed disagreement with the IEP team decision, requesting additional in-person services, four days per week. The IEP team decided that if Student C did not make progress in response to receiving 2.5 hours three days per week while receiving in-person services, the team could reconvene to discuss additional in-person services.
142. Following the IEP meeting, the principal emailed the supervisor and program specialist, relaying that the Parent did not agree with the time proposed by Student C's IEP team to deliver in-person services in order for Student C to make progress on IEP goals. She added that after listening to the family's concerns, the team agreed to increase services from two

¹¹ The District's COVID-19 in-person special education determination team consists of five nurses.

days to three days per week for 2.5 hours each day, which the educational team believed would be sufficient. She noted that the Parents continued to believe this was insufficient for Student C to make progress, and that this should be documented in a PWN, and that the team should continue to work through the disagreement the same way they would have if they were in person. She recommended the team proceed to let the supervisor know the Parents were open to another meeting. She added that in the meantime, the special education teacher would submit the in-person request form with the hours recommended by the educational team (3 days/2.5 hours per day), noting that the Parent agreed to this while still expressing a desire to move forward with the process of disagreement.

143. On November 3, 2020, the District emailed the Parents PWN that the District was proposing to bring Student C into the building for in-person services three times a week for 2.5 hours each time. The PWN noted the Parents did not believe this was enough time, but stated the academic team thought this was enough time for Student C to make progress on her IEP goals based on data from 1:1 sessions during the months of September, October, November and observational data.
144. According to the Complainant, since the November 3, 2020 meeting, the Parents of Student C have received no individualized communication from the District regarding the provision of in-person services, including any revised IEPs or PWNs from any of the three meetings held since September 4, 2020. Student C's Parents further expressed concern that Student C has become "so frustrated with remote schooling that she has started a new stim behavior based on her sign language for the word 'no,' in which she repeatedly hits herself on the head."
145. According to provider logs maintained by the OT, on November 2, 16, 25, and 30, 2020, Student C participated in individual therapy with the Parent's assistance. On November 18, 2020, Student C was absent from therapy because she was having surgery.
146. On November 16 and 23, 2020, Student C participated in movement for life, for 20 minutes and 45 minutes, respectively. According to PT logs, the Parent was present, and although Student C was late, Student C participated with the assistance of the Parent. The PT noted Student C required direct assistance of the Parent full time to participate, which Student C accepted without resistance. The notes further documented that all activities were modified for Student C to do while sitting and to accommodate Student C's limitations with fine motor movements. Student C's progress was reported as "maintaining."
147. On November 30, 2020, the nurse communicated with the special education teacher regarding completing training on PPE, in preparation for beginning in-person services.
148. On December 4, 2020, a substitute SLP¹² instructed parents on vocabulary, including "hot, cold, tired, goodbye, and excited," for parents to use with students during asynchronous time.

¹² The Student's assigned SLP was out on leave.

149. On December 9, 2020, Student C participated in movement for life group class. PT logs recorded Student C as "maintaining progress."
150. On December 9, 2020, the Parent emailed the OT to cancel all ongoing weekly consultation sessions with the OT.
151. Also on December 9, 2020, Student C's 1:1 paraeducator expressed concern to the school nurse that the health and safety risks associated with providing in-person services were not accurately described by the Parents. As stated in the District's response, the paraeducator described the following concerns: "[Student C] constantly had a bag of chew toys and saliva was an issue; the [paraeducator] would have to be in contact with many bodily fluids, including gastro-intestinal, bowel movements, and urine; [Student C] had pulled the [paraeducator's] hair and clothes and she observed [Student C] pulling down Parent's shirt the previous two days during remote instruction; [paraeducator] was concerned about [Student C] ripping off her mask/P[P]E; [Student C] eloped at times; and [Student C] touched everything and was very tactile."
152. According to SLP logs, on December 11 and 18, 2020, the substitute SLP sent instructions to the Parent on core vocabulary words to parents, including the Parent, to practice with Student C.
153. On December 14, 2020, Student C was absent from movement for life.
154. On December 16, 2020, the OT had an email consultation with the Parent. The Parent canceled weekly consultations with OT, noting that Student C was easily reaching for her clothes while she holds her legs and the arm closest to her clothes. The OT noted that the goal was for Student C to develop more trunk rotation in reaching, in order to help her reach behind her to pull up her pants without losing balance.
155. On January 2, 2021, the District emailed the Parents of Student C an IEP meeting invitation for a meeting scheduled on January 27, 2021, to review Student C's annual IEP.
156. On January 7, 2021, the Complainant filed this complaint with OSPI on behalf of Students A, B, and C.
157. On January 27, 2021, Student C's IEP team met for Student C's annual IEP meeting. The Parents, an administrator, special education teacher, general education teacher, PT, OT, and SLP attended and proceeded to develop a new IEP for Student C. According to the PWN, at the IEP meeting, Student C's IEP team "considered and did not reject" "removing or replacing some unmet IEP goals based on 6th grade content for goals based on 7th grade content," and "providing 4 days of in-person services during remote instruction." The PWN also documented that the Parents were not in agreement with the IEP team changing of IEP goals, noting that "Parents are concerned that [Student C] will miss some content if unmet content goals from 6th grade are not continued until they are met." The PWN further noted that the IEP team felt Student C would make progress with three days of in-person services during remote learning.

The PWN also documented that the Parents were requesting four days a week of in-person learning during remote learning and that they were requesting recovery and compensatory services, "including [Student B's] transition services to end after [Student C's] 22nd birthday." The PWN did not indicate what the IEP team's response was to the Parents' request for recovery services.

