

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-98

PROCEDURAL HISTORY

On October 19, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a teacher (Complainant) who works at [REDACTED] (School 1), located in the [REDACTED] 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 education of seventeen students (Student 1-17) at the school.

On October 22, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On November 1, 2018, the Complainant provided additional information and OSPI notified the District that it was adding an issue to the complaint on the same day.

On November 1, 2018, the District requested and OSPI granted an extension of time until November 20, 2018, for the District to respond to the allegations made in the complaint.

On November 20, 2018, OSPI received the District's response to the complaint and forwarded it to the Complainant on November 21 and 26, 2018. OSPI invited the Complainant to reply with any information he had that was inconsistent with the District's information.

On November 29, 2018, the OSPI complaint investigator called and interviewed one of the District's surrogate parents.

On December 3, 2018, OSPI complaint investigators conducted a site visit to School 1 and interviewed the District's Director of Special Education, School 1's Principal, School 1's Dean of Students, a general education teacher, a special education teacher, and three Students.

On December 3, 2018, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

On December 3, 2018, OSPI requested additional information from the District, and the District provided the requested information on December 4, 2018. OSPI forwarded the information to the Complainant on December 5, 2018.

On December 6, 2018, the OSPI complaint investigator interviewed the Complainant by phone.

On December 12, 2018, the Complainant provided additional information. OSPI forwarded the information to the District on the same day.

On December 12, 2018, OSPI requested additional information from the District, and the District provided the requested information on December 13 and 14, 2018. OSPI forwarded the information to the Complainant on December 17, 2018.

On December 14, 2018, an OSPI complaint investigator conducted a second site visit to School 1 and interviewed another general education teacher and two special education teachers.

OSPI considered all of the information provided by the Complainant and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the site visits and interviews.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation time period, which began on October 20, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District follow procedures for determining and/or changing the placement of students eligible for special education?
2. Did the District appropriately respond to requests for reevaluations and follow the required reevaluation procedures, if a reevaluation was warranted?
3. Did the District follow procedures for developing the students' individualized education programs (IEPs)?
4. Did the District follow procedures for implementing the students' IEPs, including providing required services and accommodations/modifications?
5. Did the District follow procedures for conducting progress monitoring and providing required progress reporting?
6. Did the District ensure that the surrogates had the knowledge and skills to adequately represent the students as required under WAC 392-172A-05130?
7. Did the District ensure that the students received physical education (PE) services, specially designed if necessary, in accordance with WAC 392-172A-02030?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met the legal standard. OSPI reviews the documentation received from the complainant and district to determine whether there is sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

Placement: When determining the educational placement of a student eligible for special education, the placement decision shall be determined annually and made by a group of persons,

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

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

Transfer Students Who Transfer from an In-State School District: If a student eligible for special education transfers from one Washington state school district to another Washington school district and has an IEP that was in effect for the current school year from the previous district (even if the previous district failed to meet the annual review requirements in 34 CFR §300.324(b)(1)(i)), the new school district, in consultation with the parents, must either: adopt the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements in WACs 392-172A-03090 through 392-172A-03110. 34 CFR §300.323(e); WAC 392-172A-03105(4). Districts must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question A-4).

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).

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

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. The evaluation group's review does not need to be conducted through a meeting but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate. 34 CFR §§300.305 and 300.501; WACs 392-172A-03025 and 392-172A-05000.

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

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A school district must 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.

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

Measurable Annual Goals: IEPs must include a statement of the student's measurable annual goals, including academic and functional goals designed to: meet the student's needs that result from the student's disability so that he or she can be involved in and make progress in the general education curriculum; and, meet each of the student's other educational needs that result from the student's disability. Additionally, for students who take alternate assessments aligned to alternate achievement standards, the statement of measurable annual goals should include a description of the benchmarks or short-term objectives the student should meet. 34 CFR §300.320(a)(2); WAC 392-172A-03090(1)(b).

Transition Requirements for IEPs: Beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, or younger if determined appropriate by the IEP team, the student's IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services including courses of study needed to assist the student in reaching those goals. 34 CFR §300.320(b); WAC 392-172A-03090(1)(j).

Transition services means a coordinated set of activities for a student eligible for special education that: is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation, and is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes: instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. Transition services for students eligible for special education may be special education, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education to benefit from special education. 34 CFR §300.43(a); WAC 392-172A-01190.

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c). If a student is not making expected progress toward annual goals on in the general education curriculum, a student's IEP must be reviewed and revised. WAC 392-172A-03110(3).

Surrogate Parents: A surrogate parent is a person appointed by the school district to act on behalf of a student when no parent, as defined in WAC 392-172A-01125, can be identified; the school district, after reasonable efforts, cannot locate a parent; the student is a ward of the state; the student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act; or, an educational representative is appointed for a student pursuant to WAC 392-172A-05135(5). School districts must develop procedures for assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a student needs a surrogate parent; for assigning a surrogate parent to the student; and for ensuring that an assignment of a surrogate parent is provided within thirty days of the district's determination that a surrogate parent is required. Where the student is a ward of the state, the judge overseeing the student's case may appoint a surrogate parent, provided that the surrogate meets the IDEA requirements to be a surrogate parent. 34 CFR §300.519; WAC 392-172A-05130.

School districts must ensure that a person selected as a surrogate parent is not an employee of the OSPI, the school district, DSHS, or any other agency that is involved in the education or care of the student; has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and has the knowledge and skills necessary to ensure adequate representation of the student. A surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement, and the provision of FAPE to the student. 34 CFR§300.519; WAC 392-172A-05130.

It would be inconsistent with Part B of the IDEA for a public agency to institute procedures for removing a surrogate parent on the basis that the public agency disagrees with the views of the surrogate parent on an issue involving the provision of a free appropriate public education to the child. However, if a public agency has a basis for concluding that an appointed surrogate parent no longer possesses the requisite knowledge and skills adequate to represent the child, or has a conflict with the interests of the child, it would be consistent with Part B for the public agency to remove the surrogate parent in accordance with state law. *Letter to Copenhaver*, 29 IDELR 1091 (OSEP 1997).

Requirements for Physical Education: Each student eligible for special education services must be afforded the opportunity to participate in the general physical education program available to students who are not disabled, unless the student is enrolled full time in a separate facility or the student needs specially designed physical education, as described in the student's IEP. If the student requires specially designed physical education, the district will ensure that the school either provides the services directly or makes arrangements with a private program. 34 CFR §300.108; WAC 392-172A-02030. Washington state minimum credit requirements for graduation are set by the Washington State Board of Education. For students graduation in 2016, 2017, and 2018, they are required to take two credits of "health and fitness" as part of twenty total credits. Students graduating in 2019 and beyond must take twenty-four credits to graduation, two of which must be health and fitness. See The Washington State Board of Education, Graduation Requirements, <http://www.sbe.wa.gov/our-work/graduation-requirements> (last viewed December 7, 2018).

BACKGROUND FACTS

1. **[REDACTED]** (school 1) is a school located at a Washington medium/maximum security juvenile correctional setting, which is run by the Juvenile Rehabilitation Administration (JRA).¹ The dean of students, principal, and teachers are employees of the District. According to the Washington State Department of Social and Health Services (DSHS), school 1 provides “older, male offenders education and vocational training. Educational options include high school diploma, general equivalency diploma (GED), and pre-college courses.” The vocational programs include “computer technology, light machine fabrication, vehicle maintenance, landscaping, welding, and the Juvenile Vocational Industries Program ‘JVIP.’”²
2. On October 19, 2018, OSPI received and opened the Complainant’s request for a special education citizen complaint. The Complainant made between one and seven allegations related to the placements and educational programs of each of seventeen (17) specified students who attend or previously attended school 1.³

Intake Procedures: JRA and School 1

3. According to the District (principal and dean of students), when students arrive at the correctional setting, JRA staff conduct the intake process, which takes around three days to a week (on average⁴) and during this period, the students do not attend class. The District stated that during this period, students are “oriented to the school, interviewed to gather data on which to build a class schedule, and given...reading and math tests, to establish their baseline level.” Students begin attending PE/recreation the same day as arrival or the following day.

During this first week, the District requests the students’ educational records. The District stated that in the past, it has had difficulty getting records for a variety of reason—e.g., records do not exist, previous district does not reply, student was previously not engaged with school—and that it can take up to two or three weeks to get records. The District stated that it has started requesting records through a Washington state data system, which is now allowing them to get some records faster. The District also stated that, beginning in “June

¹ The documentation provided in this complaint used the terms correctional facility, juvenile rehabilitation institution, and juvenile rehabilitation facility interchangeably. Students involved in this complaint also attended schools at Echo Glen Children’s Center (school 2) and Naselle Youth Camp (school 3), which are other juvenile correctional settings.

² JVIP is a textiles program. See, <https://www.dshs.wa.gov/ra/juvenile-rehabilitation/green-hill-school>.

³ JRA staff refer to the individuals at the correctional setting as “residents,” this decision will generally use “students/Students 1-17” throughout, except when referring to JRA policies or practices.

⁴ The District stated that in some cases, students start attending class within a day or two and for a few students, it takes longer than a week, depending on the unique circumstances of the student (e.g., JRA holds students for safety reasons or gang involvement). Operationally, school 1 does schedule changes two days a week on Tuesdays and Fridays, which is when new students are added to classes.

2018, [the District] learned the amount of data/records we needed to request completed records was much less than we previously thought. Special ed[ucation] records are now requested almost immediately.”

During intake, the District reviews the student’s records (if obtained), does intake academic testing, and talks to the student and the student’s parent. The District creates a class schedule for the student and the student begins attending class. The District admitted that, for many students, creating a schedule takes a certain amount of guesswork, especially if the District does not yet have the student’s records. Once the records—e.g., previous individualized education program (IEP) and evaluation—are obtained, the District adjusts the student’s education program and schedule.⁵

4. In his reply, the Complainant stated that students are initially placed without regard to their previous IEP (service minutes, modifications/accommodations, and goals). The Complainant also stated that students placed in the more restrictive living units do not receive a number of services that students living in open campus units do, such as PE instruction, vocational classes, art, music, or computer labs; and, these students “routinely receive less service time in general and less access to special education instruction from certified special education teachers.”
5. According to the District’s response, the District has no input in which students come to school 1 and housing decisions are made by the JRA staff. Students are “placed” by the JRA staff in one of six different living units (three “open campus” units and three more “restrictive” units) based on a series of criteria, including, but not limited to, level of aggression, vulnerability of an individual, treatment needs, mental health status, and gang affiliation. The District stated that JRA staff may move students from one living unit to another, but educational services continue to be provided regardless of unit.

The three more restrictive housing units are staffed the same for the purposes of school. There are four hours of class on-site (in the living unit), eight hours of teacher time total, plus a dedicated paraeducator. For students living in open campus units (most students), the students go to class in the school buildings.

School 1 Classes

6. According to the District, students with IEPs can receive their specially designed instruction in a general education setting, a special education setting (RR = resource room), or in a Title ID class.

⁵ The District also stated that a challenge it faces is that it has more “transfer” students at school 1 than the entire District, or the average district. The District stated that the average stay at school 1 ranges from a week (for a parole violation) to multiple years, but that the average stay is 220 days.

- Resource Room: A special education setting for math and English. Only students eligible for special education students are placed in a resource room class and resource room is only offered on open campus.⁶
 - Title I: A student eligible for special education may be placed in the "Title Math" class to accommodate his schedule. The "Title math course is designed for students performing below 7th grade level in math, but not necessarily having an IEP." The goal for these students is to "transition those students in to the high school curriculum (algebra) by helping to fill in missing knowledge and skills." The Title math teacher also has a class of "general math," which is specifically for students eligible for special education, and she also provides instruction to students with math as an IEP services are who are living in the most restrictive housing unit.
7. When asked about students missing class or refusing to go to class, the District stated that school 1 has about a 10% absence rate, but it is unclear how many absences are "unexcused" or "excused." The District stated that the dean of students looks at attendance by unit on a monthly basis, and then reports the attendance rates to each unit program manager and counselor. The District also stated that it is changing how it tracks attendance and that if a student refuses to attend class or the living unit "holds" the student (JRA program manager does not allow the student to attend class based on behaviors), these absences will be counted as unexcused.⁷

IEP Implementation: Access to IEPs

8. Regarding the educational programs of students eligible for special education, the District stated that staff are made aware of IEP accommodations via a shared drive and during meetings. The District stated that all teachers have access to a shared drive where they can access a summary of a student's IEP goals and the accommodations and modifications in the IEP, and special education teachers have full access to IEPs. The dean of students also meets with teachers to discuss a student's IEP and any teacher can review the full student file in the office. The dean stated that more in depth meetings are held when necessary, depending on the student. The District stated that it provides this information to teachers at the start of the year, during trainings, and the staff handbook states:

All teachers who have students with special education services can view the IEP in the dean of students/special education office (voc library)[...]Accommodations, services and goals are provided for students quarterly in the Google shared drive. If a student does not have these listed in the shared drive (usually because the student arrived since the accommodations, goals and services were posted) can get the information for a specific student from the dean of students office.

⁶ OSPI notes that the special education teacher interviewed seemed to be confused about classes designated as resource room as she stated that both general education students and students with IEPs are in the resource room class. The Complainant also stated that there was a class labeled as "resource room science," which he stated did not make sense because there were general education students in that class.

⁷ In a phone interview with the Complainant, he stated that since the complaint was filed, the District has now started taking attendance more regularly in the restrictive units. He stated that prior to this, attendance was not taken regularly.

9. The Complainant stated that he is aware of the shared drive but does not use it because it is not user friendly and the Complainant asserts that it is difficult to find information. However, as a special education teacher, he has access to the IEPs and looks directly at the student files. The Complainant further stated that all teachers get an email when each new student arrives (general and special education), but that there are so many emails it is difficult to keep track and he stated that often, the emails are sent before a student is actually in his class. The Complainant felt that this email system is a good idea but not always executed well. He stated that he believes that many teachers probably do not pay attention to or are overwhelmed by all the emails.
10. In interviews with other teachers (general and special education) at school 1, they stated the following:
- Students with IEPs are flagged on the attendance sheet.
 - There is a shared drive, but you have to talk to the dean of students to access the drive. The dean of students enters information he thinks is important into the shared drive. This information includes notes related to student needs (e.g., wears glasses, medical information, needs instructions repeated, gang affiliation, difficulty sitting still) and may include some information about the accommodations and services students receive on an IEP.
 - The shared drive contains information about accommodations.
 - The dean of students sends out the goals when a new IEP has been written.
 - The dean of students sends out an email about new students.
 - You can meet with the dean of students to discuss questions about IEPs.
 - Special education teachers can access the full IEP.

One teacher also stated that staff meetings are more regularly held and that one or two times a month, the staff discuss students eligible for special education. By contrast, the Complainant stated that staff meetings maybe happen once a month and are frequently canceled.

IEP Implementation: Provision of Specially Designed Instruction

11. Regarding the provision of instruction, OSPI investigators interviewed three special education teachers and two general education teachers. The teachers provided the following information:
- General Education Teacher 1: Stated that he does not review the information on student IEPs and does not inquire further unless a student is "struggling." The teacher stated that he does not review IEPs because he does not want them to "cloud his judgment" and that he wants to see how students do without an IEP first. The teacher stated that he does not feel like students need IEPs in his class because much of his instruction is provided in multiple ways (e.g., pictorial or in writing) and that all of the programs are already individualized for all students. Although, he acknowledged that it is often difficult to teach students who struggle with reading or writing.
 - General Education Teacher 2: Stated that instruction "is already individualized for every student" and that the program is designed based on how many credits a student has when they arrive at school 1. Teacher 2 stated that when a student starts, she looks at how many credits the student has, identifies where there are gaps, and then designs the student's assignments accordingly. She stated that all students arrive having faced hardship. The teacher stated that she created a "math record sheet" that reflects the number of credits a student has, whether a

student has an IEP, how the student is progressing on class quizzes and tests, grades from year to year, and other notes, which she shares with the other math teachers. The teacher stated that for some students she breaks assignments and instruction up into shorter chunks based on the needs she observes (she stated that she does not necessarily do this because it is on a student's IEP).

When asked about how she works with the special education teacher who designs, monitors, and supervises the provision of specially designed instruction, teacher 2 stated that the dean of students shares information and sends out an email when new students arrive with the number of credits the student has and the accommodations he receives. Teacher 2 stated that she meets with the other math teachers about three times a month to share information.

- Special Education Teacher 1: Emphasized providing the students with worksheets that match their grade level and that students can work on independently. The special education teacher identified some barriers to educating students eligible for special education, which included: that the environment was too noisy for some students; that some students are embarrassed and do not want to work with a teacher individually; and, some students just refuse to do the work. The teacher stated that interventions she tries when a student is struggling or having behaviors are to have a co-teacher take the student out of the room and work one-on-one, have the student's counselor work with the student outside class, or to have the student leave class and return to his unit to work on worksheets independently.⁸
- Special Education Teacher 2: Stated that he taught math and English and that he screens all students (students eligible for special education and students in general education) to determine the grade and skill level of the student. The teacher stated that some students in one class may be working on geometry, others on algebra, and still others on addition and subtraction.⁹ In English, the teacher stated that he gives one set of instructions (e.g., "write a 5 paragraph essay") but will allow students to complete the assignment in different ways (e.g., some students will write an essay, some a paragraph, and some a few sentences). He stated that he tells certain students to "concentrate" on certain areas based on their ability, grades based on a student's ability, and goes over instructions in different ways (e.g., may give instructions multiple times or tries to deliver instruction in a way that relates to things a specific student is interested in). The teacher stated that he tries to provide material in a way that does not embarrass or single out a student, but still enables students to do different assignments (e.g., if a student only has to complete 10 out of 30 math problems, he will circle the 10 on the student's sheet he is going to grade and will circle random numbers on the other students' sheets as well, and then tell the class that circling random problems is so that no one can cheat). The teacher stated that he makes adjustments based on the needs he observes, not necessarily what is called for on a student's IEP.

⁸ The general education teacher also stated that when a student has a behavior problem, he attempts interventions, such as changing the student's seat, changing the student's workgroup, or removing the student from class. The student would be encouraged to try again the next day. The general education teacher stated that if behavior problems persist, he speaks to the dean of students about having the student transferred to a different class.

⁹ All of the teachers interviewed emphasized this point—that in one class, there are students at all different grade levels and that the challenge was to provide different grade level instruction to multiple students in the same class. When discussing special education with the teachers, having an IEP seemed like a secondary concern to what grade level the student was at.

Special education teacher 2 stated that he helps write student IEPs, but usually does not include much specially designed instruction because “what the student needs” or “what will motivate the student” can change daily.

When asked about how he designs, monitors, and evaluates specially designed instruction when it is being provided by a general education teacher he stated that he will verbally touch base with general education teachers to see if they have tried certain strategies and interventions with students (especially those students with behaviors). He also mentioned that teachers have access to the shared drive, which includes all the accommodations listed on the IEP. Special education teacher 2 stated that often general education teachers will tell him that they do not want to know anything about a student’s IEP or disability because they want to see how the student does without any “special treatment.” In these situations, the teacher stated that he will let the general education teacher see how the student does in the class before providing assistance. For some students, special education teacher 2 stated that he will work with the student individually on assignments for their general education classes.

- Special Education Teacher 3: Stated that every student receives specially designed instruction because the school “caters to every student.” She said she generally she talks to the students to “find out what interests them and bases their instruction on their responses, to reduce work refusal. The teacher gave some examples providing accommodations to her students, such as a student that has trouble sitting still so she lets him walk around or a student who “dislikes writing” so she lets “him type instead of writing.”

Special education teacher 3 is fairly new to her position at school 1. When asked about designing specially designed instruction when provided by a general education teacher, she stated that she has not had a chance to provide any yet. However, she does verbally share information with one general education teacher during lunch and informally discusses what works with students they both have in their classes.

IEP Implementation: Provision of Accommodations and Modifications

12. Regarding the provision of accommodations and modifications, OSPI investigators interviewed three special education teachers and two general education teachers. The teachers provided the following information:

- General Education Teacher 2: Stated she provides a “wobble” seat¹⁰, “breaks material/instruction up into sections for students,” provides preferential seating, and enlarges screens when necessary.
- Special Education Teacher 1: Stated that she was aware of students receiving accommodations such as noise canceling head phones, pencil grips, and speech to text. Although, the special education teacher did not state that she provided these accommodations. Teacher 1 stated that there are accommodations she would like to use, especially for students with specific learning disabilities, but said she cannot use them because they are online and require access to the internet.
- Special Education Teacher 2: Stated that he currently is not providing any accommodations, but in the past had students who typed instead of handwriting assignments or used speech to text. He stated that it is difficult to get accommodations for students because most are not at school

¹⁰ The teacher stated that for this student, she knew he had an IEP for behavior but did not know specifically what was on the IEP.

1 long enough to complete the evaluation and referral process. He stated that some accommodations would be helpful, but that he is unable to use them because they require internet and if internet was available students would use internet inappropriately.

- Special Education Teacher 3: Stated that none of her students have any accommodations, but that she lets students stand or take more frequent breaks if they need them.¹¹

Progress Reporting and Progress Monitoring

13. The District reports progress quarterly. Progress reporting, along with report cards, are mailed to the parents and given to adult students. The dean of students stated in an email that progress reporting is "such a priority...that we actually delay mailing report cards to parents until the progress reports are all finished so they can go at the same time." The District stated that when students transfer from other schools/districts, the District "rarely, if ever,...receive[s] progress notes from previous districts." The District noted that if a student arrived with an IEP that was not part of the District's online IEP system, the District will be unable to report on that student's progress until a new IEP is developed.
14. In an interview with three of the students in this complaint, one adult student said he was able to view a copy of his progress reports at the annual IEP meeting, but that otherwise, he was not given a copy of his progress reports. The student stated that it would have been helpful to have access to his progress reports outside of the IEP meeting. The OSPI investigator asked the student if staff otherwise shared information about his progress on IEP areas or goals with him. The student replied that he did not recall this happening and instead described a process whereby he could request a report on progress from the dean of students. The student stated that this request would result in an informal meeting or conversation with the dean.
15. The District provided progress reporting sheets for many of the students identified in this complaint. However, these sheets did not include any notation or documentation confirming if and when the progress reporting was either sent to the parent or given to the adult student.
16. In interviews with general and special education teachers at school 1, OSPI investigators asked teachers about how they conducted and maintained data for progress monitoring. Each teacher seemed to have his or her own system for progress monitoring:
 - Special Education Teacher 1: Stated that progress reports are completed at the end of each quarter. The teacher stated that if, at the end of the quarter, she is not sure if the student is making progress, she will do more academic testing. The teacher stated that if it is clear a student has met his goal, she will mark "yes" on the form, and that if the student has clearly not

¹¹ It is unknown whether any of the students identified in this complaint are in special education teacher 3's class. There are students that do not have any accommodations on their IEPs, but many that do. However, it seems unlikely that this teacher would have no students with IEP accommodations.

met the goal, she will mark "no."¹² Teacher 1 stated that generally the case manager¹³ writes the IEP and completes the progress reports, and noted that the teachers usually do not provide any narrative comments because there is a "chart."

- Special Education Teacher 2: Stated that he does progress monitoring in his head because he remembers "who is doing what, how much, with whom, etc." He uses this information to estimate a percentage of progress on the students' IEP goal and records this as progress when asked to complete progress monitoring.
- Special Education Teacher 3: Stated that she gives the students with IEPs a written test or quiz every couple weeks or every month and then keeps data in a chart of their progress.
- General Education Teacher 1: Stated that a student's IEP team will generally call the general education teacher and ask what a student is working on, how the student is doing, and whether the teacher has any other information. She also stated she gets asked by the IEP team whether a suggested goal would be a good annual goal for a student with an IEP. The teacher stated that she keeps track of all tests and quiz scores on the computer, and believes that progress means progress toward a grade.
- The Complainant stated that he believes most teachers at the school do not conduct progress monitoring, collect data regarding student progress towards annual IEP goals, or prepare progress reports.

Physical Education (PE) & Recreation Time

17. JRA policy requires that residents get an hour of physical activity each day and that PE may be counted "as the one hour of exercise as long as it is large muscle exercise." According to the policy, "youth placed on room confinement or in isolation must have access to one hour of exercise every 24 hours."¹⁴ The policy states that denying physical activity cannot be used as a sanction, but that the "required hour of activity will only be denied by staff if a youth is exhibiting behavior that may be harmful to youth, staff or others in the milieu."

18. According to the District, each living unit has a period of PE (a class period during school hours) or recreation (outside of school hours) time per day. Most students residing in open campus units, PE is provided as a class during the school day. The three more restrictive units have PE first period (for the students with "fragile mental health"), or recreation at 4 p.m. and 6 p.m. for the other two restrictive units.

¹² It is unclear what the teacher is referring to, if this is a form that the teacher created or a standard form all teachers use. OSPI requested additional information about progress monitoring and data collected by teachers, but the District was not able to produce the requested documentation by the complaint decision deadline.

¹³ The Complainant stated that the dean of students is the case manager for all students with IEPs.

¹⁴ Some units have to alternate days in which certain wings of the unit access recreation time, due to gang conflicts. Thus, there may be days when students do not get PE because school 1 cannot guarantee a safe environment.

According to the District's response, there are challenges implementing PE for some of the students who reside in the more restrictive units. The District stated that there are nine separate groups that have PE/recreation center time and a six-period school day, which means that three units have recreation time when the PE teacher is not scheduled to work. This means that one unit has PE during teacher lunch/prep time and two units have PE after regular school hours.¹⁵ In the more restrictive unit, students who are at a "level one"¹⁶ generally have recreation time in the courtyard, weather permitting, or access to fitness systems in the living unit. There is a staff member who is a certified personal trainer who helps the students set and track fitness goals. Students in these units who are "above a level 1" have access to the gym and recreation center three or four times a week. On days that students do not have access to the recreation center, they have access to the fitness systems in the living unit.

19. The District stated that its practice is to grant District class credit for PE to students in the more restrictive units, despite the fact that these students do not actually have a period of PE during school hours and instead have an hour of recreation time at lunch or after school. The District stated that this is the "most equitable solution to a space problem that students or school staff can't control (not enough separate gym/recreation space to allow each student access during the school day)." The District stated that "rec time is sacred here. JR[A] staff go to great lengths to ensure residents/students get their allotted time each day, and their own policy requires it."
20. The Complainant and several students interviewed during the investigation stated that the majority of students do go to PE every day, but that students in the more restrictive units get less PE or recreation time than others. The Complainant stated that because these students have their recreation time outside of the school day, recreation is not offered at a reasonable time. The Complainant stated that school 1 provides these students full credit for participating in PE even if there is no attendance record to verify attendance and there is no instruction from a teacher. The students interviewed stated that generally in the restrictive units, students only got around 45 minutes of recreation time instead of a full hour.

Staff and Teacher Training

21. The District stated that school 1 staff receive training in special education topics yearly, at minimum, and that the District has been working to ensure that school 1 teachers are more included in District trainings. Further, the school 1 principal attends all District principal meetings.

¹⁵ The PE teacher has discretion to work over time during the extra times, but he is not required to.

¹⁶ The District stated that JRA uses a behavior level system for all residents at the correctional setting. Residents can be at a level one (more restrictive) for having contraband, testing positive for drugs, or some instances of fighting, to a level four. Residents "test" out of levels by having a certain number of days of good behavior and passing a skills test based on dialectical behavioral therapy. Residents earn increased privileges and more access to open (versus restrictive) campus as they move up levels.

22. In July 2018, special education staff from school 1 attended a "Special Ed Bootcamp" with courses put on by the Special Education Support Center. According to the director, attendees could choose from a wide variety of courses on special education topics. According to the Complainant, he requested that school 1 special education staff be required to attend this training. The Complainant stated that attendance at this training was voluntary, less than half of the special education staff at school 1 attended, and the general education teachers were not invited to attend.
23. On October 16, 2018, the director held a District wide training for special education teachers that covered the following topics:
- Assistive technology;
 - Review evaluation components and specially designed instruction areas "for IEPs as related to the specific learning disability category";
 - *Andrew F. v. Douglas County School District* ruling and the "court rules on IEP benefit";
 - Prior written notices – when to use and how to complete;
 - High leverage practices;
 - Results of Washington state consistency index review of IEPs and evaluations, and "how to apply to our daily practice."

It is unclear if school 1 special education staff were required to attend or how many attended.

24. For general education teachers at school 1, the District stated that it had a special education training specifically for general education teachers approximately two years ago.
25. Regarding surrogate parents, the District stated that surrogate parents are utilized for students who are under the age of 18 and whose parents are unable or choose not to participate in the IEP process.¹⁷ The District provided the following information:
- In the spring of 2015, a long-time surrogate was replaced after making some statements that offended a student and made statements that indicated to the dean of students that the surrogate saw his position as one of representing the school. This prior surrogate was replaced with another surrogate (surrogate 1), who had previously been employed at the school (retired in 2014) and had a "good working knowledge of special education as a paraeducator."
 - During the summer of 2015, the dean of students contacted OSPI to inquire about training materials for surrogate parents. OSPI responded that it did not have training materials available and the dean of students stated that he was going to create training materials, which he provided to OSPI upon completion.
 - Prior to September 2015, surrogate 1 received the training materials and prior to attending her first IEP meeting, she met with the dean of students to go over materials and ask questions.
 - In April 2017, the dean of students trained another surrogate (surrogate 2) as an emergency surrogate. Surrogate 2 is a retired teacher from the District. The dean of Students provided surrogate 2 with the training materials and they met on April 21, 2017 to review the materials.

¹⁷ The District also stated that on occasion, a student who is over the age of 18, and who has an intellectual disability, would be accompanied by a surrogate parent to ensure that the student has additional support to understand everything discussed in the meeting. The District stated that in such cases, it obtains consent from the adult student. The District also stated that this is not the case for any of the students identified in this complaint.

- In September 2018, the dean of students trained an additional surrogate (surrogate 3). Surrogate 3 has a background in special education, had previously worked with surrogate parents, and had previously been a unit counselor at school 1.

The District stated that surrogate parents generally meet with the student 15-20 minutes prior to an IEP meeting to get acquainted with the student. The District stated that surrogate parents are expected to be part of the meeting, not just observers.

26. On November 29, 2018, the OSPI investigator interviewed surrogate 1. Surrogate 1 stated that she has worked in the District for approximately 25 years as a special education paraeducator and that she also previously worked at school 1 as a paraeducator. During her career, she worked in many different areas, including working specifically with teachers, working with students on transition goals and culminating projects, and occasionally attended IEP meetings. After retiring, school 1 asked surrogate 1 if she would like to volunteer as a surrogate parent. In the interview, surrogate 1 stated that she felt like the training provided was sufficient, especially given her background, and that she understands her role to represent the parent and support the students. Surrogate 1 stated that if she has questions or needs additional support from the District, she feels comfortable asking the District.
27. In his reply, the Complainant stated that, in his experience, surrogate parents only attended IEP meetings, despite the fact that the surrogate parent may represent the student in all matters related to the identification, evaluation, and educational placement of students. The Complainant stated that a surrogate parent has never contacted him to request information about a student.

FINDINGS OF FACT & CONCLUSIONS OF LAW STUDENT SPECIFIC

Student 1

1. Student 1 is an adult student and is eligible for special education services under the category emotional behavioral disability.
2. Student 1's most recent reevaluation occurred in October 2016 in another district in Washington. The reevaluation report noted that the Student has a "complicated educational history interrupted by frequent moves between states and schools as well as stays in residential care facilities and juvenile detention centers." The report recommended Student 1 receive specially designed instruction in the area of behavior to address social/emotional/behavior, and specifically: self-management, skills for taking feedback, skills for using appropriate language when upset, and skills for conflict resolution. The report also recommended instructional and behavioral accommodations as supplementary aids and services.
3. The Student's 2016 reevaluation report stated that the Student's previous placement was in a long-term residential treatment facility, which was "a self-contained setting that affords 0 hours in general education and no opportunities for inclusion with non-disabled peers."

4. Based on the District's documentation, the Student's intake date was January 27, 2017 and he was enrolled in school on or around January 30, 2017. The District requested the Student's special education records on February 3, 2017 and received records on February 8, 2017.
5. A prior written notice, dated February 26, 2017, noted that the District was proposing an educational placement and stated that the District would "continue specially designed instruction for [Student 1] in accordance with his previous IEP."

The Complaint Timeline Began On October 20, 2017

6. On October 30, 2017, Student 1 met with his IEP team and developed his annual IEP. The IEP noted that Student 1's behavior adversely impacted his education and that he needed to "concentrate on his fulfilling his graduation requirements and obtaining a high school diploma before he leaves [the school]. He presently has about 21 credits towards graduation. [Student 1] needs to develop the skills to manage his own behavior, resolve conflicts safely and appropriately, and manage interpersonal relationships." Student 1's IEP included post-secondary goals/outcomes¹⁸, a single behavior goal¹⁹ (with quarterly progress reporting), and the following specially designed instruction in the special education setting, provided by a special education teacher:
 - Behavior: 15 minutes, 2 times per week

The IEP stated that the Student would spend 97.82% of his time in the general education setting, listed his placement as a "correctional facility," stated that the Student's "academic and behavior difficulties prevent accessing the general education curriculum in an age-appropriate manner; he is unable to complete grade-level assignments without specially designed instruction. No adaptations are needed for participation in physical education."

7. The prior written notice issued regarding this meeting stated that the Student needed specially designed instruction in reading, written language, math, and behavior skills, and that instruction would be delivered by a general education setting.²⁰
8. On November 24, 2017, March 30, 2018, and June 6, 2018, the District provided Student 1 with progress reporting on his October 2017 IEP goal that noted the Student was, at first, making sufficient progress on his goal and then that the goal was an "emerging skill." The comments noted that Student 1 had received six discipline slips in March, then that the rate of discipline

¹⁸ Student 1's IEP noted that the Division of Vocational Rehabilitation (DVR) was the "staff/agency responsible" for his employment and independent living post-secondary goals/outcomes. There is no indication in the documentation that a representative from DVR participated in the Student's IEP meeting.

¹⁹ Goal: "By 10/30/2018, when given five days in class [Student 1] will remain in will refrain from speaking with anger improving improving [sic] his behavior from working without becoming angry of 0 of 5 days to working without becoming angry on 5 days out of 4 as measured by teacher observations class."

²⁰ It is unclear if this prior written notice was actually written regarding Student 1 because the notice is dated prior to the IEP meeting on October 30, 2017, and in two places has a different student's name.

slips had dropped, but that the Student's lack of attention to school has not improved. The comments stated that Student 1 has "4 quarters without any credit at all in health...he is earning math credit at the rate of .1 a quarter...his behavior has prevented him accessing shop class or a job."