158. On February 23, 2021, the District submitted an updated IEP for Student C, which included the following notes on Student C's progress:

- **Adaptive/Life skills (object retrieval):** "[Student C] made progress prior to the Covid-19 closure. Please see the OT Motor section for more information about this OT supported goal.¹³ The report from [Student C's] family is that she [is] able to do this goal, so it will not continue for the 2021-2022 IEP."
- **Adaptive/Life skills (toothbrushing):** "[Student C] made progress prior to Covid-19 closure. Please see the OT Motor section for more information for this OT supported goal."¹⁴
- **Adaptive/Life skills (handwashing):** "[Student C] made progress prior to the Covid-19 closure. Please see the OT Motor section for more information for this OT supported goal.¹⁵ This goal will continue for the 2021-2022 IEP."
- **Adaptive/Life skills (stairs).** "[Student C] made progress prior to the Covid-19 closure. Please see the PT Motor section for more information about this PT supported goal This goal will continue for the 2021-2022 IEP."
- **Communication (communicating physical sensations):** "[Student C] can formulate a phrase describing her perception in 0 out of 5 trials. This goal has not been met."
- **Communication (directing results to a specific communication partner):** "[Student C] can formulate a phrase describing her perception in 0 out of 5 trials. This goal has not been met."
- **Functional math (algebraic equations):** "[Student C] made good progress prior to the Covid-19 closure and moderate progress in the spring. It has been difficult this fall to assess her knowledge. This goal will continue for the 2021-2022 IEP."
- **Functional math (ratio and proportional relationships):** "[Student C] made good progress prior to the Covid-19 closure and moderate progress in the spring. It has been difficult this fall to assess her knowledge. This goal will continue with modifications to reflect the changes in the 7th grade curriculum for the 2021-2022 IEP."
- **Functional math (time):** "[Student C] made good progress prior to the Covid-19 closure and moderate progress in the spring. It has been difficult this fall to assess her knowledge. This goal will continue with modifications to include activities that are associated with the time of day for the 2021-2022 IEP."
- **Functional reading (comprehension):** "[Student C] made some progress prior to the Covid-19 closure and during the spring. It has been difficult this fall to assess her knowledge. This goal with modifications to reflect 7th grade curriculum will continue for the 2021-2022 IEP."

¹³ The Student's IEP noted that Student C made incremental progress on motor goals related to dressing (pulling up pull-ups, pants) necessary to make progress on independent toileting by working daily with Parents at home. The IEP noted that the Parents expressed a desire to continue working daily with Student at home on dressing goals and to discontinue dressing goals in the school IEP).

¹⁴ Student C's Parent reported that no progress had been made on this goal at home.

¹⁵ The IEP reported that Student C had made some progress on this goal at home, as it was a regular part of Student C's life skills class and incorporated into Student C's daily routine by the Parent. However, it was noted that Student C continued to require adult support with this task.

- **Functional reading (nouns and verbs):** “[Student C] demonstrated her knowledge of nouns and verbs before the Covid-19 school closure and during remote learning in the spring correctly answering 3/5 or 4/5 trials. It has been difficult this fall to assess her knowledge. We will continue this goal, but modify the goal to include descriptive words, adjectives.”
- **Functional reading (rhyming word families):** “[Student C] made some progress prior to the Covid-19 closure and during the spring. It has been difficult this fall to assess her knowledge. This goal will continue for the 2021-2022 IEP.”
- **Functional written language (create a paragraph):** “We had not yet started working on this goal when school went remote due to Covid-19. It has been difficult this fall to assess her knowledge. This goal will continue for the 2021-2022 IEP.”
- **Functional written language (handwriting):** “[Student C] made some progress prior to the Covid-19 closure and during the spring. Yet, it has been difficult this fall to assess her ability in the remote setting. Please see the motor OT section for further information. This goal will continue in 2021.”
- **Social/behavior (conversations):** “We had not yet started working on this goal when school went remote due to Covid-19. It has been difficult this fall to assess her knowledge as she has very little incentive to attend and there are not consequences for her behavior (i.e. Getting up and roaming away from the computer or repetitively giving an incorrect answer). This goal will continue for the 2020-2021 IEP.”
- **Social/behavior (greetings):** “[Student C] met this goal in March 2021 with the teacher in her classroom. She continued to address by name and greet teachers in the room during remote instruction.”

CONCLUSIONS

Issue 1: IEP Implementation – The Complainant alleged the District did not implement Student A, B, and C’s individualized education programs (IEPs) from September 4, 2020 to January 7, 2021. In particular, the Complainant alleged that although the District offered special education services remotely for each Student, that the District failed to implement each Student’s IEP because the Students were unable to access and receive the intended benefits from their special education services because the District did not provide the services, including related and supplementary aides and services included in their IEPs, in-person. The Complainant further stated that the alleged failure by the District to implement each Student’s IEP was material, and that each Student was accordingly denied a free appropriate public education (FAPE). In addition, the Complainant alleged the District did not make Student-specific determinations regarding the amount of in-person services each student required to implement their IEP, and that the District did not implement Student B’s IEP in the least restrictive environment because the IEP team declined to consider Student B’s need for in-person services to access the general education setting.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. The IEP must be developed in compliance with the procedural requirements of the IDEA and state regulations, and provide all specially designed instruction and related services consistent with the student’s needs as described in the IEP to the *greatest extent possible*. Services must also be provided in a student’s least restrictive environment. 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 student with a disability and those required by the IEP.

At the commencement of the 2020-2021 school year, districts were required to implement special education services in conformity with a student's IEP regardless of the model in which the district chose to open the school year (e.g., remote, hybrid, in-person). OSPI understands that due to the ongoing nature of the pandemic and the requirement that districts follow Department of Health guidelines regarding health and safety, that the model a district chooses to use may change or fluctuate over the course of the 2020-2021 school year, and that districts may need to develop multiple service delivery plans to meet the needs of students with disabilities in multiple locations. The IDEA does not require that services be delivered in person, unless necessary for a FAPE. Regardless of the stage in reopening a district is in or the location in which it is serving students, districts are required to provide students with disabilities a FAPE. This includes providing the accommodations, related services, and supplementary aides included in a student's IEP and as determined by an IEP team as necessary for a student to access and receive the intended benefits of his or her special education program. It also includes implementing specific methodologies for delivering instruction when the IEP team has determined it necessary for a student to receive a FAPE. Districts may not unilaterally or arbitrarily make changes to a student's special education program that impact a FAPE for administrative or scheduling reasons. Districts must continue to offer and document cogent and responsive explanations for how they developed the IEP to show it is appropriately ambitious, regardless of the location in which the student will receive his or her services. The IEP developed by the IEP team must also accurately and fully detail its offering of a FAPE, including the setting in which services are being provided and the amount of services being provided.

While OSPI appreciates that district must meet Department of Health guidelines for health and safety and may also develop their own procedures to keep staff and students safe, districts must also continue to implement students' IEPs and provide equal access to learning to ensure it is offering a FAPE across all locations and settings. If an IEP team determines it is unable to implement a student's IEP as necessary to provide a FAPE due to factors outside its control, it must clearly document this in a prior written notice (PWN) that includes all alternatives considered—including those offered by the parent—and why they were either determined by the IEP team to be inappropriate or otherwise unable to be implemented. If unable to implement an IEP to the greatest extent possible, and thus unable to provide a FAPE, the district should make continued efforts to try and prevent learning loss as much as possible and create opportunities for the student to interact with his or her nondisabled peers, while working with parent to develop a plan for recovery services, which should include a plan for how to collect data on student progress during the period of time during which the student is unable to access special education services.