9. School 1's 2018-2019 school year began on August 24, 2018, and the Student was enrolled in the following classes:

- Period 0: PE/Fitness
- Period 1: Social Studies
- Period 2: English
- Period 3: Independent Study
- Period 4: No School
- Period 5: Independent Study
- Period 6: Transition
- Period 7: General Math

10. On October 2, 2018, Student 1 met with his IEP team and developed his annual IEP. The IEP noted that Student 1's "behavioral plans are directed by institutional staff in cooperation with teachers on an as needed basis. Level/token economy system is utilized in most living units." The IEP noted that Student 1 continued to have significant difficulties with managing his behavior and challenging emotions. Student 1's IEP included post-secondary goals, stated that he would complete his diploma requirements by January 2019, and that the Student would need to access Department of Vocational Rehabilitation (DVR)²¹ services once he was released from county jail. The IEP included one behavioral goal ("By 10/02/2019, when given his next 90 days in jail [Student 1] will learn to control his anger and to get along with supervisory staff improving his ability to remain in general population so he can attend 1:1 classes with school staff from being in general population 75 percent of the time to being in general population 100 percent of the time as measured by teacher observations") and the following specially designed instruction in the general education setting, provided by a general education teacher and monitored by a special education teacher:

- Behavior: 60 minutes, 2 times weekly

Student 1's October 2018 IEP also included accommodations (cue expected student behavior, provide clear expectations) and a modification (teach self-monitoring). The IEP listed the Student's placement as a "correctional facility" and noted that Student 1 would be transferred "by the state from [school] to the [county] jail. No PE class is provided at the jail. [Student 1] has completed PE requirements. [Student 1] will have a teacher to provide work and go over questions and answers. Most of [Student 1's] [alternative learning experience] program will involve individual work needed to complete his diploma in health and in math."

11. There is no evidence that the Student received specially designed instruction in the general education setting, provided by a general education teacher.

12. Student 1's prior written notice, dated October 2, 2018, noted that the Student would be transferred to the county jail on October 4, 2018. The notice stated that Student 1 would continue working toward his diploma and that a special education teacher would meet with

²¹ At this IEP meeting, a "transition specialist" attended and signed the IEP; it is unclear if this individual works at DVR.

Student 1 twice a week to “complete school work.”²² The notice stated that a meeting was scheduled for December 14, 2018 to review Student 1’s progress.²³

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student individualized education programs (IEPs) when student placements were changed. When a student transfers into the District, the District is required to either adopt the student’s previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student’s placement should be determined annually by a group of persons, including the parents, and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student’s IEP, least restrictive environment (LRE) (LRE includes a consideration of educating a student to the maximum extent appropriate in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student’s educational program), a reevaluation must be completed. In determining whether a significant change in placement has occurred, the team should consider whether the student’s educational program has been revised, whether the student’s LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

Prior to attending school 1, Student 1 was in a “self-contained setting that affords 0 hours in general education and no opportunities for inclusion with non-disabled peers.” When Student 1 was transferred to school 1, the District determined that it would “continue specially designed instruction in accordance with his previous IEP.” In October 2017, the District developed Student 1’s annual IEP, which increased his time in the general education setting to 97.82% of his time, which represents a significant change from zero percent of his time in general education. The Student’s October 2018 IEP indicated that he would be transferred to the county jail.

The District maintains that because students are transferred to school 1, the District has no control over a student’s placement. However, placement refers to more than just the fact that a student has been transferred to a school within a correctional setting. Placement decisions must also take into consideration the appropriate LRE for the student at school 1 (percentage of time in general versus special education) and whether a significant change in placement has occurred, which might necessitate a reevaluation. Here, the change in LRE from zero to 97% may represent a significant change in placement and there is no indication that the Student’s IEP team discussed this potential change in placement, and considered whether a reevaluation was necessary for Student 1 to reassess his educational needs before developing a new IEP. OSPI finds a violation based on the fact that the District failed to follow placement procedures. Given that Student 1 is no longer at school 1, no student specific corrective actions are required.

²² The District stated that it generally continues to provide some amount of services for students when they are transferred to the county jail. The District stated that on average, they have one or two students in the county jail.

²³ The District stated that as of December 3, 2018, Student 1 earned his high school diploma.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student’s IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student’s academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

Student 1’s October 2016 reevaluation recommended that the Student receive specially designed instruction in the area of behavior (specifically self-management, skills for taking feedback, skills for using appropriate language, and skills for conflict resolution) and recommended accommodations. In October 2017 and October 2018, the District developed Student 1’s respective annual IEPs. Both IEPs included a transition plan and provided the student with specially designed instruction in behavior. OSPI notes that the 2017 IEP did not include any accommodations/modifications and that the way the 2017 IEP goal was written, it is not measurable as it is unclear whether the goal was measuring the Student refraining from speaking or measuring the Student staying in class. OSPI also notes that the prior written notice issued related to the 2017 IEP contained errors as it had another student’s name in two places and the services listed did not match Student 1’s IEP. OSPI recommends that the District be more careful when writing prior written notices to ensure that information is documented accurately. The Student’s 2018 IEP included a measurable annual goal and several accommodations and modifications. OSPI finds that the District did not follow procedures for developing the Student’s 2017 IEP, but did properly develop the Student’s 2018 IEP.

The District provided no specific documentation related to the implementation of Student 1’s IEP beyond minimal progress reporting on the Student’s 2017 IEP goal that stated he was making “SP” (sufficient progress) and then that the goal was an “ES” emerging skill. The comments on the progress reporting described that the Student had received several discipline slips and that his attention in school was not improving. The District, in interviews, did provide more detail on the provision of instruction to the Student based on his 2018 IEP and the District stated that the Student continued to receive instruction from a special education teacher while he was in the county jail (and as of December 3, 2018, completed his health and math coursework to earn his diploma). However, the Student’s October 2018 IEP required specially designed instruction to be provided by a general education teacher (designed, supervised, and monitored by a special education teacher). Overall, while the documentation is minimal, it does appear that Student 1’s IEP was being provided instruction. However, the IEP was not being implemented as written. OSPI reminds the District that it must implement IEPs as written, and thus finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student’s IEP must include a statement indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student’s progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student’s progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the student to achieve those goals.

Here, the District entered progress reporting in November 2017, March 2018, and June 2018. The progress reporting indicated that Student 1 was at first making “SP” (sufficient progress) on his goal, and then due to an increase in behavior referrals, the goal was an “ES” (emerging skill). The progress report included some information in the comments about the Student’s behavior referrals, which helps explain change from sufficient progress to emerging skill, and provided other progress on credits. While the progress report does not include much information, the progress report meets the minimum requirements. No violation is found related to progress reporting for Student 1.

Issue 7 – PE: The Complainant alleged that students receive credit for PE without meaningful attended or instruction. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to students who do not have disabilities, unless the student needs specially designed physical education as described in the student’s IEP. Washington State graduation credit requirements require that students take a minimum of two credits in “health and fitness.” While students eligible for special education services must be able to participate in PE, this does not necessarily mean that all students must take a PE class for the entirety of high school. However, Juvenile Rehabilitation Administration (JRA) policy requires that residents of correctional facilities get an hour of physical activity every day, and the policy states that PE may be counted as an hour of exercise as long as it is large muscle exercise. Youth placed on room confinement or in isolation must have access to one hour of exercise every twenty-four hours; although the required hour of activity can be denied if the resident is exhibiting behavior that may be harmful to self, staff, or others.

Student 1 had PE/Fitness listed on his class schedule for the 2018-2019 school year. The documentation in this complaint does not provide any specific evidence that Student 1 attended PE and the Student is not attending PE given that he is currently at the county jail. OSPI reminds the District that it bears more responsibility to verify that students actually received PE instruction or recreation time beyond simply stating that all students receive an hour of recreation per day. However, the documentation also does not indicate that there was anything preventing Student 1 from accessing PE regularly. Districts have a responsibility to ensure students be afforded the opportunity to participate in the general PE program, however, this does not require a district to ensure a student has 100% attendance. Given the importance of PE at school 1 and the agreement by all parties that students on open campus did generally have regular access to PE, it is fair to say that Student 1 likely was getting some amount of PE. OSPI finds no violation related to Student 1’s opportunity to participate in PE.

Student 2

1. Student 2 is an adult student and is eligible for special education services under the category emotional behavioral disability.
2. Student 2's most recent reevaluation occurred in June 2016, while he attended school at a different juvenile rehabilitation facility (school 2) in a different school district in Washington. The June 2016 reevaluation noted that the Student's current IEP had been written at school 2 and included goals in math, reading, written expression, social-emotional skills, and behavior; and the reevaluation recommended that the Student continue to receive specially designed instruction in the same areas. The reevaluation stated that the Student's behaviors had an adverse impact on his ability to access the general education setting and that Student 2 had "difficulty maintaining appropriate classroom behaviors." The reevaluation report also recommended several accommodations and modifications for Student 2.
3. The June 2016 reevaluation noted that the Student attended school in school 2's "highly structured and supportive school environment with concrete guidelines, frequent monitoring of student behavior, low student/teacher ratio, and a school-wide positive behavior reinforcement program."
4. On June 10, 2016, Student 2's IEP team at school 2 developed his annual IEP, which included goals in the areas of reading comprehension, written expression, math calculation, math reasoning, behavior and social-emotional, and transition/life skills. The June 2016 IEP also included a secondary transition plan, post-secondary goals, and a course of study, and also included several accommodations and modifications. Student 2's IEP provided him with the following specially designed instruction:
 - Behavior: 85 minutes per week (concurrent, special and general education settings and teachers)
 - Reading: 135 minutes per week (special education setting and teacher)
 - Writing: 135 minutes per week (special education setting and teacher)
 - Math: 270 minute per week (special education setting and teacher)
 - Transition/Life Skills: 85 minutes per week (concurrent, special and general education settings and teachers)
 - Social-Emotional: 85 minutes per week (concurrent, special and general education settings and teachers)

The IEP noted that the Student would spend 540 minutes per week in the special education setting and 810 minutes per week in the general education setting (approximately 60% in the general education setting), and that in the "juvenile rehabilitation facility...students participate in general education class per their schedule...[and] school-wide behavior intervention plan is implemented in all areas and all classrooms."

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5. According to the District's documentation, the Student transferred to school 1 in December 2017 and his "behavior has kept him from being able to attend regular classes on open campus since he has arrived at [rehabilitation facility] (December 2017 – Current Date, 2/26/18)."
6. On December 12, 2017, the District invited Student 2 and his parent to a transfer review meeting. According to the transfer review notice, the District marked "continue placement in accordance with previous IEP." On the placement page provided in response to this complaint and the prior written notice, the District stated that Student 2's placement was from June 12, 2016 through June 11, 2017 and was in a correctional facility and that the Student's "disability in reading, written language, math, and behavior has a direct impact on his general education content area classes requiring specially designed instruction in his identified areas."
7. On February 12, 2018, the District invited Student 2's parent to an IEP meeting scheduled for February 26, 2018. On the meeting invitation, the following boxes were checked: "discuss annual goal progress, consider termination of services, review current IEP, review instructional needs, [and] determine placement." According to the contact attempt report, the parent could not attend the meeting and gave the team permission to proceed.
8. On February 26, 2018, Student 2 met with the Complainant (his case manager), the parent (participated via phone), a general education teacher, and the dean of students. The February 2018 IEP included post-secondary goals/outcomes and a course of study for his remaining required academic assessments and credits. Student 2's IEP included annual goals in the areas of social/emotional/behavior, math, written language, and reading (with progress reporting quarterly). The February 2018 IEP also included several accommodations and modifications, and the following specially designed instruction:
 - Behavior: 60 minutes, 1 time per week (counselor, monitored by a counselor, general education setting)
 - Math: 50 minutes, 5 times per week (general education teacher, monitored by a special education teacher, special education setting)
 - Reading: 25 minutes, 5 times per week (special education teacher, special education setting)
 - Written Language: 25 minutes, 5 times per week (special education teacher, special education setting)

The IEP stated that the Student would spend 60% of his time in the general education setting. The placement section of the IEP stated that the Student's placement was in a correctional facility and that Student 2 would "participate with nondisabled students in all nonacademic and extracurricular activities available."

9. According to the prior written notice, dated February 26, 2018, Student 2's IEP was updated because his current IEP was "incompatible with his current placement" and the Student was in "need of special education services updated to reflect what [school 1] can offer him."

10. On March 30 and June 6, 2018, the District entered the following progress reporting regarding Student 2's February 2018 IEP goals²⁴:

- Social Emotional/Behavior: "IP"
- Math: "ES"
- Written Language: "ES" and then "IP"
- Reading: "SP"

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student individualized education programs (IEPs) when student placements were changed. When a student transfers into the District, the District is required to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student's placement should be determined annually by a group of persons, including the parents, and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student's IEP, least restrictive environment (LRE) (LRE includes a consideration of educating a student to the maximum extent appropriate in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student's educational program), a reevaluation must be completed. In determining whether a significant change in placement has occurred, the team should consider whether the student's educational program has been revised, whether the student's LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

Prior to attending school 1, Student 2 was at a school at a different juvenile correctional setting and according to his June 2016 IEP, was in the general education setting 60% of his time. Student 2 was transferred to school 1 in December 2017 (and due to behavior, was placed in a restrictive unit) and the District stated it was continuing his placement in accordance with his prior IEP. There is no indication that a new annual IEP for Student 2 was developed in June 2017, so therefore, when he was transferred to school 1 in December 2017, his IEP was already six months out of date. In February 2018, the District developed a new IEP, which stated that the Student would spend 60% of his time in the general education setting. The District stated it was continuing Student 2's placement, and there was no change to the Student's LRE when his new IEP was developed. The fact that the District implemented an IEP that was already six months out of date for several more months prior to developing a new IEP, is highly problematic. The District should not have adopted an IEP that was not in compliance with special education regulations, and while the District should have continued to provide the Student services, it should have created a new annual IEP for the Student far sooner than it did. Further, the District adopted his transfer IEP and then several months later, in a prior written notice, stated that the Student's transfer IEP was incompatible with

²⁴ All of the progress reporting sheets provided in this complaint use the following codes: "ES" = "emerging skill demonstrated but may not achieve annual goal within duration of IEP"; "IP" = "insufficient progress demonstrated to meet this annual goal and may not achieve annual goal within duration of IEP"; "M" = Mastered = this annual goal; "NI" = not been provided instruction on this goal; and "SP" = "sufficient progress being made to achieve annual goal within duration of IEP".

the Student's placement and the services that school 1 could offer. This indicates that the original adoption of the transfer IEP was improper. The District did not follow placement and transfer procedures for Student 2 and OSPI finds a violation. The District will be required to conduct training on these topics.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. If a student is not making expected progress toward annual goals in the general education curriculum, a student's IEP must be reviewed and revised.

Here the District entered progress reporting on March 30 and June 6, 2018, which indicated that Student 2 was making "IP" (insufficient progress) on some goals, "SP" (sufficient progress) on another, and still other goals were an "ES" (emerging skill) for the Student. The progress reporting contains no data, further information beyond the standard codes, or an explanation of why the Student was not making progress. Further, it appears the Student was not making progress as expected toward his IEP goals, and therefore, an IEP meeting should have been held to address the lack of progress. A violation is found, as OSPI finds that this progress report is insufficient. Corrective actions will be required.

Issue 7 – PE: The Complainant alleged that students receive credit for PE without meaningful attended or instruction. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to students who do not have disabilities, unless the student needs specially designed physical education as described in the student's IEP. Washington State graduation credit requirements require that students take a minimum of two credits in "health and fitness." While students eligible for special education services must be able to participate in PE, this does not necessarily mean that all students must take a PE class for the entirety of high school. However, Juvenile Rehabilitation Administration (JRA) policy requires that residents of correctional facilities get an hour of physical activity every day, and the policy states that PE may be counted as an hour of exercise as long as it is large muscle exercise. Youth placed on room confinement or in isolation must have access to one hour of exercise every twenty-four hours; although the required hour of activity can be denied if the resident is exhibiting behavior that may be harmful to self, staff, or others.

The District did not provide a class schedule or any specific information about Student 2's access to PE/recreation. OSPI reminds the District that it bears more responsibility to verify that students actually received PE instruction or recreation time beyond simply stating that all students receive an hour of recreation per day. While the importance of the PE at school 1 is clear (see below, District Conclusions Issue 7 for full analysis) and there is agreement by all parties that students on open campus did generally have regular access to PE, here, the District did not provide sufficient

information that Student 2 was afforded the opportunity to participate in PE. OSPI finds a violation related to Student 2's access to PE.

Student 3

1. Student 3 is an adult student and is eligible for special education services under the category specific learning disability. Student 3's primary language is listed on documentation as both Ukrainian and Chinese, and the primary language at home is listed as both Russian and English.²⁵
2. On April 23, 2013, Student 3's parent waived his triennial reevaluation, which was due in September 2013, after a review of existing data.

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3. On February 15, 2018, Student 3 was transferred to school 1 and began attending class on February 16, 2018. According to the District's documentation, it requested the Student's special education records on February 28, 2018 and received those records on March 8, 2018.
4. On March 9, 2018, the District issued a prior written notice, stating that it would "continue specially designed instruction for [Student 3] in accordance with his previous IEP," which included instruction in reading, written language, and math skills. In its response, the District also stated that the Student's previous district opted for a reevaluation waiver, but that the District felt a reevaluation was needed.²⁶
5. On April 19, 2018, Student 3's reevaluation group (dean of students, school psychologist, general education teacher, and special education teacher) met to discuss the results of his recent reevaluation. The reevaluation included a review of the results of Student 3's February 2018 physical, his past cognitive scores, his existing special education records, the results of an intake academic screening administered by school 1 in February 2018, and the school psychologist's observations of the Student.