Student A

At the commencement of the 2020-2021 school year, Student A's November 2019 IEP was in effect. It provided Student A with the following specially designed instruction:

- 765 minutes weekly of social/behavior in the *general education* setting;

- 30 minutes weekly of social/behavior in a *special education* setting;
- 255 minutes weekly of functional math in a *special education* setting;
- 130 minutes weekly of functional reading in a *special education* setting;
- 125 minutes weekly of functional written language in a *special education* setting; and,
- 345 minutes weekly of adaptive/life skills in a *special education* setting.

Student A's IEP also provided Student A with 450 minutes yearly in physical therapy, 800 minutes yearly in occupational therapy, and 120 minutes monthly of speech therapy. Student A's IEP additionally included a full time 1:1 paraprofessional to assist with motor needs, mobility, and personal hygiene.

Beginning September 4, 2020, the District made available to Student A special education and related services through a combination of virtual instruction, online learning, and asynchronous educational materials. At the commencement of the school year, Parent A was provided with a schedule and information regarding how to access Student A's classes, as well as with information on opportunities for the special education teacher to work remotely with Student A through virtual, individual and small group classes. The District also provided documentation of specially designed instruction developed by the special education teacher for Student A, which aligned with the Student's IEP goals and was provided through the remote learning platform used by the special education teacher during small group instruction. The special education teacher and Student A's other service providers, including the speech language pathologist (SLP) communicated with Parent A frequently about services and supports for the Student and collaborated with Student A's other teachers, including Student A's general education teacher and paraeducators. The special education teacher also attempted to collect data and progress information early on in the school year regarding Student A's ability to participate in remote instruction and make progress on her IEP goals. In addition, the SLP offered to provide Student A with a weekly 30-minute virtual speech sessions to implement the 120 minutes monthly of speech services in the Student's IEP, which the Student was sometimes able to access. The SLP contacted the Parent when Student A did not attend the sessions and attempted to reschedule Student A's speech sessions based on the Parent's availability. The SLP also offered to provide additional asynchronous activities for the Student, assistance over winter break, and additional assistance related to Student A's communication software. The occupational therapist (OT) also offered weekly virtual occupational therapy sessions consistent with the Student's IEP and offered to join the Student's special education group life skills class and provided asynchronous motor activities to the Parent at home. Student A further was offered group physical therapy sessions in the home; however, Parent A was unable to assist the Student during the times offered and Student A was unable to attend.

Although the District made a diligent effort to serve Student A remotely, Student A's IEP also provided for a full-time 1:1 paraeducator to support Student A with significant motor, mobility, and personal care needs that otherwise prevented Student A from being able to access her instruction or related services during the school day. In particular, Student A utilized a communication device for all activities and settings which required physical motor support from an adult to navigate. The documentation showed that the Parents made efforts to provide this support to Student A when able, but that it was difficult for them to provide the level of support

required by Student A and manage their work schedules in the home. The Parents also reported that Student A had a low tolerance for virtual learning, and that Student A began exhibiting additional behaviors—including screaming and self-injurious behaviors, including biting—during remote virtual instruction. The Parents reported that they felt engaging Student A in virtual instruction had caused Student A to regress on her goals because of these behaviors. The Parents of Student A informed the District prior to the commencement of the school year that Student A required direct in-person instruction and support for her IEP to be implemented and for her to make progress, and that they were unable to provide this support in the home. On October 14, 2020, Student A’s IEP team met and agreed Student A required in-person services for the reasons above. During the time period under investigation for this complaint, Student A had not yet received any in-person services and continued to be unable to access the majority of the special education services in her IEP remotely while at home. Student A’s teachers and service providers all relayed that because Student A was unable to access special education services, she had not made progress on any of her IEP goals since spring 2020.

Although the District indicated that the reason Student A did not receive in-person support in the home was that it was prioritizing staff and student safety; the difference between what was required by Student A’s IEP and what she received was nonetheless substantial and material. While the Student’s teachers and related service providers made diligent efforts to offer services, the Student’s disability prevented her from accessing the majority of these services absent the provision of the in-person 1:1 paraeducator support, which the District was unable to provide. OSPI accordingly finds the District in violation and it will be required to provide compensatory services for the special education services not accessed from September 4, 2020 through January 7, 2021.¹⁶

Appropriateness of Amount of In-Person Services Offered to Student A

The Complainant alleged the District did not make a student-specific determination regarding the amount of in-person services offered to Student A. While IEP teams are required to consider the concerns of parents for enhancing the education of the student, the parent does not have veto power over the presentation of an IEP plan. However, presentation of a “take it or leave it” basis of services has been found to be a violation of the IDEA.

On October 14, 2020, following a determination that Student A required in-person instruction to access and benefit from her IEP, the IEP team offered Student A ten hours of in-person instruction.¹⁷ This offering of ten hours of in-person instruction and schedule of services was

¹⁶ OSPI notes that the compensatory services awarded are only for the time period under review in this complaint (September 4, 2020 through January 7, 2021). The compensatory services awarded herein do not preclude the Parent from requesting the IEP team consider the Student’s need for additional recovery services for periods of time the Student was unable to access services that are not addressed in this complaint.

¹⁷ The District began providing in-person instruction to Student A for ten hours per week on February 8, 2021.

subsequently documented in a PWN. The PWN did not explain how Student A would access the remaining hours of specially designed instruction and related services provided in her IEP or why ten hours was offered. At the same time, Parent A requested the IEP team consider recovery services. Student A's IEP team declined to consider the Parent's request at the meeting. The Complainant alleged the number of in-person service hours offered was arbitrary, that the decision was not based on the Student's specific needs, and that the amount offered was accordingly insufficient to implement Student A's IEP. The Complainant further alleged that it was improper for the District to refuse to consider Student A's need for recovery services, considering the documentation provided to the District at that time regarding the amount of services Student A had been unable to access. OSPI agrees and finds the District to be in violation. As written, the Student's IEP provides for 27.5 hours of specially designed instruction weekly and four hours per month of related services. Student A's IEP team had determined Student A had not been accessing those services since March of 2020, and had not made any progress on any of her IEP goals. The PWN and accompanying documents from the October 14, 2020 IEP meeting did not offer any explanation for how the IEP team determined ten hours was appropriate relative to what was provided in Student A's IEP, or how it related to data collected earlier in the school year, which showed Student A was not able to access any special education services without full time 1:1 in-person support.