The report noted that, at the time, Student 3's planned release date was May 26, 2018, after which he would be transferred into Department of Corrections (DOC) custody.²⁷ The

²⁵ It is unclear whether the Student speaks all four languages listed on various documents. Based on the reevaluation report, it appears that the Student's primary language is Ukrainian and listing Chinese is a mistake.

²⁶ The District's documentation did not include the previous IEP referenced, so it is unclear what date the previous IEP was developed. The documentation also did not contain any previous evaluations, so while the Student's 2013 triennial reevaluation was waived, it is not clear whether or not he received a triennial reevaluation in 2016 either.

²⁷ Based on the documentation provided in this complaint, Student 3 still attends school 1 and does not appear to have been transferred yet.

reevaluation report stated that the Student continued to be eligible for special education services under the category specific learning disability, and that the Student was still eligible for and receiving English Language Learner (ELL) services. The evaluation report recommended that Student 3 receive specially designed instruction in reading comprehension, written language, math calculation, and math reasoning.

6. Also on April 19, 2018, the Complainant emailed the principal and the director, and stated that he had been approached that day by the school psychologist and asked to sign an evaluation for Student 3 during a fire drill. The Complainant stated that “to the best of [his] knowledge, no meeting had been scheduled...I know it has been customary on this campus for evaluations to take place without having any meeting in the past...is it the practice of [school 1] to skip evaluation meetings?” The Complainant stated that later that day, Student 3 told him that he (Student 3) was “also asked to sign the evaluation but that he did not understand what it was for and didn’t have an opportunity to review it or ask any questions about it.”²⁸
7. On May 22, 2018, Student 3 met his IEP team to develop his annual IEP. The IEP included a secondary transition plan and annual goals in the areas of math calculation, math reasoning, reading comprehension, and written language (with progress reported quarterly). The IEP provided the following specially designed instruction in a special education setting, provided by a special education teacher:
 - Math Calculation: 30 minutes, 5 times per week
 - Math Reasoning: 25 minutes, 5 times per week
 - Reading Comprehension: 30 minutes, 5 times per week
 - Written Language: 25 minutes, 5 times per week

The IEP noted that Student 3 would spend 60% of his time in the general education setting, and listed his placement as “correctional facility”.

8. On June 6, 2018, the District recorded the following progress reporting for Student 3’s annual goals:
 - Math Calculation: “SP”
 - Math Reasoning: “SP”
 - Reading Comprehension: “SP”
 - Written Language: “ES”
9. School 1’s 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes:

<ul style="list-style-type: none">• Period 1: RR-Math• Period 2: Independent Study• Period 3: PE/Fitness• Period 4: No School	<ul style="list-style-type: none">• Period 5: RR-English• Period 6: Physical Science• Period 7: Social Studies
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²⁸ The dean of students, school psychologist, a general education teacher, and a special education teacher signed the April 19, 2018 evaluation. Neither the Student nor the Complainant signed the evaluation report.

10. In an interview with Student 3, he stated that he knows he has an IEP, but did not know if he had ever seen a copy. Student 3 stated that he remembers at the last IEP meeting, the team discussed the fact that he was behind on credits to graduate. Student 3 stated that prior to being sent to school 1, he was working and not attending school, and that his IEP team originally told him he would be able to graduate before leaving school 1. He stated that at the last IEP meeting, he was told that this would not be possible and that he would have to enroll in school upon leaving.

Student 3 stated that he has never received an update on his educational progress, beyond receiving a copy of his transcript. He stated that he does not know what his IEP goals are. Student 3 also stated that he receives PE for an hour each day, and that he usually lifts weights during this time.

Issue 2 – Reevaluation: The Complainant alleged that students are not reevaluated when necessary and that no reevaluation meetings are held. A district should consider conducting a reevaluation when the needs of a student require a reevaluation, when a parent or teacher requests a reevaluation, or when significant change in placement occurs. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student’s educational program. At minimum, a student should be reevaluated every three years (unless the parent and district agree that an evaluation is not necessary). A reevaluation must include a review of existing data, and if the student’s IEP and other qualified professionals determine that no additional data are needed to determine whether the student continues to be eligible and/or to determine educational needs, no further assessments are required. The evaluation group’s review of existing data does not need to be conducted through a meeting, but if a meeting is held, parents/adult student must be provided notice and afforded an opportunity to participate. Additionally, the reevaluation report should include the data and signature of each professional member of the group, certifying that the report reflects their conclusion.

In February 2018, Student 3 (an adult student) was transferred to school 1 and in March 2018, the District determined that it was necessary to reevaluate the Student. The reevaluation report indicates that the reevaluation was conducted by the dean of students, the school psychologist, a general education teacher, and a special education teacher, and that the reevaluation group met on April 19, 2018. The group reviewed the Student’s medical information, past cognitive scores, existing special education records, recent academic screenings, and the school psychologist’s observations. The reevaluation report stated that Student 3 continued to be eligible for special education services under the category specific learning disability, and recommended that he continue to receive specially designed instruction in the areas of reading comprehension, written language, math calculation, and math reasoning. While the Complainant stated that he was not asked to attend the meeting, it does appear a meeting occurred and that another special education teacher attended. There is no requirement that all of a student’s teachers attend, although it is odd that the Complainant was asked to sign an evaluation report that he did not contribute to.

Additionally, beyond the assessments and observation, it is unclear to what extent Student 3 was involved in providing information for consideration in the evaluation. According to the Complainant, Student 3 told the Complainant that the District asked him to sign the evaluation, but that he did not understand what it was for and did not have an opportunity to review it or ask questions. While the District properly initiated Student 3's reevaluation, reviewed existing data, conducted need academic assessments, and met required timelines, it is not clear that the adult Student had an opportunity to participate in the reevaluation meeting. It is unclear from the documents provided the extent to which the Student's input and information was considered if the Student was unable to attend the meeting. Therefore, based on the District's failure to sufficiently show that it ensured the adult Student's participation in the reevaluation meeting, OSPI finds a violation.

Student 4

1. Student 4 is an eleventh grade student and is eligible for special education services under the category specific learning disability.
2. In November 2015, while attending school 2 at a different juvenile rehabilitation facility, Student 4 was reevaluated. School 2 reviewed the Student's existing special education records, a recent academic screening, and classroom observations and determined that the Student continued to qualify for special education services under the specific learning disability category. The evaluation report recommended that the Student receive specially designed instruction in math, and recommended several accommodations and modifications for the IEP team to consider.
3. The Student's previous placement was at a third Washington State juvenile detention facility (school 3). On the Student's IEP, it listed his placement as "correctional facility" and stated that school 3 proposed "to continue placement in Special Education in the general education classroom (maximum 12 students) in an incarceration setting with support from the special and general education teachers...while the student attends [school 3], he will receive all accommodations developed and planned in his IEP and approved in his previous school district."

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4. On July 26, 2018, Student 4's IEP team, at school 3, met and developed the Student's IEP because his prior IEP had expired. Student 4's IEP included a secondary transition plan, an annual goal in the area of math (probability and statistics) with progress reporting due at the semester, and several accommodations. The July 2018 IEP also included the following specially designed instruction in the general education setting:
 - Math: 20 minutes, 5 times per week

The IEP listed special and regular education staff as the "service provider for delivering service" and the "monitor," and stated that the Student would spend 100% in the general education setting.

5. School 3's prior written notice, issued after the July 26, 2018 IEP meeting, stated that "on the day of planned meeting, the night prior [Student 3's] actions in lodge resulted in emergency transfer to [school 1], IEP was not reviewed with student, but will be considered completed, and given to [school 1] for Implementation."
6. According to the District's documentation, Student 4's intake at school 1 occurred on July 26, 2018 and he began attending classes on the same day.
7. According to the District's documentation, it requested the Student's special education records on August 13, 22, and 28, 2018. The District stated it received the records on August 28, 2018.
8. School 1's 2018-2019 school year began on August 24, 2018.
9. On August 29, 2018, the District issued a prior written notice that stated that the District proposed to "continue specially designed instruction for [Student 4] in accordance with his current evaluation and IEP", which included specially designed instruction in math.
10. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes:
 - Period 0: PE/Fitness
 - Period 1: Social Studies
 - Period 2: General Math
 - Period 3: Independent Study
 - Period 4: No School
 - Period 5: General Science
 - Period 6: English
 - Period 7: Independent Study
11. There is no evidence that the Student received specially designed instruction in the general education setting, from either a general education or special education teacher. Further, there is no evidence that a special education teacher designed, monitored, and evaluated the Student's specially designed instruction.
12. Between October 11 and 18, 2018, according to the District's documentation, Student 4 attended three days of recreation/programming (which includes in-unit exercise), one day of recreation, and four days of programming.
13. The Student's next triennial reevaluation was due November 10, 2018. According to the District, the Student's reevaluation was in progress at the time of its response to this complaint.

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student individualized education programs (IEPs) when student placements were changed. When a student transfers into the District, the District is required to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student's placement should be determined annually by a group of persons, including the parents, and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student's IEP, LRE (LRE includes a consideration of educating a student to the maximum extent appropriate

in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student's educational program), a reevaluation must be completed. In determining whether a significant change in placement has occurred, the team should consider whether the student's educational program has been revised, whether the student's LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

Prior to attending school 1, Student 4 was at a school at a different juvenile correctional setting and on July 26, 2018, Student 4's IEP team developed his IEP, which stated that he would be in the general education setting 100% of his time. Before the July 2018 IEP was implemented, Student 4 was transferred to school 1 on July 26, 2018. The District did not adopt the Student's transfer IEP until August 29, 2018, which was after the school year began. Districts should adopt or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. Given the timing, the District should have determined whether it would adopt or develop a new IEP prior to the start of the school year, as it is required to have student IEPs in effect at the start of the school year.

Further, the District adopted an out-of-district IEP that included errors; for example, the IEP listed special and regular education staff as both the service provider and monitor for specially designed instruction. While a general education teacher may assist in the provision of specially designed instruction, that instruction must still be designed and supervised by a special education teacher. A general education teacher may not design and supervise specially designed instruction. Upon closer review, the District should have developed a new IEP for Student 4. While the District has followed procedures to determine the Student's placement, the actual issue here is that the District has not followed transfer procedures. OSPI finds a violation and corrective action will be required on transfer procedures.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student's IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student's academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

In July 2018, Student 4's IEP team (in another school/district) developed his annual IEP, which included a transition plan, a measurable annual goal in the area of math, and several accommodations. The IEP provided the Student with specially designed instruction in math, in the general education setting. The Student's IEP improperly stated that both a special education and general education teacher would monitor the provision of specially designed instruction. While a general education teacher can assist in the provision of specially designed instruction, a general education teacher cannot design and monitor the provision of specially designed instruction. The District requested the Student's special education records on August 13, 22, and 28, 2018 and received those records on August 28. The District adopted a non-compliant IEP when it adopted Student 4's transfer IEP.

Based on when the District requested and received the Student's records, the Student attended classes from July 26 through August 28, 2018, with no IEP in place. Then, when the District did adopt the Student's transfer IEP, it adopted a non-compliant IEP. During the 2018-2019 school year, the Student was enrolled in a general education math class, where he was scheduled to get his math instruction per his July 2018 IEP. The District provided no progress reporting for Student 4 or other documentation that the Student's IEP was implemented. There is no evidence that the Student was receiving specially designed instruction from either a general education or special education teacher, and no information provided about special education teachers designing, monitoring, and evaluating the specially designed instruction. OSPI reminds the District that it bears more responsibility to verify the implementation of an IEP than simply stating the IEP was implemented as written. OSPI finds that the District failed to substantiate it implemented Student 4's IEP, and OSPI finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. If a student is not making expected progress toward annual goals in the general education curriculum, a student's IEP must be reviewed and revised.

Here, the District has not entered any progress reporting for Student 4. However, the Student's July 2018 IEP required progress reporting at the semester. As of the filing of this complaint, the District did not yet have an obligation to provide progress reporting. Although, OSPI reminds the District that even if progress reporting has not been provided yet, if the teachers are monitoring student progress, there should be some progress information available. However, here OSPI finds no violation.

Issue 7 – PE: The Complainant alleged that students receive credit for PE without meaningful attended or instruction. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to students who do not have disabilities, unless the student needs specially designed physical education as described in the

student's IEP. Washington State graduation credit requirements require that students take a minimum of two credits in "health and fitness." While students eligible for special education services must be able to participate in PE, this does not necessarily mean that all students must take a PE class for the entirety of high school. However, Juvenile Rehabilitation Administration (JRA) policy requires that residents of correctional facilities get an hour of physical activity every day, and the policy states that PE may be counted as an hour of exercise as long as it is large muscle exercise. Youth placed on room confinement or in isolation must have access to one hour of exercise every twenty-four hours; although the required hour of activity can be denied if the resident is exhibiting behavior that may be harmful to self, staff, or others.

Student 4 had PE/Fitness listed on his class schedule for the 2018-2019 school year. The documentation in this complaint indicates that between October 11 and 18, 2018 (a randomly selected week prior to the complaint being filed), Student 4 attended three days of recreation/programming (programming includes in-unit exercise), one day of recreation, and four days of programming. The documentation does not ensure that the Student was able to attend PE class 100% of the time, but given the importance of PE at school 1, it is fair to say that Student 4 was afforded an opportunity to attend PE. OSPI finds no violation related to Student 4's opportunity to participate in PE.

Student 5

1. Student 5 is an eleventh grade student and is eligible for special education services under the category specific learning disability.
2. Student 5 previously attended school at an alternative school in another district in Washington. At the alternative school, all students received instruction in small settings.
3. Student 5's most recent reevaluation occurred in December 2016, in another school district in Washington. The reevaluation report stated that the Student continued to be eligible for special education services and recommended specially designed instruction in the areas of reading, written language, and math. The report also recommended several accommodations and modifications under the heading "supplementary aids and services." The reevaluation report also included a transition assessment.
4. On February 9, 2017, Student 5's other district IEP team met, including the Student and the Student's father, and developed his annual IEP. The IEP included a secondary transition plan and course of study, annual goals in the areas of math, reading, and written language (with progress reporting quarterly), and an extensive list of accommodations and modifications.²⁹ The February 2017 IEP provided the Student with the following specially designed instruction in the general education setting, provided by a general education teacher and monitored by a special education teacher:
 - Math: 20 minutes, 4 times per week

²⁹ The IEP also stated that the Student would "Pass at Level 2", which was listed as an accommodation/modification for the smarter balanced assessment (SBA).

- Reading: 20 minutes, 4 times per week
- Written Language: 20 minutes, 4 times per week

The IEP noted that the Student would spend 100% of his time in the general education setting.

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5. On December 5, 2017, Student 5 transferred to school 1 and on December 13, 2017, the District requested and received the Student's special education records.
6. On December 16, 2017, the District issued a prior written notice that stated the District proposed to "continue specially designed instruction for [Student 5] in accordance with his current IEP."
7. The District provided no progress reporting on the Student's transfer IEP goals and no information that the Student received specially designed instruction from a general education teacher, designed, monitored, and evaluated by a special education teacher.
8. On February 15, 2018, the District invited Student 5's father to the Student's annual IEP meeting, which was scheduled for February 26, 2018.
9. On February 26, 2018, Student 5's IEP team, including the Student and the Student's father who participated by phone, met and developed the Student's IEP. The February 2018 IEP included a secondary transition plan and annual goals in the areas of written language, reading, and math (with progress reporting quarterly). Student 5's IEP included the following accommodations: "preview test procedures" and "testing in Separate Location." The IEP stated that the Student "requires off-grade level assessments in all areas due to the impact of his disability on his content area test performance." Student 5's February 2018 IEP provided him with the following specially designed instruction in the special education setting, provided by a special education teacher:
 - Math: 50 minutes, 5 times per week
 - Reading: 25 minutes, 5 times per week
 - Written Language: 25 minutes, 5 times per week

The IEP stated the Student would spend 66.67% of his time in the general education setting, and listed his placement as "correctional facility."

10. On March 30 and June 6, 2018, the District entered progress reporting on Student 5's February 2018 annual goals. The progress reporting stated that the Student made the following progress:
 - Math: "SP" in March and June 2018
 - Reading: "SP" in March and June 2018
 - Written Language: "SP" in March 2018 and "ES" in June 2018
11. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes:

- Period 1: RR - Math
- Period 2: Independent Study
- Period 3: PE/Fitness
- Period 4: No School
- Period 5: RR - English
- Period 6: Social Studies
- Period 7: Multi-media

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student’s IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student’s academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

In December 2017, Student 5 was transferred into the District and the District adopted his previous IEP, which included a transitional plan, annual goals, an extensive list of accommodations and modifications, and provided the Student with specially designed instruction (in math, reading, and written language) provided by a general education teacher. Student 5’s District IEP team developed his February 2018 on February 26, 2018, and the IEP included a transition plan, measurable annual goals, and accommodations. The IEP provided the Student with specially designed instruction in math, reading, and written language (provided by a special education teacher). While the District properly developed the majority of the Student’s 2018 IEP, OSPI notes that the Student’s 2017 transfer IEP included extensive accommodations and modifications, and the Student’s 2018 IEP included only two accommodations for testing. While not necessarily improper, there is no documentation explaining this change or why significantly fewer accommodations were necessary. While this does not necessarily rise to the level of a violation, OSPI recommends that the District hold an IEP meeting and discuss whether the Student needs additional accommodations and modifications.

The District provided no progress reporting on the Student’s transfer IEP goals, or any evidence that the Student received specially designed instruction in the general education setting, designed, monitored, and evaluated by a special education teacher. The District provided minimal progress reporting that stated the Student was making “SP” (sufficient progress) on his February 2018 IEP goals, although provided no further data regarding the Student’s progress. The Student is enrolled in resource room math and English for the 2018-2019 school year, which is where he is scheduled to receive his specially designed instruction. However, OSPI reminds the District that it bears more responsibility to verify the implementation of an IEP than simply stating the IEP was implemented as written, especially in the months that it provided comparable services from the transfer IEP (i.e., services provided by a general education teacher). Here, the progress reporting

does not provide sufficient information on the Student's progress and OSPI finds that the District failed to substantiate it implemented Student 5's IEP, and OSPI finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. If a student is not making expected progress toward annual goals in the general education curriculum, a student's IEP must be reviewed and revised.

Here, the District entered progress reporting on March 30 and June 6, 2018, which indicated that Student 5 was making "SP" sufficient progress on some goals, and that in June, one goal was an "ES" (emerging skill). The progress reporting contained no data or further information beyond the standard codes. While the Student may have been making sufficient progress on most of his goals, the existing progress reporting does not provide a parent/adult student with enough information to be informed of student progress and the extent to which the student will be able to achieve the IEP goals. A violation is found, as OSPI finds that this progress report is insufficient.

Student 6

1. Student 6 is an adult student and is eligible for special education services under the category other health impairment.
2. During the 2014-2015 school year, Student 6 attended school in a different district in Washington where he transitioned between a school at a county juvenile detention center and a "very structured, highly supported self-contained classroom for very at risk juveniles on probation" several times.
3. Student 6's most recent reevaluation occurred in September 2015, in a detention school in another school district in Washington. The reevaluation consisted of a review of existing data, including academic testing from April 2015. The reevaluation report included information about the Student's educational, behavioral, and medical history, and stated that the evaluation group determined that the Student continued to be eligible for special education services. The reevaluation report stated that Student 6's math calculation skills were "low average" and that his reading and writing skills were "within normal limits"; and, the evaluation report stated that the Student continued to need "specially designed instruction in behavioral skills."
4. The Student transferred to school 1 on July 11, 2016 and began attending class on July 12, 2016. According to the District's documentation, at some point, the Student was transferred to school 3 and then back to school 1. The District stated that it requested special education

records for the Student on July 17, 2016. The District developed an IEP for the Student on October 31, 2016.³⁰

The Complaint Timeline Began On October 20, 2017

5. On October 25, 2017, Student 6's IEP team, including the parent by phone, met to develop his annual IEP. According to the District's documentation, the team considered progress reporting from the Student's prior IEP (October 2016 IEP) annual goals, which stated that the Student had made "sufficient progress" on his behavior goal. Student 6's IEP included a secondary transition plan³¹, a single annual goal in the area of behavior (with progress reporting quarterly), one accommodation (color-coded folders), and stated that Student 6 "requires off-grade level assessments in math due to the impact of his disability on his content area test performance." The October 2017 IEP provided the Student with the following specially designed instruction in the special education setting:
- Behavior: 20 minutes, 3 times per week (general education teacher, monitored by a special education teacher)

The IEP noted that the Student would spend 96% of his time in the general education setting and listed the Student's placement as "correctional facility."

6. The District entered the following progress reporting information for Student 6's October 2017 IEP annual goal in behavior:
- November 24, 2017: "IP"; "behavior and attendance have been serious barriers to [Student 6's] progress."
 - March 30, 2018: "SP"
 - June 6, 2018: "IP"
7. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes:
- | | |
|-------------------------------|-------------------------------|
| • Period 1: Biology | • Period 5: Independent Study |
| • Period 2: Independent Study | • Period 6: PE/Fitness |
| • Period 3: Social Studies | • Period 7: Integrated Math |
| • Period 4: No School | |

8. On August 28, 2018, the District invited adult Student 6 to a meeting (scheduled for that same day) to "consider a waiver for the routine 3 year reevaluation." The Student signed a statement that he agreed to "waive a reevaluation at this time; however, I understand that I may request a reevaluation at a later date." According to the District's request for a reevaluation wavier:
- A review of special education records from [other] district indicates that [Student 6] has been receiving special education services since age 5...his most recent reevaluation was

³⁰ A copy of the Student's October 2016 IEP was not included in the District's response to this complaint.

³¹ Student 6's employment goal stated that Student 6 "will need assistance finding a job that matches his interests and ability level" and listed DVR as the agency responsible related to the Student's post-secondary goals in education, employment and independent living. There is no indication that a representative from DVR participated in the IEP meeting.

completed on 9/20/15. His recommended goal area was and continues to be Behavior. [Student 6] has a documented history of acting out and disruptive behavior problems and treatment for Attention Deficit Hyperactivity Disorder [ADHD] and Anxiety. In addition, managing his aggression continues to be an issue that he is working on in his living unit treatment program. Behavior is also an area he continues to work on at school. [Student 6] has made excellent progress earning high school credits. He needs about 6 ½ credits left to graduate. There is no need to do a reevaluation at this time. [Student 6] remains eligible for special education services and continues to need a Behavior goal."

The Complainant stated that, at this time, he was one of the Student's teachers, and that he "was not notified of or in any way consulted about his reevaluation or waiver."

9. On October 22, 2018, Student 6 met with his IEP team to develop his annual IEP. The IEP noted that the Student "has had prolonged, documented challenges in math that may need to be addressed...reevaluation skipped addressing...[dean of students] reported at IEP meeting that [Student 6] has passed his state mandated math assessment." Student 6's IEP included a secondary transition plan³², a new annual goal in the area of behavior (with progress reporting quarterly). The October 2018 IEP provided the Student with the following specially designed instruction:
 - Behavior: 60 minutes, 1 time per week (counselor, special education setting)
 - Behavior: 1 minute, 5 times per week (general education teacher, general education setting)

The IEP noted that the Student would spend 100% of his time in the general education setting and listed the Student's placement as "correctional facility." The October 2018 IEP also noted that Student 6 was "unable to receive PE instruction for a substantial portion of the 2017-2018 academic year but was granted full credit regardless of attendance."

10. The District's prior written notice, dated October 22, 2018, stated that the team "considered eliminating services because need appears to be negligible or even non-existent." The notice stated that this option was rejected because the team was "unable to confirm due to a lack of any special education or...reevaluation meeting or having access to any discipline, attendance, diagnostic or scheduling records or any current academic assessment information. (No teachers, special education or general education, were included in the evaluation wavier process)."
11. The District provided no information that the Student received specially designed instruction from a counselor or a general education teacher, designed, monitored, and evaluated by a special education teacher.

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student IEPs when student placements were changed. When a student transfers into

³² Student 6's updated 2018 employment goal stated that Student 6 "will work in construction, eventually working in a state job" and listed DVR as the agency responsible related to Student's post-secondary goals in education, employment and independent living. There is no indication that a representative from DVR participated in the IEP meeting.

the District, the District is required to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student's placement should be determined annually by a group of persons, including the parents, and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student's IEP, LRE (LRE includes a consideration of educating a student to the maximum extent appropriate in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student's educational program), a reevaluation must be completed. In determining whether a significant change in placement has occurred, the team should consider whether the student's educational program has been revised, whether the student's LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

On October 25, 2017, Student 6's District IEP team developed his IEP, which stated that he would spend 96% of his time in the general education setting. In August 2018, the Student waived his triennial reevaluation. On October 22, 2018, the Student's IEP team met and developed his annual IEP, which stated that the Student would spend 100% of his time in the general education setting. There is no documentation in this complaint (e.g., meeting notes) that document whether the Student's IEP team discussed his placement or potential changes to the Student's placement. Between the 2017 and 2018 IEPs, the Student's LRE did change, but only slightly. This shift does not appear to indicate that there was a significant change in placement that would warrant further discussion or a potential reevaluation. OSPI recommends that the District adopt a practice of taking IEP meeting minutes in order to ensure such discussions occur and are recorded; however, the District did follow placement procedures here and OSPI finds no violation in relation to Student 6's placement.

Issue 2 – Reevaluation: The Complainant alleged that students are not reevaluated when necessary and that no reevaluation meetings are held. A district should consider conducting a reevaluation when the needs of a student require a reevaluation, when a parent or teacher requests a reevaluation, or when significant change in placement occurs. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. At minimum, a student should be reevaluated every three years (unless the parent or adult student and district agree that an evaluation is not necessary). A reevaluation must include a review of existing data, and if the student's IEP and other qualified professionals determine that no additional data are needed to determine whether the student continues to be eligible and/or to determine educational needs, no further assessments are required. The evaluation group's review of existing data does not need to be conducted through a meeting, but if a meeting is held, parents or the adult student must be provided notice and afforded an opportunity to participate.

Student 6's October 2017 IEP stated that the Student had made sufficient progress on his previous behavior goal (July 2016 IEP annual goal), and provided the Student with a goal and specially designed instruction in behavior. The 2017 IEP stated that the Student would spend 96% of his time in the general education setting. On August 28, 2018, adult Student 6 waived his triennial reevaluation. The District's documentation indicated that the District reviewed the Student's special education records, his most recent reevaluation (September 2015), and his behavior records. The documentation indicated that the Student continued to be eligible for special education, continued to need a behavior goal, and thus that a reevaluation was not necessary. However, the Student's October 22, 2018 IEP provided potentially contradictory information – it noted that Student 6 has had prolonged, documented challenges in math that may need to be addressed and that the Student has passed his State mandated math assessment. It is not clear to what extent the Student's math skills were considered. Further, the District's October 22, 2018 prior written notice stated that the team considered eliminating services because it appeared the need was negligible. But, the notice stated this option was rejected because the team was unable to confirm due in part to a "lack of [a]...reevaluation meeting or having access to any discipline, attendance, diagnostic or scheduling records or any current academic assessment information. (No teachers, special education or general education, were included in the evaluation wavier process)."

Here, the District's documentation contradicts itself, stating both that existing data was reviewed in August 2018 but that there was very little discipline, attendance, diagnostic, or academic information available in October. While this review was conducted without a meeting (which is allowed under the regulation), the District's prior written notice itself indicates that a reevaluation was necessary. OSPI notes that there is no requirement that all of a student's teachers be invited to participate in a review of a student's file. However, based on the District's own documentation, the District likely should have conducted a reevaluation for Student 6. OSPI finds a violation, and requires that the District reevaluate Student 6.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student's IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student's academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

In October 2017, Student 6's IEP team met and developed his IEP, which included a transition plan, an annual goal in the area of behavior, and one accommodation. The IEP provided the Student with specially designed instruction in behavior. The Student's October 2018 IEP also included a transition plan, a new annual goal in the area of behavior, and provided the Student with specially designed instruction in behavior. The 2017 and 2018 IEPs were developed properly; OSPI finds no violation.

The District provided minimal progress reporting that stated the Student was making "IP" (insufficient progress) on some goals and "SP" (sufficient progress) on other goals, although it provided no specific data regarding the Student's progress. Further, in October 2018, the District's prior written notice stated that while the Student's need for specially designed instruction seemed negligible, the same notice stated that there was little discipline, attendance, or academic information available. The lack of academic information indicates that the Student's October 2017 was not implemented. Here, the progress reporting and other documentation does not provide sufficient information on the delivery of the Student's specially designed instruction. The District provided no information that the Student received specially designed instruction from a counselor or a general education teacher, designed, monitored, and evaluated by a special education teacher as required by his October 2018 IEP. OSPI finds that the District failed to substantiate it implemented Student 6's IEP, and OSPI finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. If a student is not making expected progress toward annual goals in the general education curriculum, a student's IEP must be reviewed and revised.

Here, the District entered progress reporting on March 30 and June 6, 2018, which indicated that Student 2 was making "IP" (insufficient progress) on some goals, "SP" (sufficient progress) on another, and still other goals were an "ES" (emerging skill) for the Student. The progress reporting contains no data or further information beyond the standard codes. While the Student may have been making sufficient progress on some of his goals, the existing progress reporting does not provide a parent/adult student with enough information to be informed of student progress and the extent to which the student will be able to achieve the IEP goals. Further, it appears the Student was not making progress as expected toward other of his IEP goals, and therefore, an IEP meeting should have been held to address the lack of progress. A violation is found, as OSPI finds that this progress report is insufficient.

Issue 7 – PE: The Complainant alleged that students receive credit for PE without meaningful attended or instruction. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to students who do not have disabilities, unless the student needs specially designed physical education as described in the

student's IEP. Washington State graduation credit requirements require that students take a minimum of two credits in "health and fitness." While students eligible for special education services must be able to participate in PE, this does not necessarily mean that all students must take a PE class for the entirety of high school. However, Juvenile Rehabilitation Administration (JRA) policy requires that residents of correctional facilities get an hour of physical activity every day, and the policy states that PE may be counted as an hour of exercise as long as it is large muscle exercise. Youth placed on room confinement or in isolation must have access to one hour of exercise every twenty-four hours; although the required hour of activity can be denied if the resident is exhibiting behavior that may be harmful to self, staff, or others.

Student 6's October 2018 IEP stated that Student 6 was "unable to receive PE instruction for a substantial portion of the 2017-2018 academic year, but was granted full credit regardless of attendance." OSPI suspects that this means the Student was not attending PE classes because he was in a more restrictive unit, but that he continued to attend recreation and in-unit programming. However, there is no documentation in this complaint that confirms that the Student was participating in recreation time and this statement could also indicate that for much of the 2017-2018 school year, Student 6 was not afforded the opportunity to participate in PE. OSPI recommends that if the District include statements such as this in a student's IEP, it also include a brief statement explaining how the student otherwise participates in PE/recreation. Student 6 does have PE/Fitness listed on his class schedule for the 2018-2019 school year, although again, there is no documentation that specifically documents the Student's participation.

OSPI reminds the District that it bears more responsibility to verify that students actually received PE instruction or recreation time beyond simply stating that all students receive an hour of recreation per day. While the importance of PE at school 1 is clear and there is agreement by all parties that students on open campus did generally have regular access to PE, here, the District did not provide sufficient information that Student 6 was afforded the opportunity to participate in PE. OSPI finds a violation.

Student 7

1. Student 7 is an adult student and is eligible for special education services under the category other health impairment.
2. According to the District's documentation, Student 7's intake date for school 1 was June 19, 2014 and he began attending classes on June 20, 2014. The District stated it requested the Student's special education records on August 20 and 22, 2014, and received the records on August 25.
3. On May 23, 2017, Student 7 met with his IEP team and developed his IEP. The 2017 IEP included post-secondary goals and a course of study, and annual goals in the areas of reading, math, written language, and behavior (with progress reporting quarterly). The IEP included several modifications and provided Student 7 with the following specially designed instruction in the general education setting:

- Math: 50 minutes, 5 times per week (general education teacher, monitored by a special education teacher)
- Reading: 25 minutes, 5 times per week (general education teacher, monitored by a special education teacher)
- Written Language: 25 minutes, 5 times per week (general education teacher, monitored by a special education teacher)
- Social/Behavior: 60 minutes, 1 time per week (counselor monitored, by a special education teacher)
- Study/Organizational Skills: 15 minutes, 3 times per week (concurrent) (general education teacher, monitored by a special education teacher)

The IEP stated that Student 7 would spend 100% of his time in the general education setting and that the Student's placement was in a "correctional facility."

4. On June 2, 2017, the District entered progress reporting for Student 7's May 2017 IEP annual goals, which indicated he was demonstrating "ES" (emerging skills) on his reading and written language goals, and "IP" (insufficient progress) on his math and behavior goals.
5. In June 2017, Student 7 was reevaluated. Student 7's June 13, 2017 reevaluation report stated that the Student's "most recent IEP included goals in: reading, written language, math and behavior skills. He has passed all of the state tests and has done very well on intake academic screening" and stated that the Student continued to be eligible for special education services under the category other health impairment, based on his diagnosis of attention deficit hyperactivity disorder (ADHD). The reevaluation report recommended that Student 7 receive specially designed instruction in the area of behavior, and based on academic assessments, stated that the Student no longer needed specially designed instruction in reading, math, or written language.
6. On July 13, 2017, the District invited the Student and the Student's guardian to an IEP meeting to review his current IEP, review instructional needs, and to consider the termination of services. The IEP meeting was scheduled for July 26, 2017.
7. On July 26, 2017, Student 7 met with his IEP team to review his current IEP and develop a new IEP. The July 2017 IEP included post-secondary goals and a course of study, and included an annual goal in the area of behavior (with progress reporting quarterly). The IEP included several modifications and provided Student 7 with the following specially designed instruction in the general education setting:
 - Social/Behavior: 60 minutes, 1 time per week (counselor, monitored by a special education teacher)
 - Study/Organizational Skills: 15 minutes, 3 times per week (concurrent) (general education teacher, monitored by a special education teacher)

The IEP stated that Student 7 would spend 100% of his time in the general education setting and that the Student's placement was in a "correctional facility."