Student A's IEP team will be required to meet to discuss Student A's need for in-person services and implementation of Student A's IEP as described in the corrective actions.

Student B

At the commencement of the 2020-2021 school year, Student B's IEP provided him the following specially designed instruction:

- Functional math, 270 minutes weekly in the *general education* setting;
- Functional reading, 270 minutes weekly in the *general education* setting;
- Functional written language, 240 minutes weekly in the *general education* setting;
- Social/behavior, 300 minutes weekly in the *general education* setting;
- Communication, 90 minutes monthly in the *special education* setting;
- Adaptive/life skills, 300 minutes weekly, in the *special education* setting;
- Functional written language, 100 minutes monthly in the *special education* setting; and,
- Occupational therapy, 60 minutes monthly.

Beginning September 4, 2020, the District offered the Student special education and related services through virtual instruction, online learning, and educational materials. Leading up to the 2020-2021 school year, the special education teacher and other District staff communicated frequently with the Parents about supports that could be provided to Student B during the school closures, including making an iPad available to Student B in lieu of a laptop. In addition to special education classes, the personalized schedule created for Student B by the special education teacher included time during which Student B's general education peers were scheduled to video call him to provide more opportunities for social interactions (although it is noted that this never came to fruition). Student B's special education teacher and service providers also communicated with Student B's Parents and offered creative solutions to make IEP accommodations available

to Student B during virtual learning. Student B was also offered 1:1 direct instruction for his special education services to try and keep him engaged and focused.

Despite the District's efforts, the Parents reiterated concerns raised prior to the commencement of the school year that Student B remained unable to access remote instruction and required in-person services. Student B's IEP team met on September 14, 2020, to discuss these concerns and agreed that data would be collected for two weeks regarding Student B's ability to attend to and engage in remote virtual learning. When Student B's IEP team met to review the data, it showed that Student B was unable to access most of his specially designed instruction and services other than speech, and that as of September 25, 2020, Student B was not accessing or engaging in any of his virtual general education classes. The Student's IEP team recommended Student B receive in-person services; however, despite the Parents' requests, the team only considered Student B's need for in-person services as it related to his ability to access services provided in the special education setting. The District began offering some in-person services on November 20, 2020, but due to the Parents' requests, Student B began in-person instruction on December 4, 2020. On January 21, 2021, Student B's IEP team agreed to increase his in-person services to provide for some recovery services, due to acknowledgement that Student B was unable to access most of his special education services during remote virtual learning.

While OSPI acknowledges the efforts of Student B's team to creatively engage Student B in virtual remote learning, because Student B lacked direct in-person support, the documentation showed that from September 4 through December 4, 2020, Student B was unable to access most of the specially designed instruction provided in the special education setting, almost all specially designed instruction provided in the general education setting, and all remote virtual occupational therapy. Student B's IEP team acknowledged this as well and determined Student B required in-person services to access a FAPE for all areas other than speech therapy. Accordingly, despite Student B's team's efforts, the difference between the special education services provided in Student B's IEP and what Student B was able to access was material and Student B did not receive a FAPE during this time. OSPI accordingly finds the District in violation. The District was able to show, however, that Student B has started making progress again since he began receiving in-person services. The District will be required to evaluate Student B for his progress on current IEP goals to determine Student B's need for compensatory services for services not accessed from September 4 through December 4, 2020. The District, with Parent involvement, will determine an amount of compensatory services they believe to be appropriate and a schedule by which it will provide the services. The District will propose the amount and schedule of services to OSPI for review and approval.

Appropriateness of Amount of In-Person Services Offered to Student B

As previously stated, the presentation of a "take it or leave it" basis of services has been found to be a violation of the IDEA. A district may not limit the amount of services offered or deny a type of service delivery method based on the setting in which an eligible student receives his special education services. The data collected on Student B clearly indicated he was unable to access any specially designed instruction in the general education setting or otherwise access the general education setting without in-person support. The request for in-person support was strongly

advocated for by both his Parents and his special education teacher. The District may not refuse to consider providing in-person services to a student to access the general education setting if the student's IEP team has determined that setting is the student's LRE, as it did here. OSPI finds the District to be in violation.

Student B's IEP team will be required to convene to reconsider the Parents' request for in-person services to access Student B's general education classroom. The IEP team must also consider Student B's lack of access to specially designed instruction in the general education when considering Student B's needs for compensatory services.

The District will also be required to issue written guidance to District administrative and special education staff that they must consider requests for in-person services of students with disabilities on a case by case basis and may not refuse to consider in-person services for students who receive their special education services in the general education setting.

Student C

At the commencement of the 2020-2021 school year, Student C's IEP provided her with the following specially designed instruction:

- 257 minutes weekly in social/behavior, in a *general education setting*;
- 153 minutes weekly in adaptive/life skills, in a *general education setting*;
- 401 minutes weekly in functional math, in a *special education setting*;
- 231 minutes weekly in functional reading, in a *special education setting*;
- 142 minutes weekly in functional written language, staff in a *special education setting*;
- 349 minutes weekly in social/behavior in a *special education setting*;
- 226 minutes weekly in adaptive/life skills in a *special education setting*;
- 150 minutes per month of speech language therapy, provided by an SLP in a *special education setting*; and,
- 100 minutes per month of occupational therapy, provided by an OT in a *special education setting*.

Student C's IEP additionally provided the Student with 200 minutes yearly of physical therapy and a full time 1:1 paraeducator support as a supplementary aid and service in all special education and general education settings.

The District offered Student C special education and related services through virtual instruction, online learning, and educational materials. Student C's Parent was provided with a daily schedule for her remote learning, which included opportunities for specially designed instruction provided remotely in social/behavior, adaptive life skills, functional math, functional reading, and functional written language. The special education teacher also offered to provide additional 1:1 virtual instruction. Although Student C's schedule provided opportunities for Student C to receive specially designed instruction during this time, it is unclear with the exception of adaptive/life skills, which was supported by the OT and PT, what, if any, specially designed instruction Student C received in academic and social areas. The District was unable to provide documentation that Student C received instruction that was modified or adapted to Student C's individual needs in academic or social curriculum, or that Student C was able to access her instruction in any academic area. This was supported by documentation that Student C's IEP team recommended Student C

for in-person services to access specially designed instruction after collecting data on her ability to engage and participate in remote instruction, and concluding that she was unable to do so without direct in-person support. Progress data included in Student C's January 2021 IEP further documented Student C's lack of progress, or the District's inability to monitor progress due to Student C's inability to access instruction, in academic areas. The difference between what was provided in Student C's IEP and what was accessed was material and OSPI accordingly finds the District in violation for not implementing Student C's IEP in the areas of social/behavior, functional math, functional reading, communication, and functional written language.

The District will be required to provide Student C with compensatory services in the areas of social/behavior, functional math, functional reading, communication, and functional written language for the period of September 4, 2020 through January 7, 2021.¹⁸

OSPI notes that Student C's OT and PT supported Student C during her weekly "movement for life" group classes that supported Student C's "life skills" class, with the Parent providing the 1:1 direct adult support. Student C's OT additionally provided consultation for gross motor and mobility support to Student C's Parent. This support resulted in Student C making some progress on her adaptive/life skills goals that required motor support. Although this support was not always provided exactly as indicated in Student C's IEP, any deviations did not appear to be material. Although Student C's Parents disagreed with the recommendations by Student C's IEP team to continue providing this service remotely, there does not seem to be a material failure to implement the IEP regarding OT and PT services at this time. No violation with implementation of OT and PT services for Student C. However, OSPI acknowledges that part of Student C's progress has been because the Parents have been able to support Student C in the home to provide direct 1:1 support required for IEP implementation in these areas. The Parents have expressed to the District that they are unable to do this full time for all of Student C's IEP services. If the Parents become unable to provide the 1:1 adult support they have been providing for OT and PT, Student C's IEP team should reconvene to discuss how to implement the 1:1 paraeducator support required for implementation of these services.

Issue 2: District's Response to Parents A, B, & C's Request for In-Person Services – The Complainant alleged the District did not follow procedures when responding the individual requests of Parents A, B, and, C for in-person services—including in-person specially designed instruction, related services, and supplementary aids and services—for Students A, B, and C, respectively. In particular, the Complainant alleged that when considering the Parents' requests, the District did not consider or make available the full continuum of placements required by the IDEA—including home instruction—and that it inappropriately made decisions impacting the provision of a free appropriate public education (FAPE) outside the IEP process. The Complainant further alleged the District's actions in response to the requests of Parents A, B, and C for in-

¹⁸ OSPI notes that the compensatory services awarded are only for the time period under review in this complaint (September 4, 2020 through January 7, 2021). The awarding of compensatory services in this complaint do not preclude the Parents from requesting the Student's IEP team consider the Student's need for additional recovery services for periods of time outside the timeframe for this complaint during which the Student may not have been able to access services.

person services for Students A, B, and C, respectively, did not follow procedures regarding parent participation, and that the District did not provide required prior written notice (PWN).

Each school district is required to make available a continuum of alternative placements to meet the special education and related services needs of eligible students. Districts accordingly must make available general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and provide for supplementary services. Educational placement decisions must be determined annually, or sooner if appropriate, and be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options that provide a reasonably high probability of assisting the student in attaining challenging annual goals, and a consideration of any potential harmful effect on the student or on the quality of services the student needs, based on the student's IEP and least restrictive environment (LRE) requirements. Although the District currently must meet certain Department of Health safety and health requirements due to the ongoing COVID-19 pandemic, and IEP teams when considering placement options for students with disabilities may consider administrative policies and procedures regarding the health and safety for all students and staff, it must also continue to make individualized determinations regarding the provision of a FAPE for each student with an IEP, within the IEP process. IEP teams must develop an IEP for each eligible student that indicates what placement along the continuum meets the student's needs.

Regarding parent participation when determining educational placement, the IEP team, which includes the parent decides the type of placement appropriate to meet the student's needs. The IEP team may delegate the classroom assignment/location to the school administration where there is more than one location that fits the description of an appropriate educational program for the student. However, determinations about location and placement must be consistent with the IEP team's decision about the appropriate educational setting for the student and meet the other needs of the student as determined by the IEP team. Written notice must be provided to the parents of a student eligible for special education a reasonable time before the school district proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

Continuum of Alternative Placements

OSPI acknowledges that during the current COVID-19 pandemic, districts may offer classes in the general education and special education setting in the home or school building, and that the location in which a student receives services may fluctuate due to local Department of Health guidelines, administrative decisions regarding health and safety, or due to a student's specific needs. If an IEP team has determined a student requires in-person instruction to receive a FAPE, the student requires this method of delivery across all locations and settings as determined by the IEP team. An IEP team's determination regarding the method of delivery of instruction does not necessarily change the student's placement or right to receive the specially designed instruction and related services in conformity with his or her IEP. If a district has transitioned from providing all educational services in a remote model with students accessing instruction from the home, and has begun providing some educational services in the school building in accordance

with Department of Health guidelines, then the change in the provision of services to a student with a disability from in the school building—once determined by an IEP team that the student will receive his or her special education services in the school building—to home, *may* constitute a change of placement under the IDEA. A change would evoke change of placement procedures if it significantly changed the Student’s access to nondisabled peers, nonacademic/extracurricular opportunities, and/or the placement along the IDEA continuum of placements. In short, the District continues to have a responsibility to provide the Student a FAPE. This includes a responsibility to at least consider placement needs as part of the IEP process, including discussing during IEP meetings and documenting in a PWN whether a student with a disability may require a change in placement in order to meet the needs identified in the IEP, and to make the full continuum of placements under the IDEA available. Districts may not deny parents of students for whom IEP teams have determined require in-person services consideration of the full continuum of placements available under the IDEA—including home instruction—when considering what placement will offer a FAPE. At the same time, IEP teams should be careful not to make determinations regarding a student’s placement based on situations caused by the pandemic alone, and not a student’s disability, and should continue to offer placements that provide students the level of access to their general education peers as required in their IEP.

Here, the District had a written policy reiterated by administrative staff that it would not provide in-person services in the home to any student. It also refused to consider home instruction as an option on the continuum of alternative placements for each Student A, B, and C during the IEP process. Although an IEP team does not have to agree with a request from a parent to change a student’s placement, when a district is unable to implement the special education programs and placement of a student in the student’s current setting or location, it is at minimum required to consider all alternatives, including a change of placement, particularly when raised during an IEP meeting or as part of the IEP process. The District’s reference of its policy of not providing any services in the home and refusing to hold an IEP meeting to consider any requests for home instruction, is contrary to the IDEA. The District will be required to consider requests for change in placement that arise in the special education context on a case by case basis and follow the procedures to consider each student’s unique needs and to provide PWN of any denial of requests to change placement when they arise during the IEP process. The District will be required to develop written guidance on this issue and disseminate to administrative staff in the District.