The Complaint Timeline Began On October 20, 2017

8. The District entered the following progress reporting on Student 7's annual behavior goal:
 - November 24, 2017: "IP"; "[Student 7] was [in a restrictive unit] due to behavior during all of October and most of November. In his time out, he received 15 discipline slips in September and two in November (in one week)."
 - March 30, 2018: "SP"
 - June 6, 2018: "ES"; "[Student 7] was in [a restrictive unit] for all but four days of spring quarter."
9. The District provided no information that the Student received specially designed instruction from a counselor or a general education teacher, designed, monitored, and evaluated by a special education teacher.
10. On July 25, 2018, Student 7 met with his IEP team to develop his annual IEP. The IEP noted that Student 7's only remaining general education class was social studies that the Student continued to receive specially designed instruction in behavior skills, that the Student received six disciplinary incident reports in the last academic year, and that Student 7 stated he "would like to complete his high school diploma and his welding certification. To graduate [Student 7] will also need to complete a culminating project." The IEP continued to include a secondary transition plan, an annual goal in behavior, several accommodations and modifications, and provided the following specially designed instruction from July 26, 2018 until August 31, 2018:
 - Behavior: 60 minutes, 1 time per week (counselor, monitored by a special education teacher, general education setting)
 - Behavior: 50 minutes, 5 times per week (general education teacher, monitored by a special education teacher, special education setting)

The IEP stated that the Student would spend 80% of his time in the general education setting. The IEP also provided the following specially designed instruction from September 4, 2018 until July 25, 2019:

- Behavior: 60 minutes, 1 time per week (counselor, monitored by a special education teacher, general education setting)

The IEP stated that for this period, the Student would spend 100% of his time in the general education setting.

11. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes:
 - Period 1: VOC-Grounds
 - Period 2: VOC-Grounds
 - Period 3: VOC-Grounds
 - Period 4: VOC-Grounds
 - Period 5: RR-English
 - Period 6: Independent Study
 - Period 7: Social Studies
12. Student 7 stated, in an interview with the OSPI investigator, that he participated in his last IEP meeting and that he felt the IEP team listened to him, asked him questions, and asked him how he was doing in classes. Student 7 also stated that he knew he was supposed to be getting instruction related to behavior from the counselor, but that he is not currently

receiving that instruction. Student 7 stated that the counselor told him that he was too busy and Student 7 does not remember the last time he met with the counselor. Student 7 also stated that he did not realize the counseling was part of school (Student 7 characterized the counselor as "separate" from school, and that the counselor is part of the living unit and provides counseling in the unit). Student 7 also stated that he was not sure what accommodations were on his IEP and that he did not think he was getting any accommodations or modifications.

Finally, Student 7 stated that right now, he is getting PE/recreation time daily (50-minute class period). He stated that in the past, when he has been in a more restrictive living unit, he got around 45 minutes of recreation time daily and no academic instruction. Student 7 stated that when he had classes in the restrictive unit, the teacher would give him a magazine to read and have him answer questions about it, and that the magazine was below his reading level.

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student individualized education programs (IEPs) when student placements were changed. When a student transfers into the District, the District is required to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student's placement should be determined annually by a group of persons, including the parents, and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student's IEP, LRE (LRE includes a consideration of educating a student to the maximum extent appropriate in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student's educational program), a reevaluation must be completed. In determining whether a significant change in placement has occurred, the team should consider whether the student's educational program has been revised, whether the student's LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

On July 26, 2017, Student 7's District IEP team developed his IEP, which stated that he would spend 100% of his time in the general education setting. On July 25, 2018, Student 7's IEP team developed his new annual IEP, which also stated that the Student would spend 100% of his time in the general education setting. While there is no documentation that the District discussed the Student's placement and LRE beyond acknowledging that he was placed in a correctional facility, there also was no change to the Student's LRE between his 2017 and 2018 IEPs that would warrant the team considering a potential reevaluation. In this case, the District followed placement procedures for Student 7. OSPI finds no violation.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides

all services in a student's IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student's academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

Student 7's July 2018 IEP provided the Student with 60 minutes a week of specially designed instruction in behavior from a counselor and 50 minutes, 5 times a week of specially designed instruction in behavior from a general education teacher (monitored by a special education teacher) from July 26, 2018 until August 31, 2018. The IEP also provided the Student with 60 minutes of specially designed instruction in behavior from a counselor from September 4, 2018 until July 25, 2019. The District provided minimal progress reporting on the Student's annual goals from his 2017 IEP, which indicated the Student's progress ranged from "IP" (insufficient progress, November 2017) to "SP" (sufficient progress, March 2018), and back to an "ES" (emerging skill, June 2018). The June 2018 progress reporting indicated that the Student was in a more restrictive unit for most of the quarter. During this period, his progress on his IEP goal dropping from sufficient progress to emerging skill, which indicates that the Student was possibly receiving less specially designed instruction in behavior. At a minimum, the Student's IEP team should have met to address this decrease in progress. Further, the District provided no information that the Student received specially designed instruction from a counselor or a general education teacher, designed, monitored, and evaluated by a special education teacher.

The District did not provide any documentation that indicated the Student's July 2018 has been implemented. Further, in an interview with the Student, he stated that he knows he is supposed to be receiving behavior instruction from a counselor, but Student 7 stated that he was not receiving any counseling because the counselor was "too busy." OSPI also notes that Student 7's 2018-2019 class schedule includes a resource room (special education) English class, despite reading not being an area of service on the Student's IEP. OSPI finds that the District failed to substantiate it implemented Student 7s IEP, and OSPI finds a violation.

Issue 7 – PE: The Complainant alleged that students receive credit for PE without meaningful attended or instruction. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to students who do not have disabilities, unless the student needs specially designed physical education as described in the student's IEP. Washington State graduation credit requirements require that students take a minimum of two credits in "health and fitness." While students eligible for special education services must be able to participate in PE, this does not necessarily mean that all students must take a PE class for the entirety of high school. However, Juvenile Rehabilitation Administration (JRA) policy requires that residents of correctional facilities get an hour of physical activity every day, and the policy states that PE may be counted as an hour of exercise as long as it is large

muscle exercise. Youth placed on room confinement or in isolation must have access to one hour of exercise every twenty-four hours; although the required hour of activity can be denied if the resident is exhibiting behavior that may be harmful to self, staff, or others.

Student 7's 2018-2019 class schedule does not include PE/recreation and the District did not provide any specific documentation regarding Student 7's participation in PE during the 2017-2018 school year. However, in an interview with Student 7, he stated that currently, he is attending PE/recreation time daily. Student 7 also stated that when he was in a more restrictive unit, he received fewer minutes of recreation time. However, the regulations require districts to give students eligible for special education an opportunity to participate in PE and unless a student requires specially designed instruction in PE, the regulations do not require that a student attend a specific number of minutes of PE. The requirement that students attend one hour a day of recreation is a JRA policy, over which the District has no control. Here, the documentation in this complaint indicates that the District afforded Student 7 the opportunity to participate in PE.

Student 8

1. Student 8 is an adult student who is eligible for special education services under the category other health impairment.
2. On March 9, 2016, Student 8 attended a school in a different school district in Washington and his IEP team developed his annual IEP. The March 2016 IEP noted that the Student's attendance was a concern. The IEP included post-secondary goals and a course of study for high school. The IEP included an annual goal in the area of reading comprehension and a goal in written language (with quarterly progress reporting), and included several accommodations and modifications. The March 2016 IEP provided the Student with the following specially designed instruction in the special education setting:
 - Written Language: 30 minutes, 5 times per week
 - Reading: 30 minutes, 5 times per week

The IEP stated that the Student would spend 83.33% of his time in the general education setting.

The Complaint Timeline Began On October 20, 2017

3. On October 24, 2017, the Student arrived at school 1 and on October 25 he began attending classes.
4. On November 8 and 9, 2017, the District requested the Student's special education records, and it received those records on November 11.
5. On January 16, 2018, the District initiated the Student's triennial reevaluation, which included a review of existing data, academic assessments, and a review of the Student's juvenile rehabilitation and medical records. Student 8, an adult student, signed consent for his reevaluation.

6. On February 6, 2018, the Student's reevaluation group met. The reevaluation report noted that the Student was originally found eligible for special education services in first grade under the category specific learning disability. In fourth grade, the Student was reevaluated and his eligibility category was changed to other health impairment, due to his diagnosis of attention deficient hyperactivity disorder (ADHD). The District stated in the report that it "considered requesting a Waiver for the routine 3 year reevaluation. However, given the concern regarding his math difficulties and his prior IEP math services it was determined a reevaluation would be done." The reevaluation report stated that social/emotional and behavior was not a concern for Student 8. The Student's reevaluation group recommended that he continue to receive specially designed instruction in reading basic, reading comprehension, written language, and math calculation.
7. On February 15, 2018, the District provided the adult Student with a prior written notice, stating that the District was proposing to change the Student's IEP, and that Student 8 needed specially designed instruction in reading, written language, and math skills.
8. On February 27, 2018, Student 8 met with his IEP team and developed his annual IEP. The IEP included a secondary transition plan³³ and annual goals in the following areas: reading basic, written language, reading comprehension, and math calculation (with quarterly progress reporting). The February 2018 IEP included two accommodations (preview test procedures and testing in separate location) for State tests and stated that the Student "requires off-grade level assessments in all areas due to the impact of his disability on his content area test performance." Student 8's IEP provided him with the following specially designed instruction in the special education setting from a special education teacher:
 - Reading Basic: 15 minutes, 5 times per week
 - Written Language: 25 minutes, 5 times per week
 - Math Calculations: 50 minutes, 5 times per week
 - Reading Comprehension: 10 minutes, 5 times per week

The IEP stated that the Student would spend 66.67% of his time in the general education setting and listed his placement as "correctional facility."

9. On March 30 and June 6, 2018, the District entered the following progress reporting for Student 8's goals:
 - Reading Basic: "ES" and "SP"
 - Written Language: "ES" and "ES"
 - Reading Comprehension: "ES" and "SP"
 - Math Calculation: "SP" and "SP"
10. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes:
 - Period 1: Independent Study
 - Period 2: Integrated Math
 - Period 3: PE/Fitness
 - Period 4: No School

³³ Student 8's February 2018 IEP includes "LC Social Services" as a responsible agency under the Student's transition plan. There is no indication that a representative from this agency attended the IEP meeting.

- Period 5: RR-English
- Period 6: Physical Science

- Period 7: Social Studies

11. In an interview with an OSPI investigator, Student 8 stated that he attends his IEP meetings where the team discusses his progress and areas he has challenges, such as staying focused and finishing work. Student 8 says he is improving in school and that his grades are better; although, he stated that some teachers, for example his math teacher, just gives assignments but does not explain the material. Student 8 stated that he attends recreation every day for an hour.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student’s IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student’s academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

In October 2017, Student 8 was transferred to school 1. On February 27, 2018, the Student’s IEP team met and developed his IEP. The IEP included a transition plan, measurable annual goals in reading, written language, and math. The IEP also included accommodations for testing. The IEP provided the Student with specially designed instruction in reading basic, reading comprehension, written language, and math calculation. The District properly developed Student 8’s IEP and OSPI finds no violation.

The District did not provide progress reporting or other documentation related to the implementation of the Student’s IEP between October 2017 and the development of his new IEP in February 2018. The District stated that it received the Student’s special education records by November 11, 2017; however, there is no documentation that a transfer review was conducted or if a previous IEP was adopted. It is unclear if the District was implementing an IEP at this point. The District did provide minimal progress reporting on the Student’s February 2018 IEP goals, which stated that the Student was making “SP” (sufficient progress) in math and that reading and written language goals were an “ES” (emerging skill) for the Student. The Student is enrolled in an “integrated math” (unclear if this is a special education setting) and resource room English for the 2018-2019 school year. It is important to note, that in an interview with Student 8, he stated that his math teacher just gives assignments, but does not explain the material. It is not clear if Student 8 is receiving specially designed instruction in the areas identified on his IEP. Here the progress reporting and other documentation does not provide sufficient information on the Student’s

progress and OSPI finds that the District failed to substantiate it implemented Student 8's IEP, and OSPI finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the student to achieve those goals.

Here, the District entered progress reporting on March 30 and June 6, 2018, which indicated that Student 8 was making "SP" (sufficient progress) on some goals and other goals were an "ES" (emerging skill) for the Student. The progress reporting contains no data or further information beyond the standard codes. While the Student may have been making sufficient progress on some goals, the existing progress reporting does not provide a parent/adult student with enough information to be informed of the extent of student progress, the extent to which the Student will be able to achieve the IEP goals, and why the Student was making less progress on some goals versus others. A violation is found, as OSPI finds that this progress report is insufficient.

Student 9

1. Student 9 is in twelfth grade and is eligible for special education services under the category specific learning disability.
2. Student 9's most recent reevaluation occurred in January 2016, while the Student attended school 2 at a different juvenile rehabilitation facility. The reevaluation report included information about the Student's educational and special education background and that his behaviors and attendance impacted his learning. The reevaluation report stated that the Student continued to be eligible for special education services under the category specific learning disability, and recommended that the Student receive specially designed instruction in the areas of writing, math, and behavior. The reevaluation report also recommended several accommodations and modifications for the IEP team to consider.
3. On June 1, 2017, Student 9 met with his IEP team (while attending school in another district) to develop his annual IEP. Student 9's parent did not attend the meeting and gave consent to proceed without her "because her phone wasn't working properly." The IEP included a secondary transition plan and multiple annual goals in the following area: behavior, math, and writing (progress reporting at the semester). The IEP included several accommodations and several modifications, and provided Student 9 with the following specially designed instruction:
 - Behavior: 17 minutes, 5 times per week (special education teacher, special education setting)
 - Math: 54 minutes, 5 times per week (general education teacher, general education setting)
 - Writing: 27 minutes, 5 times per week (special education teacher, special education setting)

The IEP stated that Student 9 would spend 84.51% of his time in the general education setting and listed his placement as a correctional facility.

4. According to the District's documentation, Student 9's intake at school 1 occurred on July 12, 2017 and the Student began attending class on July 13. The District requested the Student's special education records on September 7, 15, 18, and 20, 2017 and received the requested records on September 20, 2017.

The Complaint Timeline Began On October 20, 2017

5. The District provided no information that the Student received specially designed instruction, as called for in his June 2017 IEP, from a special education or a general education teacher, designed, monitored, and evaluated by a special education teacher.
6. On May 21, 2018, the District invited surrogate 1 to participate in Student 9's IEP meeting after multiple attempts, with no response, to contact Student 9's parent. The meeting invitation indicated that the team planned to review and develop the Student's IEP, review instructional needs, discuss annual goal progress, determine the Student's placement, and consider the termination of services.
7. On May 22, 2018, Student 9 met with his IEP team, including surrogate 1, and developed the Student's IEP. The IEP noted that "based on [Student 9's] performance over this past year and his lack of academic growth across academic disciplines, and specifically in reading, [Student 9's] teacher recommends that he receive increased services and a reevaluation"³⁴ and that the Student "needs a more complete educational program."³⁵ The May 2018 IEP noted that due to behavioral challenges, the Student had not been permitted to participate in the general education setting for any meaningful length of time this school year. The IEP included post-secondary goals and under course of study stated that the Student "needs a dramatic increase in class offerings immediately." The May 2018 IEP included an annual goal in each of the areas of math, written language, and social/emotional (with progress reporting quarterly), and the IEP included several accommodations and modifications. The IEP provided Student 9 with the following specially designed instruction:
 - Math Calculation: 35 minutes, 4 times per week (general education teacher, monitored by a special education teacher, general education setting)
 - Written Language: 45 minutes, 4 times per week (special education teacher, special education setting)
 - Behavior: 60 minutes, 1 time per week (counselor, monitored by a special education teacher, general education setting)

³⁴ Student 9's next triennial reevaluation is due by January 26, 2019. In its response, the District stated that it does not automatically conduct a reevaluation just because a new student arrives at school 1, especially when "documentation is obtained that indicates a student has a current evaluation in place."

³⁵ Handwritten in the "team considerations" section under the "concerns of the parent."

The IEP stated that the Student would spend 365 minutes per week in school, 50.68% of this time would be in the general education setting, and the Student's placement was listed as "correctional facility." The IEP also stated that the Student "lives in a maximum security unit and is not permitted to participate in any extracurricular activities...[and that] Student is in a setting that does not provide PE instruction."

The prior written notice regarding the IEP meeting stated that Student 9 was "in need of special education services updated to reflect what [school 1] can offer him...[and that] his current IEP [was] incompatible with his current placement."

8. On June 6, 2018, the District entered the following progress reporting for the Student's goals:
 - Math: "ES"
 - Written Language: "ES"
 - Social/Emotional: "IP"
9. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes:
 - Period 1: RR English
 - Period 2: Independent Study
 - Period 3: RR Math
 - Period 4: No School
 - Period 5: Independent Study
 - Period 6: Transition
 - Period 7: Art/Graphic Design
10. Between October 11 and 18, 2018, according to the District's documentation, Student 9 attended six days of programming (which includes in-unit exercise). Beyond the recreation information, the District provided no information that the Student received specially designed instruction from a special education teacher, a general education teacher, or a counselor, designed, monitored, and evaluated by a special education teacher.