Decisions outside the IEP Process & Parent Participation

If the exclusion of a student with a disability from the school building is a temporary (usually less than ten days), emergency measure because the student is determined to be high-risk, and/or so the district can address health and safety concerns in the school environment to prepare to fully implement the student’s IEP in the school building, it usually is not necessary for the IEP team to reconvene during that time to discuss what additional measures need to be taken in the interim in the home to implement the IEP. Parent participation and involvement in the administrative process and PWN are also not required. This is because the short-term provision of remote services in the home due to an administrative decision or delay—even if an IEP team has determined the student should receive in-person services in the school building—would not likely

constitute a change in placement or a material failure to implement the IEP under the IDEA, Thus, administrative decisions—including those made for health and safety reasons—that have a short-term impact on the implementation of a student’s IEP or ability to access his or her special education program do not invoke IDEA protections.

However, administrative decisions (such as those made by the District regarding COVID-19), or situations arising from a student’s disability that result in long-term exclusions (more than ten days) from the school building—either resulting in the failure to deliver all or some services in conformity with a student’s IEP—when the student’s IEP team has identified the school building as the location where the student’s placement and most or all special education services required to receive a FAPE will be provided, and whereby long-term exclusion from the building may result in a denial of FAPE due to the inability to receive required special education services as indicated by the IEP team, the IEP team should reconvene to consider how to meet the student’s unique needs under the changed circumstances. Consideration of a student’s unique needs includes consideration of how the student’s educational program will be implemented in the location a student currently is, with the resources available now and in consideration of those believed to be available in the future. In addition to considering whether a change in location may also constitute a change in placement under the IDEA, an IEP team should consider what other supplementary supports or accommodations the student may require in the current location or placement. For students who are unable to return to the school building and where district staff are unable to enter a student’s home, and where an IEP team has determined the student requires in-person services to receive a FAPE (for either all or some special education services), an IEP team may also consider whether it may be appropriate to contract with private services or add skilled nursing services to help implement an IEP to the greatest extent possible and mitigate learning loss—instead of waiting to provide compensatory services. These decisions, including whether a change in placement is necessary to provide a FAPE, should be made by each IEP team in response to each student’s unique disability-related needs and documented in a prior written notice, along with any parental disagreement.

In each instance, the exclusion of Students A, B, and C from the school building well exceeded ten days following a determination by the IEP team that the Student required in-person services, either in whole or in part. While it appears the IEP teams did not intend the duration of the exclusion to last as long as it did and has, and although the exclusions were due to decisions by the District’s administrative COVID-19 health and safety teams, the IEP teams for each Student—including the Parent and those with knowledge of alternative placement options—should have reconvened once it became clear the exclusion from the school building would be long-term and that the Students’ IEPs were unable to be implemented in their current location and placement because the Students were unable to receive in-person services. In particular, the IEP teams should have reconvened if requested by the Parent, including where a request was made to consider alternative placement options. At the IEP meeting, the IEP teams should have considered the Student’s unique needs, including whether additional supplementary supports could be provided in the school and/or home, and if any changes needed to be made to the Students’ educational programs, including whether a change in placement was appropriate. If, after consideration by the IEP team, it was decided that a particular placement along the continuum—including home

instruction—was not appropriate, and if it could not implement the program determined by a Student’s IEP team to provide a FAPE, the IEP team should have then documented its decision clearly in a prior written notice that included all alternatives considered, including those proposed by the Parent, and any disagreement by the Parent.

While the District must adhere to Department of Health guidelines and may have administrative policies regarding health and safety, which IEP teams may and should refer to, the District is still obligated to provide students with disabilities a FAPE and must simultaneously continue to follow IDEA procedures. When responding to concerns and requests to provide students in-person services, the District still must consider the full continuum of alternative placements available to students who require in-person services, must make student-specific decisions, convene IEP teams when appropriate under the IDEA, and follow procedures regarding prior written notice. Although the Students’ IEP teams initially met to discuss the Parents’ concerns about the Students’ need for in-person services, the District did not follow procedures once it excluded Students’ A, B, and C from the school building for more than ten days and they were unable to access the services. Thus, OSPI finds a violation.

The District will be required to hold an IEP meeting for each Student A, B, and C to fully consider any alternatives proposed by Parents A, B, and C, respectively, and to provide prior written notice containing all required components.

Finally, if, after following the procedures described above, the District is unable to implement a Student’s IEP, this should be documented in a prior written notice as well as the Student’s right to receive compensatory services, as discussed in previous sections.

Prior Written Notice

Student A: Student A’s IEP team met on October 14, 2020 to review data collected on Student A’s participation in remote learning and to address Parent A’s request for in-person services. The team agreed that Student A would receive in-person services on Monday/Thursday from 10:00 am to 12:00 pm, and Tuesday/Friday from 9:00 am to 12:00 pm. At the meeting, the Parent also requested recovery services, and that if the District was unable to provide services for the Student in the school building that she would like to request consideration of a change in placement to home instruction.

The District provided the Parent with PWN following the meeting, but it did not mention the Parent’s request for recovery services or her request for consideration of services in-the home, or a possible change of placement if the District was unable to provide services in the school building. The PWN also did not include the IEP team’s response to Parent A’s requests. OSPI finds the District in violation for not providing a PWN with all required components, including documentation of the Parent’s proposal and District’s response. The District will be required to provide the Parent with a revised PWN from the October 14, 2020 IEP meeting, noting her request at that time for recovery services, and to complete training in prior written notice requirements.

Student B: On September 10, 2020, Student B's IEP team convened to discuss Parent B's request for Student B to receive full-time, in-person instruction. At the meeting, the IEP team agreed to collect data on Student B's participation and engagement in remote learning for two weeks and to reconvene on September 25, 2020 to review the data, which the team did. Student B's IEP team recommended the Student receive in-person services for 300 minutes per week of specially designed instruction in adaptive skills, 100 minutes per week of specially designed instruction in written language, and 60 minutes per month of occupational therapy. The IEP team determined the Student could receive the remainder of his services remotely. The Parents of Student B disagreed with the IEP team's recommendations. The District provided PWN following each meeting that adequately described the team's proposal and the Parents' disagreement. OSPI finds no violation.