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student IEPs when student placements were changed. When a student transfers into the District, the District is required to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student's placement should be determined annually by a group of persons, including the parents, and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student's IEP, LRE (LRE includes a consideration of educating a student to the maximum extent appropriate in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student's educational program), a reevaluation must be completed. In determining whether a significant change in placement has occurred, the team should consider whether the student's educational program has been revised, whether the student's LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

Student 9's placement, prior to being transferred to school 1, was in a juvenile correctional setting and his June 2017 IEP stated that he would spend 84.51% of his time in the general education setting. The documentation in this complaint indicates that Student 9 was transferred to school 1 in July 2017, and it can be assumed (based on later documentation) that the District adopted the Student's June 2017 transfer IEP. However, there is no transfer review notice or prior written notice from July 2017 indicating the IEP was adopted and the District's documentation indicates it did not receive the Student's special education records until September 2017. However, the District's May 2018 prior written notice states that Student 9's previous IEP was incompatible with his current placement. It is therefore concerning that the District adopted a transfer IEP that it later found incompatible with the educational program it was able to offer.

In May 2018, the Student's District IEP team developed his new annual IEP, which stated that he would spend 365 minutes per week in school total, 50.68% of this time in the general education setting. The District maintains that because students are transferred to school 1, the District has no control over a student's placement. However, placement refers to more than just the fact that a student has been transferred to a school within a correctional setting. Placement decisions must also take into consideration the appropriate LRE for the student at school and whether a significant change in placement has occurred, which might necessitate a reevaluation. Here, the change in LRE from 84.51% to 50.68% (and the reduction in total number of minutes in school) may represent a significant change in placement and there is no indication that the Student's IEP team discussed this potential change, and considered whether a reevaluation was necessary. The District did not follow procedures when considering Student 9's placement in 2018, and OSPI finds a violation. The District will hold an IEP meeting to discuss whether Student 9's change in LRE represents a significant change in placement and whether a reevaluation is warranted.

Issue 2 – Reevaluation: The Complainant alleged that students are not reevaluated when necessary and that no reevaluation meetings are held. A district should consider conducting a reevaluation when the needs of a student require a reevaluation, when a parent or teacher requests a reevaluation, or when significant change in placement occurs. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. At minimum, a student should be reevaluated every three years (unless the parent and district agree that an evaluation is not necessary). A reevaluation must include a review of existing data, and if the student's IEP and other qualified professionals determine that no additional data are needed to determine whether the student continues to be eligible and/or to determine educational needs, no further assessments are required. The evaluation group's review of existing data does not need to be conducted through a meeting, but if a meeting is held, parents must be provided notice and afforded an opportunity to participate.

Student 9's most recent reevaluation occurred in January 2016 and his triennial reevaluation is due in January 2019. The District stated, in its response, that it does not automatically conduct a reevaluation when a new student arrives at school 1, especially when documentation is obtained that indicates the student has a current evaluation in place. Student 9's May 2018 IEP does

indicate that over the past year, Student 9 has not made much progress, and his teacher recommended that Student 9 receive increased services and a reevaluation. The surrogate parent who attended his IEP meeting also recommended that Student 9 have a "more complete educational program." Also, as discussed above, the change in LRE from 84.51% to 50.68% (and the reduction in total number of minutes in school) may represent a significant change in placement, which could necessitate a reevaluation. Based on this limited information about Student 9's progress and educational needs, OSPI finds that the District likely should have conducted a reevaluation sooner than the Student's scheduled triennial reevaluation in January 2019. OSPI finds a violation and the District will need to reevaluate Student 9.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student's IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student's academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

In May 2018, Student 9's District IEP team met and developed his IEP, which included a transition plan, measurable annual goals, and several accommodations and modifications. The May 2018 IEP provided the Student with specially designed instruction in math, written language, and behavior. Here, the District properly developed Student 9's IEP and OSPI finds no violation.

The May 2018 IEP noted that due to behavioral challenges, the Student had not been permitted to participate in the general education setting for any meaningful length of time this school year. So while the District properly developed Student 9's May 2018 IEP, the District should have held an IEP meeting prior to this date to address the Student's behavior challenges.

The District did not provide any documentation regarding the services Student 9 received prior to the development of his May 2018 IEP (between the start of the complaint timeline on October 20, 2017 and May 2018). The District did provide minimal progress reporting on the Student's May 2018 IEP goals, which stated that the Student made insufficient progress on his behavior goal and that math and written language were emerging skills. The Student is enrolled in a resource room math and English class for the 2018-2019 school year, where he is scheduled to receive specially designed instruction. However, the District provided no information that the Student received specially designed instruction from a counselor, a special education teacher, or a general education teacher, designed, monitored, and evaluated by a special education teacher. OSPI reminds the District that it bears more responsibility to verify the implementation of an IEP than

simply stating the IEP was implemented as written. Here the progress reporting and other documentation does not provide sufficient information on the Student's progress and OSPI finds that the District failed to substantiate it implemented Student 9's IEP, and OSPI finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. If a student is not making expected progress toward annual goals in the general education curriculum, a student's IEP must be reviewed and revised.

Here, the District entered progress reporting on June 6, 2018, which indicated that Student 10 was making "IP" (insufficient progress) on one goal and the other two goals were an "ES" (emerging skill) for the Student. The progress reporting contains no data or further information beyond the standard codes. Further, it appears the Student was not making progress as expected toward his IEP goals, and therefore, an IEP meeting should have been held to address the lack of progress. A violation is found, as OSPI finds that this progress report is insufficient.

Issue 6 – Surrogate Parent: The Complainant alleged that surrogate parents are not prepared to competently represent students. Surrogate parents are appointed by a district to act on behalf of a student, for a number of reasons, including when no parent can be identified or located. A surrogate parent may not be an employee of the district, OSPI, DSHS, or any other agency that is involved in the education or care of the student. The surrogate parent must have the knowledge and skills necessary to ensure adequate representation of the student in all matters related to the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE) to the student.

The District's documentation indicates that surrogate 1 has a background in special education (she worked as a paraeducator and previously worked at school 1, but is currently retired) and that surrogate 1 received training as to her role as a surrogate parent. Surrogate 1 met with Student 9 and attended his May 2018 IEP meeting (after multiple attempts, with no response, to contact Student 9's parent). The District's documentation indicated that surrogate 1 stated that Student 9 needed a more complete educational program, although it is not clear exactly how much the surrogate participated in the meeting. The District stated that its practice was to have the surrogate parent meet with the Student prior to the IEP meeting and that student records are available to surrogates upon request. The District has substantiated, that in this case, surrogate 1 competently represented Student 6.

Issue 7 – PE: The Complainant alleged that students receive credit for PE without meaningful attendance or instruction. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to students who do not have disabilities, unless the student needs specially designed physical education as described in the

student's IEP. Washington State graduation credit requirements require that students take a minimum of two credits in "health and fitness." While students eligible for special education services must be able to participate in PE, this does not necessarily mean that all students must take a PE class for the entirety of high school. However, Juvenile Rehabilitation Administration (JRA) policy requires that residents of correctional facilities get an hour of physical activity every day, and the policy states that PE may be counted as an hour of exercise as long as it is large muscle exercise. Youth placed on room confinement or in isolation must have access to one hour of exercise every twenty-four hours; although the required hour of activity can be denied if the resident is exhibiting behavior that may be harmful to self, staff, or others.

Student 9's May 2018 IEP stated that Student 9 "lives in a maximum security unit and is not permitted to participate in any extracurricular activities...[and that] Student is in a setting that does not provide PE instruction." Further, Student 9's 2018-2019 class schedule does not include a PE class. The documentation in this complaint indicates that between October 11 and 18, 2018 (a randomly selected week prior to the complaint being filed), Student 9 attended six days of programming (which includes in-unit exercise). OSPI does recommend that if the District includes statements such as this in a student's IEP, it also include a brief statement explaining how the student otherwise participates in PE/recreation. OSPI finds no violation related to Student 9's opportunity to participate in recreation.

Student 10

1. Student 10 is in eleventh grade and is eligible for special education services under the category specific learning disability.
2. Student 10's most recent reevaluation occurred in June 2017 while he was attended a school in another district in Washington. On June 6, 2017, the Student's reevaluation group met and determined that the Student continued to qualify for special education services under the category specific learning disability. The evaluation report recommended that the Student receive specially designed instruction in reading, study/organizational skills, and social/behavior.

The Complaint Timeline Began On October 20, 2017

3. On November 11, 2017, Student 10's IEP team, in another district, amended the Student's June 2017 IEP. The November 2017 IEP amendment included post-secondary goals and a course of study, and included an annual goal in each of the following areas: reading, study/organizational skills, and social/behavior (with progress reporting quarterly). The IEP included several accommodations and modifications, and supports for school personnel. Student 10's IEP provided him with the following specially designed instruction in the special education setting, provided by a special education teacher:
 - Reading: 278 minutes per week
 - Study/Organization: 278 minutes per week
 - Social/Behavior: 278 minutes per week

The IEP stated that the Student would spend 53.67% of his time in the general education setting.

4. According to the documentation in this complaint, while Student 10 was attending school in the other district, the following events occurred:
 - On December 4, 2017, the Student's IEP was amended to reflect a change in the Student's schedule to address the Student "struggling to attend [school] regularly."
 - At the beginning of January 2018, Student 10 began attending a district school located within the [county] juvenile detention center.
 - During May 2018, Student 10 began attending school 3, at another juvenile rehabilitation facility. The prior written notice stated that school 3 would be implementing the Student's transfer IEP and that the IEP would expire on "6/8/2018, very shortly after his start date. His current IEP will be implemented and approximated in the current setting until appropriate present levels can be determined, and delivered. All previously served areas will continue with services."
5. According to the District's documentation, Student 10's intake at school 1 occurred on June 29, 2018 and he began attending classes on the same day. The District requested and received the Student's special education records on July 5, 2018.
6. The District's prior written notices, dated July 16, 2018, stated that the District would continue "specially designed instruction for [Student 10] in accordance with his previous IEP."³⁶
7. On August 22, 2018, the District invited Student 10 and his parent to attend an IEP meeting to discuss the Student's current IEP, review his instructional needs, determine placement, discuss annual goal progress, and to consider the termination of services.
8. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes:
 - Period 1: Algebra/Geometry
 - Period 2: Transition
 - Period 3: RR-English
 - Period 4: No School
 - Period 5: Art/Graphic Design
 - Period 6: English
 - Period 7: PE/Fitness
9. On September 4, 2018, the Student met with his IEP team. The IEP noted that Student 10 had "only attending classes at [school 1] for a few weeks (approximately 15 school days) and he is doing pretty well so [far] in school." The September 2018 IEP included post-secondary goals, and an annual goal in each of the following areas: reading, social/emotional, and behavior (with progress reporting quarterly). The Student's IEP included several accommodations and modifications, and provided the following specially designed instruction:
 - Reading Comprehension: 50 minutes, 5 times per week (special education teacher, special education setting)

³⁶ Based on the documentation provided in this complaint, the "previous IEP" referenced is the Student's June 2017 IEP, which was amended in November and December 2017. The documentation indicates that the Student's annual IEP was due on June 8, 2018, but it is unclear whether or not a new annual IEP was developed in June 2018 while the Student was at school 3.

- Behavior: 60 minutes, 1 time per week (counselor, monitored by a special education teacher, general education setting)

The IEP stated that the Student would spend 75% of his time in the general education setting, listed his placement as "correctional facility," and stated that "PE instruction is not offered in [Student 10's] current living unit."

10. Between October 11 and 18, 2018, according to the District's documentation, Student 10 attended three days of recreation/programming (which includes in-unit exercise), one day of recreation, and four days of programming. Beyond information about recreation, the District provided no information that the Student received specially designed instruction from a counselor that was designed, monitored, and evaluated by a special education teacher, or instruction from a special education teacher.

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student IEPs when student placements were changed. When a student transfers into the District, the District is required to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student's placement should be determined annually by a group of persons, including the parents, and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student's IEP, LRE (LRE includes a consideration of educating a student to the maximum extent appropriate in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student's educational program), a reevaluation must be completed. In determining whether a significant change in placement has occurred, the team should consider whether the student's educational program has been revised, whether the student's LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

Student 10's November 2017 IEP, which amended his June 2017 IEP while he attended school in another district in Washington, stated that he would spend 53.67% of his time in the general education setting. According to the documentation, the Student's IEP was amended again in December 2017. On June 29, 2018, Student 10 was transferred to school 1 and the District prior written notice, dated July 16, 2018, stated that it would continue specially designed instruction in accordance with Student 10's previous IEP (which was now out-of-date). The District's school year began on August 24, 2018, and the District continued to implement the Student's out-of-date IEP. On September 4, 2018, Student 10's IEP team developed his new IEP, which stated that the Student would spend 75% of his time in the general education setting.

Districts should adopt or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. It is not clear why the District waited a little over a month to develop a new IEP after adopting an IEP that was out of date. Further, a district should have a compliant IEP in place at the start of the school year. While a month is not

necessarily an unreasonable period of time, it is not clear what or if Student 10 was receiving special education services during this period. Further, there is no indication that the Student's IEP team discussed the benefits and potential downsides to changing the Student's LRE. While it is not clear that the Student's placement was changed significantly, the District is still required to discuss the Student's placement, LRE, and the continuum of placement options. Here the District did not substantiate that it followed placement and transfer procedures, and OSPI finds a violation. Because it is not clear that a change in placement occurred, no student specific corrective actions are required, but the District will be required to do training on transfer and placement procedures, including the requirements for when IEPs must be in effect.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student's IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student's academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

On November 11, 2017, while Student 10 attended school in another district in Washington, his IEP team met and amended his June 2017 IEP, which included a transition plan, measurable annual goals, several accommodations, and supports for school personnel. The IEP provided Student 10 with specially designed instruction in reading, study/organization, and social/behavior. This IEP was amended again in December 2017. On June 29, 2018, the Student was transferred to school 1 and the District stated it would continue to implement Student 10's (now expired) transfer IEP. On September 4, 2018, Student 10's District IEP team met and developed his IEP, which included a transition plan, measurable annual goals, and several accommodations and modifications. The September 2018 IEP provided the Student with specially designed instruction in the areas of reading and behavior. There is no explanation in the documentation as to why the District continued to implement an expired IEP for approximately a month and a half after Student 10 was transferred to school 1. Further, there is no explanation as to why the Student's specially designed instruction in study/organization skills was not included on the September 2018 IEP (there was no reevaluation or documentation that indicated that the Student no longer needed instruction in this area). Based on these discrepancies and the lack of explanation, the District has not followed procedures to develop Student 10's IEP. OSPI finds a violation.

During the 2018-2019 school year, Student 10 was enrolled in a resource room English class. The District did not provide any progress reporting or other information regarding the implementation

of Student 10's IEP. The District provided no information that the Student received specially designed instruction from a counselor that was designed, monitored, and evaluated by a special education teacher, or instruction from a special education teacher. OSPI reminds the District that it bears more responsibility to verify the implementation of an IEP than simply stating the IEP was implemented as written. OSPI finds that the District failed to substantiate it implemented Student 9's IEP, and OSPI finds a violation.

Issue 7 – PE: The Complainant alleged that students receive credit for PE without meaningful attended or instruction. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to students who do not have disabilities, unless the student needs specially designed physical education as described in the student's IEP. Washington State graduation credit requirements require that students take a minimum of two credits in "health and fitness." While students eligible for special education services must be able to participate in PE, this does not necessarily mean that all students must take a PE class for the entirety of high school. However, Juvenile Rehabilitation Administration (JRA) policy requires that residents of correctional facilities get an hour of physical activity every day, and the policy states that PE may be counted as an hour of exercise as long as it is large muscle exercise. Youth placed on room confinement or in isolation must have access to one hour of exercise every twenty-four hours; although the required hour of activity can be denied if the resident is exhibiting behavior that may be harmful to self, staff, or others.

Student 10's 2018-2019 class schedule included PE/Fitness; however, the Student's September 2018 IEP stated that "PE instruction is not offered in [Student 10's] current living unit." OSPI does recommend that if the District include statements such as this in a student's IEP, it also include a brief statement explaining how the student otherwise participates in PE/recreation. The documentation in this complaint indicates that between October 11 and 18, 2018 (a randomly selected week prior to the complaint being filed), Student 10 attended three days of recreation/programming (programming includes in-unit exercise), one day of recreation, and four days of programming. OSPI finds no violation related to Student 10's opportunity to participate in recreation.

Student 11

1. Student 11 is an adult student who is eligible for special education services under the category specific learning disability.
2. Student 11's most recent reevaluation occurred in October 2013, when he attended school in a different district in Washington. The Student's reevaluation group found that Student 11 continued to be eligible for special education services under the category specific learning disability and recommended that he receive specially designed instruction in reading, math, written language, and behavior.
3. On January 18, 2017, the Student began attending school 1. According to the District's documentation, on January 25 and 30, 2017 and on February 1 and 2, 2017, the District

requested the Student's special education records. The District received the requested records on February 8, 2017.

4. On February 21, 2017, the District requested and Student 11's parent signed an agreement to waive the Student's triennial reevaluation (which would have been due in October 2016, prior to the Student's transfer to school 1). The "request for reevaluation waiver" noted that there was "sufficient available documentation to continue [Student 11's] eligibility for special education without doing a Reevaluation at this time. He continues to meet the eligibility for special education as an SLD student with service in reading comprehension, math calculations, math reasoning, written language and behavior skills." The District's prior written notice further stated that Student 11's "routine academic intake screening" for school 1 indicated "serious delays in reading...and math...School staff, [Student 11] and his mother both recognize his continued need for services."
5. On February 26, 2017, the District issued a prior written notice that stated that the District proposed "to continue specially designed instruction for [student 11] in accordance with his previous IEP."
6. On March 21, 2017, Student 11 met with his IEP team, including his mother, to develop his IEP. The IEP stated that Student 11 "attends classes in the general education setting for PE, Multimedia, and social students" and that his learning disability "negatively impacts his ability to access grade level materials involving math, reading, and written language." The IEP included a secondary transition plan, course of study, and an annual goal in each of the following areas: math, reading, written language, and behavior (with progress reporting quarterly). Student 11's March 2017 IEP provided him with the following specially designed instruction in the special education setting from a special education teacher:
 - Math: 45 minutes, 5 times per week
 - Behavior: 10 minutes, 5 times per week
 - Reading: 25 minutes, 5 times per week
 - Written Language: 30 minutes, 5 times per week

The IEP stated that the Student would spend 63.33% of his time in the general education setting, and listed his placement as a "correctional facility."