Student C: Student C's IEP team convened on October 12, 2020 to discuss Parent C's request that Student C receive full-time, in-person instruction. The IEP team proposed they collect data for two weeks and reconvene on October 26, 2020 for a follow up IEP meeting to review the data and discuss services. At this meeting, Student C's Parents requested recovery services for Student C. Student C's IEP team reconvened on October 26, 2020 to review the data and proposed Student C receive in-person services for 2.5 hours, two days per week, during which Student C would participate in three, 50-minute special education classes each day to receive her specially designed instruction in math, reading, and writing. It was proposed that Student C would continue to receive life skills instruction remotely and that Student C would participate virtually in general education classes (music and physical education). The team discussed Parent C's request to increase services to three days per week. The Parents disagreed and requested four days. The team agreed to reconvene to further discuss options. Although the District submitted an IEP that included an attached PWN, dated November 11, 2020, the Complainant alleged the Parents never received it and there is no documentation that the IEP was provided to the Parents. It is unclear if the Parent received this PWN. Further, even if the Parent had received it, the PWN did not mention Parent C's request for recovery services. OSPI accordingly finds the District in violation for not providing a PWN with all required component and the District will be required to complete training and to provide the Parents of Student C an updated PWN with all required components.

OSPI notes that on January 27, 2021, following the Student's annual IEP meeting, the District provided Parents of Student C a revised IEP that included PWN that documented the IEP team's proposal for in-person services and noted the Parent's request for recovery services. However, the PWN still did not include the IEP team's response to the Parent's request for recovery services. Accordingly, the District will still be required to issue an updated PWN, documenting the IEP team's response to the Parent's request for recovery services.

ISSUE THREE: IEP FLOW CHART

The Complainant alleged the District systemically violated FAPE for students with disabilities in the District by utilizing a flow chat that instructs IEP teams to follow a series of considerations and actions when determining whether to recommend a student for in-person services.

The District asserted the flow chart was:

designed to provide a process for making individual determinations about the provision of special education services to students. The Flow Chart requires IEP teams to individually review whether each student made progress during remote learning to determine whether any amendments to their IEPs are necessary. The Flow chart requires teams to consider whether students need additional supports, and to monitor progress data to consider whether students are able to make meaningful progress on their goals through remote learning with additional learning with additional supports.

The Complainant's main concern with the flow chart appears to be that in accordance with the flow chart, each Student's IEP team recommended a period of two weeks to collect data to determine the Students' need for in-person services. The Complainant alleged this caused an unnecessary delay and opined that it should have been clear from each Students' performance in the spring that they were not making progress. However, each Students' special education program in the fall differed from that in the spring of 2020, and it was reasonable for the IEP teams to collect data to help determine the Students' need for services. The two-week time period was not unreasonable, and in each case, data was collected and the IEP team promptly convened to review the data and make an individualized determination regarding each Student's needs for services. OSPI does not find the Flow Chart in and of itself to violate FAPE and reminds the District that it still must continue to consider each students' unique needs and must continue to provide all students with disabilities a FAPE. OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **April 2, 2021, April 9, 2021, April 23, 2021, May 14, 2021, and December 10, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

COMPENSATORY EDUCATION

Student A

By or before **March 26, 2021**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: **198.5 hours** of specially designed instruction in social/emotional, **64 hours** of specially designed instruction in functional math, **32.5 hours** of specially designed instruction in functional reading, **29 hours** of specially designed instruction in functional written language, and **86 hours** of specially designed instruction in adaptive/life skills. The District will also be required to provide **2 hours** of physical therapy as a related service, and **4 hours** of speech and language pathology as a related service.

The District will provide OSPI with documentation of the schedule for services by or before **April 2, 2021**.

The compensatory education will occur in a one-on-one setting,¹⁹ and be provided by a certificated special education teacher. The District must also provide the Student with an in-person 1:1 paraeducator during the provision of services. Time spent attending to Student's A's personal care needs, including toileting or feeding, will not be included in the time allotted for compensatory education. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks, including over the summer. 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 3, 2021**, including those needing to be rescheduled.*

No later than **December 10, 2021**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for Student to access these services, or reimburse Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **December 10, 2021**.

Student B

By or before the Student B's scheduled IEP meeting (see section below regarding IEP meeting), and no later than **April 2, 2021**, the District will monitor and measure the Student's progress on his IEP goals. This could include a review of existing data, Parent input regarding progress at home during remote instruction, new assessments, and information about what the Student's expected progress was when the Student's IEP goals were developed and where the Student is today.

At the IEP meeting ordered by OSPI in response to this complaint, the Student's IEP team must then discuss the Student's progress and the impact of Student B's inability to access his specially designed instruction and related services from September 4 through December 5, 2020, including the special education services the Student was supposed to receive in the general education setting. If the District has provided any recovery services since this complaint has been filed, it may take those into consideration. The District and Parent will then develop a proposal for the

¹⁹ OSPI notes that 191 of the 198.5 hours of compensatory service hours awarded in specially designed instruction in the area of social/emotional were originally to be provided in the general education setting. Student A's social/emotional goals additionally supported post-secondary goals relating to communicating with peers. If the District and Parent agree to the delivery of specially designed instruction in a setting that is not 1:1, they may propose to OSPI, for approval, a different alternative setting in which to deliver these hours.

amount of compensatory services they believe the Student requires to receive FAPE and a schedule for providing the services.

The compensatory education proposed will be provided by a certificated special education teacher and the District must also provide the Student with the support of an in-person 1:1 paraeducator during the provision of services. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks, including over the summer. 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 schedule developed by the District and Parent must provide for services to be completed no later than **December 3, 2021**, including those needing to be rescheduled.*

By **April 9, 2021**, along with the requested documents from the IEP meeting (see section below regarding IEP meeting), the District will additionally provide OSPI with the following: 1) Plan for additional compensatory services; 2) what documentation was used to determine the services; and, 3) schedule for providing the services.

By April 16, 2021, OSPI will review the data used by the IEP team, including the Parent, to determine if the amount is appropriate. OSPI will either approve or modify the proposal and notify the District by April 16, 2021 if it has been accepted.

No later than **December 10, 2021**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for Student to access these services or reimburse Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **December 10, 2021**.

Student C

By or before **March 26, 2021**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: **151 hours** of specially designed instruction in social/behavior, **100 hours** of specially designed instruction in functional math, **58 hours** of specially designed instruction in functional reading, **35.5 hours** of specially designed instruction in functional written language, and **94.8 hours** of specially designed instruction in adaptive/life skills.

The District will provide OSPI with documentation of the schedule for services by or before **April 2, 2021**.

The compensatory education will occur in a one-on-one setting²⁰ and be provided by a certificated special education teacher. The District must also provide the Student with the support of an in-person 1:1 paraeducator during the provision of services. Time spent attending to Student's C's personal care needs, including toileting and feeding, will not be included in the time allotted for compensatory education. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks, including over the summer. 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 3, 2021**, including those needing to be rescheduled.*

No later than **December 10, 2021**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for Student to access these services, or reimburse Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **December 10, 2021**.

IEP MEETINGS

Student A

By or before **April 2, 2021**, if Student A is not receiving all special education services in-person in the school building, Student A's IEP team will be required to meet to discuss the following:

- How many minutes per week of in-person services does Student A require to make expected progress on her IEP goals, and what data and information is the team relying on to make this decision?
- If the District is unable to provide in-person support for the number of minutes of special education services required by the Student for FAPE, the team must discuss any other alternatives proposed by any IEP team member—including the Parent. This includes any proposals regarding placement, recovery services, and/or requests to provide private services.
- If the IEP team determines it is unable to implement any part of the Student's IEP, it should document this in a PWN, discuss how it will prevent learning loss in the meantime, and develop a plan recovery services, including how it will maintain data on the Student's progress in the meantime.

²⁰ OSPI notes that 64 of the 151 hours of compensatory service hours awarded in specially designed instruction in the area of social/behavior were to be provided in the general education setting. If the District and Parent agree to the delivery of specially designed instruction in a setting that is not 1:1, they may propose to OSPI, for approval a different alternative setting for these hours.

By **April 9, 2021**, the District will provide OSPI with: 1) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; 2) any meeting notes taken during the meeting; 3) meeting invitations; 4) a list of people, including their roles, who attended the meeting; 5) a copy of the Student's amended IEP, if relevant; and, 6) any other relevant documentation.

Student B

By or before **April 2, 2021**, Student A's IEP team will be required to meet to discuss the following:

- Student B's progress, as described above (see section on compensatory services), and to determine what amount of compensatory services are required to help Student B achieve the level of progress he would have on his IEP goals, had he been able to receive in-person paraeducator support and been able to access all of his special education services from September 4, 2020 through December 4, 2021. As stated above, OSPI will review this proposal and either accept or modify it.
- What supports, including in-person paraeducator support, Student B requires to access to the general education setting, as required in his IEP.
- Any other requests or proposals as raised by any member of the IEP team.

By **April 9, 2021**, the District will provide OSPI with: 1) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; 2) any meeting notes taken during the meeting; 3) meeting invitations; 4) a list of people, including their roles, who attended the meeting; 5) a copy of the Student's amended IEP, if relevant; and, 6) any other relevant documentation.

Student C

By or before **April 2, 2021**, Student C's IEP team will meet to discuss the following:

- How many minutes per week of in-person services does Student C require to make expected progress on her IEP goals, and what data and information is the team relying on to make this decision?
- If the District is unable provide Student C's with in-person services necessary to implement her IEP, the team must discuss any other alternatives proposed by any IEP team member—including the Parent. This includes any proposals regarding placement, recovery services, and/or requests to provide private services.
- If the IEP team determines it is unable to implement any part of the Student's IEP, it should document this in a PWN, discuss how it will prevent learning loss in the meantime and develop a plan recovery services, including how it will maintain data on the Student's progress in the meantime.

By **April 9, 2021**, the District will provide OSPI with: 1) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; 2) any meeting notes taken during the meeting; 3) meeting invitations; 4) a list of people, including their roles, who attended the meeting; 5) a copy of the Student's amended IEP, if relevant; and, 6) any other relevant documentation.

REVISION OF PRIOR WRITTEN NOTICES

Student A

By or before **March 26, 2021**, the District will be required to provide Parent A a revised October 14, 2020 prior written notice (PWN) that documents that on October 14, 2020, the Parent requested recovery services for services not accessed since spring 2020, and that the IEP team declined.

The District will submit a copy of the updated prior written notice to OSPI, and documentation that the revised PWN was sent to the Parents by **April 2, 2021**.

Student C

By or before **March 26, 2021**, the District will be required to provide Parent C a revised November 11, 202 PWN that documents the Parent requested recovery services for services not accessed since spring 2020, including the IEP team's response.

The District will submit a copy of the updated PWN to OSPI, and documentation that the revised copies were sent to Parents by **April 2, 2021**.

DISTRICT SPECIFIC:

DISSEMINATION OF WRITTEN GUIDANCE

By **April 16, 2021**, the District will ensure that all District special education administrators receive written guidance on the topics listed below:

- Districts must consider requests for in-person services of students with disabilities on a case by case basis and may not refuse to consider requests for in-person services for students who receive their special education services in the general education setting.
- The District must offer the full continuum of special education placements to students with disabilities, including home instruction. The District should consider requests for change in placement that arise in the special education context on a case by case basis and continue to follow special education procedures to consider each student's unique needs regarding placement, and provide prior written notice of any denial of requests to change placement when they arise during the IEP process. The District will be required to develop written guidance on this issue and disseminate to administrative staff in the District.

By **April 2, 2021**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by April 9, 2021.

By **April 23, 2021**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

TRAINING

By or before **May 7, 2021**, District special education staff will complete a training module on prior written notices. The training module has been developed by OSPI special education division and eLearning for Educators in Canvas, an online learning management system. Access to the training module in Canvas can be found here <https://www.evergreen.edu/elearningforeducators/>.

By or before **May 14, 2021**, the District will submit documentation that required staff have completed the training module.

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.

RECOMMENDATIONS

OSPI also notes that as written, Student B's current IEP includes each special education service in the matrix twice. The change was made following the October 23, 2020 IEP meeting and resulted in a doubling of special education minutes in the special education setting from the previous IEP and a change in the LRE in the IEP by more than 20%. The Student's IEP also contains each of the Student's weekly minutes of specially designed instruction in the general education setting twice. The PWN following the October 23, 2020 meeting does not clarify what the matrix was intended to provide the Student. The current IEP accordingly does not clearly or fully detail the District's offering of FAPE in such a way that it can be accurately implemented or that enables the Parents to effectively participate. Although not an issue raised in this complaint, OSPI strongly recommends Student B's IEP team review the service matrix and revise to make sure it accurately and fully details the IEP team's offering of FAPE.

OSPI additionally recommends the District and the Parents of Student B consider special education mediation as an option for working through the process of developing a proposal of compensatory services for Student B, prior to submitting to OSPI for approval. Mediation is a voluntary process for parents and districts to meet and discuss their concerns with the help of a trained, neutral facilitator. Mediation services are provided at no cost and may not be used to deny the Parent the right to the compensatory services ordered within this complaint. OSPI contracts with a company called Sound Options Group to provide mediation services.

Dated this ___ day of March, 2021

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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