7. On April 7 and June 2, 2017, the District entered the following progress reporting for the Student's March 21, 2017 IEP goals:
 - Math: "ES" and "ES"
 - Behavior: "SP" and "ES"
 - Reading: "SP" and "ES"
 - Written Language: "SP" and "IP"

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8. At some point between June 2017 and March 2018, Student 11 was transferred out of school 1 and into another district in Washington.

9. On March 27, 2018, the Student was attending school at a "community facility" in another district that helps youth transition back into the community. While there, Student 11's IEP team developed his annual IEP. The IEP continued to include a secondary transition plan and course of study. The March 2018 IEP included updated annual goals in the areas of math, reading, written language, and social/emotional (based on grade level standards), with written progress reporting required at the semester. Student 11's IEP included several accommodations and stated that the Student would take the State assessments with accommodations. The IEP provided the Student with the following specially designed instruction in the general education setting, provided by a general education teacher, and monitored by a special education teacher:
- Math: 30 minutes, 5 times per week
 - Behavior: 55 minutes, 5 times per week
 - Reading: 30 minutes, 5 times per week
 - Written Language: 30 minutes, 5 times per week

The IEP stated that the Student would spend 100% of his time in the general education setting, and listed his placement as a "correctional facility."

10. Sometime prior to May 7, 2018, Student 11 began attending school 1 again. The District's prior written notice stated that it would continue to provide "specially designed instruction for [Student 11] in accordance with his current IEP."
11. The District provided no information that the Student received specially designed instruction from a general education teacher, designed, monitored, and evaluated by a special education teacher.
12. On June 6, 2018, the District entered the following progress reporting for the Student's March 2018 IEP goals:
- Math: "SP"
 - Behavior: "SP"
 - Reading: "SP"
 - Written Language: "SP"
13. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes:
- | | |
|--------------------------------------|-------------------------------|
| • Period 1: Social Studies | • Period 5: TL Math |
| • Period 2: Washington State History | • Period 6: PE/Fitness |
| • Period 3: RR English | • Period 7: Independent Study |
| • Period 4: No School | |

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student IEPs when student placements were changed. When a student transfers into the District, the District is required to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student's placement should be determined annually by a group of persons, including the parents,

and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student's IEP, LRE (LRE includes a consideration of educating a student to the maximum extent appropriate in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student's educational program), a reevaluation must be completed. In determining whether a significant change in placement has occurred, the team should consider whether the student's educational program has been revised, whether the student's LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

On March 21, 2017, while attending school 1, Student 11's IEP team developed his IEP, which stated that he would spend 63.33% of his time in the general education setting. In March 2018, the Student was attending a school in another school district in Washington and his March 2018 IEP stated he would spend 100% of his time in the general education setting. Sometime prior to May 7, 2018, the Student was transferred back to school 1 and the District's prior written notice stated that it would continue to provide specially designed instruction in accordance with his current (March 2018) IEP. The District maintains that because students are transferred to school 1, the District has no control over a student's placement. However, placement refers to more than just the fact that a student has been transferred to a school within a correctional setting. Placement decisions must also take into consideration the appropriate LRE for the student at school 1 and whether a significant change in placement has occurred, which might necessitate a reevaluation. Here, the change in LRE from 63.33% to 100% may represent a significant change in placement and there is no indication that the Student's IEP team discussed this potential change in placement when reviewing his transfer IEP, and considered whether a reevaluation was necessary. OSPI finds a violation based on the fact that the District failed to follow placement procedures. The District will hold an IEP meeting for Student 11 to determine whether this change in placement necessitates a reevaluation.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student's IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student's academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

In March 2018, while Student 11 attended school in another district in Washington, the Student's IEP team developed his annual IEP, which included a transition plan, measurable annual goals, and several accommodations. The IEP stated that the Student would take State assessments with accommodations. The March 2018 IEP provided Student 11 with specially designed instruction in math, behavior, reading, and written language. Sometime in May 2018, Student 11 began attending school 1. The District provided minimal progress reporting on June 6, 2018 regarding the Student's progress toward his March 2018 IEP goals, which indicated that the Student was making sufficient progress on his goals. The District did not provide any other specific information regarding the implementation of Student 11's IEP. The District provided no information that the Student received specially designed instruction from a general education teacher, designed, monitored, and evaluated by a special education teacher. OSPI reminds the District that it bears more responsibility to verify the implementation of an IEP than simply stating the IEP was implemented as written. OSPI finds that the District failed to substantiate it implemented Student 11's IEP, and OSPI finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the student to achieve those goals.

Here, the District entered progress reporting on June 6, 2018, which indicated that Student 11 was making "SP" (sufficient progress) on his goals. While the Student may have been making sufficient progress on most of his goals, the existing progress reporting does not provide a parent/adult student with enough information to be informed of the extent of student progress and the extent to which the student will be able to achieve the IEP goals. A violation is found, as OSPI finds that this progress report is insufficient.

Student 12

1. Student 12 is eligible for special education services under the category other health impairment.
2. Student 12's most recent reevaluation was conducted in December 2016, while he attended school in another school district in Washington. The reevaluation report stated that the Student continued to be eligible for special education services and recommended that the Student receive specially designed instruction in math, social/emotional/behavioral, and written expression. The reevaluation included input from the Student about his future goals and plans, disability, and education.

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3. On January 17, 2018, while Student 12 was attending school in another district, his IEP was developed. The January 2018 IEP included a post-secondary goals and a course of study, and included annual goals in the areas of math, written language, and social/emotional. The IEP also included accommodations and modifications, and stated that the Student would participate in State assessments with accommodations. The IEP provided Student 12 with the following specially designed instruction in the special education setting, provided by a special education teacher:
 - Math: 60 minutes, 5 times per week
 - Social Emotional/Behavioral: 30 minutes, 5 times per week
 - Written Language: 30 minutes, 5 times per week

The IEP stated that the Student would spend 66% of his time in the general education setting, and provided the Student with "tutoring...after school on Thursdays" provided by a paraeducator for 90 minutes as a supplementary aid and service.
4. According to the District's documentation, the Student's intake to school 1 occurred on June 7, 2018 and the Student began attending classes the next day. On June 14, 2018, the District requested and received the Student's special education records.
5. On July 17, 2018, the District reviewed the Student's previous IEP and the District's prior written notice stated that the District would continue "specially designed instruction for [Student 12] in accordance with his current IEP." The District stated, in its response, that the Student's previous IEP was not "linked in our system" and that the Student "does not have a progress report for summer yet."
6. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following:
 - Period 1: RR Math
 - Period 2: Independent Study
 - Period 3: Social Studies
 - Period 4: No School
 - Period 5: PE/Fitness
 - Period 6: English
 - Period 6: Transition
 - Period 7: RR English
7. Between October 11 and 18, 2018, according to the District's documentation, Student 12 attended three days of recreation/programming (which includes in-unit exercise), one day of recreation, and four days of programming.

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student IEPs when student placements were changed. When a student transfers into the District, the District is required to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student's placement should be determined annually by a group of persons, including the parents, and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student's IEP, least restrictive environment (LRE) (LRE

includes a consideration of educating a student to the maximum extent appropriate in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student's educational program), a reevaluation must be completed. In determining whether a significant change in placement has occurred, the team should consider whether the student's educational program has been revised, whether the student's LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

In January 2018, while attending school in another Washington district, Student 12's IEP team developed his IEP, which stated that the Student would spend 66% of his time in the general education setting. On June 8, 2018, Student 12 began attending school 1. The District requested and received his special education records on June 14, 2018. On July 17, 2018, the District adopted his transfer IEP. There is no indication that his placement was changed; however, there is also no explanation for why it took a month for the District to review and adopt the Student's transfer IEP. In this case though, the District had an IEP in place for the Student at the start for the 2018-2019 school year. In the case of Student 12, the District has substantiated that it followed procedures for determining the Student's placement. OSPI finds no violation.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student's IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student's academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

In January 2018, while Student 12 attended school in another district in Washington, the Student's IEP team developed his annual IEP, which included a transition plan, measurable annual goals, and several accommodations and modifications. The IEP stated that the Student would take State assessments with accommodations. The January 2018 IEP provided Student 12 with specially designed instruction in math, social/emotional behavioral and written language. In mid-summer 2018, Student 12 was transferred to school 1. The District did not provide progress reporting for the summer because, according to the District, the Student's IEP was not yet "linked" in school 1's system. The Student is enrolled in a resource room math and English class for the 2018-2019 school year, where he is scheduled to get his specially designed instruction. The District did not provide any progress reporting for the fall of 2018 or any other specific information about Student

12's IEP being implemented. Further, the transfer IEP adopted by the District included after school tutoring provided by a paraeducator as a supplementary aid and service; there is no indication that this was being provided at school 1. OSPI reminds the District that it bears more responsibility to verify the implementation of an IEP than simply stating the IEP was implemented as written. OSPI finds that the District failed to substantiate it implemented Student 12's IEP, and OSPI finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the student to achieve those goals.

Here, the District's documentation did not include any progress reporting and according to the documentation, Student 12 only began attending school 1 in mid-summer 2018. The District stated that it provides progress reporting at the end of each quarter. When this complaint was filed, the quarter had not yet ended and therefore, the District was not yet obligated to provide progress reporting for Student 12. OSPI finds no violation.

Issue 7 – PE: The Complainant alleged that students receive credit for PE without meaningful attended or instruction. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to students who do not have disabilities, unless the student needs specially designed physical education as described in the student's IEP. Washington State graduation credit requirements require that students take a minimum of two credits in "health and fitness." While students eligible for special education services must be able to participate in PE, this does not necessarily mean that all students must take a PE class for the entirety of high school. However, Juvenile Rehabilitation Administration (JRA) policy requires that residents of correctional facilities get an hour of physical activity every day, and the policy states that PE may be counted as an hour of exercise as long as it is large muscle exercise. Youth placed on room confinement or in isolation must have access to one hour of exercise every twenty-four hours; although the required hour of activity can be denied if the resident is exhibiting behavior that may be harmful to self, staff, or others.

Student 12's 2018-2019 class schedule included PE/Fitness and the documentation in this complaint indicates that between October 11 and 18, 2018 (a randomly selected week prior to the complaint being filed), Student 10 attended three days of recreation/programming (programming includes in-unit exercise), one day of recreation, and four days of programming. OSPI finds no violation related to Student 12's opportunity to participate in recreation.

Student 13

1. Student 13 is in twelfth grade and is eligible for special education services under the category other health impairment.

The Complaint Timeline Began On October 20, 2017

2. On April 12, 2018, the District reviewed Student 13's transfer IEP after he was transferred to school 1 from another school district in Washington. The District's prior written notice stated that it proposed to "continue specially designed instruction for [Student 13] in accordance with his previous IEP."
3. On May 22, 2018, Student 13 met with his IEP team (while attending school in another district), including his parent who participated by phone, and developed his IEP. The IEP included an annual goal in each of the areas of reading, written language, and social emotional (with progress reporting quarterly), and included several accommodations and modifications. The May 2018 IEP provided Student 13 with the following specially designed instruction:
 - Reading Comprehension: 25 minutes, 5 times per week (general education teacher, special education setting)
 - Written Language: 25 minutes, 5 times per week (special education teacher, special education setting)
 - Behavior: 60 minutes, 1 time per week (counselor, general education setting)

The IEP stated that the Student would spend 80% of his time in the general education setting, and listed his placement as "correctional facility."

4. According to the District's documentation, on June 7, 2018, the Student was transferred to school 1 and on June 8, he began attending classes. On June 14, 2018, the District requested and received the Student's special education records.
5. On June 6, 2018, the District entered the following progress reporting for Student 13's May 2018 IEP goals:
 - Reading: "ES"
 - Written Language: "ES"
 - Social Emotional: "SP"
6. The District provided no information that the Student received specially designed instruction from a counselor or a general education teacher, designed, monitored, and evaluated by a special education teacher, or instruction from a special education teacher.
7. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes:
 - Period 1: Algebra/Geometry
 - Period 2: Transition
 - Period 3: RR English
 - Period 4: No School
 - Period 5: Art/Graphic Design
 - Period 6: Independent Study
 - Period 7: PE/Fitness

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals.

The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. If a student is not making expected progress toward annual goals in the general education curriculum, a student's IEP must be reviewed and revised.

Here, the District entered progress reporting on June 6, 2018, which indicated that Student 13 was making "SP" (sufficient progress) on one goal and that the other two goals were "ES" (emerging skills) for the Student. It is unclear how the District entered progress reporting for this Student on June 6, 2018, given that according to the District's documentation, he did not begin attending classes until two days later on June 8, 2018. While the Student may have been making sufficient progress on one goal, the existing progress reporting does not provide a parent/adult student with enough information to really be informed of student progress and the extent to which the student will be able to achieve the IEP goals. The progress reporting contains no data or further information beyond the standard codes. A violation is found, as OSPI finds that this progress report is insufficient.

Student 14

1. Student 14 is an adult student and is eligible for special education services under the category emotional behavioral disability.
2. Student 14's most recent reevaluation occurred in April 2017, while he attended school 1.
3. On April 18, 2017, the Student's evaluation group met and determined that Student 14 continued to be eligible for special education services under the category emotional behavioral disability and recommended that the Student receive specially designed instruction in reading comprehension, written language, math calculation, math reasoning, and behavior. The evaluation group determined, based on the assessments conducted, that the Student's IEP team should add goals in reading comprehension and written language, which were areas that were absent from his previous evaluation in 2014.
4. On May 24, 2017, Student 14 met with his IEP team, including the parent by phone, and developed the Student's IEP. The IEP included a secondary transition plan and an annual goal in each of the following areas: behavior, math calculation, math reasoning, reading comprehension, and written language (with progress reporting quarterly). The IEP included preferential seating as an accommodation. And, the May 2017 IEP provided the Student with the following specially designed instruction in the general education setting, provided by a general education teacher and monitored by a special education teacher:
 - Behavior: 5 minutes, 5 times per week
 - Math Calculation: 20 minutes, 5 times per week
 - Math Reasoning: 25 minutes, 5 times per week
 - Reading Comprehension: 25 minutes, 5 times per week
 - Written Language: 25 minutes, 5 times per week

The IEP stated that Student 14 would spend 100% of his time in the general education setting, and listed his placement as "correctional facility."

5. On June 2, 2017, the District entered the following progress reporting for Student 14's goals:
 - Behavior: "SP"
 - Math Calculation: "SP"
 - Math Reasoning: "SP"
 - Reading Comprehension: "SP"
 - Written Language: "SP"
6. The District provided no information that the Student received specially designed instruction from a counselor or a general education teacher, designed, monitored, and evaluated by a special education teacher as required by his May 2017 IEP.

The Complaint Timeline Began On October 20, 2017

7. On May 22, 2018, Student 14 met with his IEP team, including surrogate parent 1, and developed his annual IEP. The IEP noted that the Student had completed all of his general education classes for graduation. The May 2018 IEP included post-secondary goals and stated under course of study that May 2018 was the Student's "exit month."³⁷ The IEP included a measurable annual goal in each of the following areas: behavior (this goal built on the May 2017 goal, but required the Student to increase his skill), math calculation (this goal built on the May 2017 goal, but required the Student to increase his skill), math reasoning (same as the May 2017 goal), reading comprehension (similar to the May 2017 goal, but added a grade level for the reading passage), and written language (built on the May 2017 goal, but required the Student to increase his skill). Under report of student progress, the IEP stated, "other: never." The IEP included several accommodations and provided the following specially designed instruction in the general education setting, from May 23, 2018 until June 30, 2018:
 - Behavior: 60 minutes, 1 time per week (counselor)
 - Math Calculation: 25 minutes, 5 times per week (general education teacher, monitored by special education teacher)
 - Math Reasoning: 25 minutes, 5 times per week (general education teacher, monitored by special education teacher)

The IEP stated that the Student would spend 100% in the general education setting, and listed his placement "correctional facility."

The IEP also provided the following specially designed instruction in the special education setting, from May 23, 2018 until June 30, 2018:

- Reading Comprehension: 25 minutes, 5 times per week (special education teacher)
- Written Language: 25 minutes, 5 times per week (special education teacher)

The IEP stated that the Student would spend 66.67% of his time in the general education setting, and stated that the Student's placement was a "correctional facility."

³⁷ No documentation was provided that indicates that the Student was exited or transferred.

8. According to the District's prior written notice, the Student was "in need of special education services until his graduation this summer" and that it does not "typically graduate students until nearer their departure date."
9. On June 6, 2018, the District entered the following progress reporting for Student 14's goals:
 - Behavior: "SP"
 - Math Calculation: "SP"
 - Math Reasoning: "SP"
 - Reading Comprehension: "SP"
 - Written Language: "SP"
10. School 1's 2018-2019 school year began on August 24, 2018 and the Student was enrolled in the following classes during the 2018-2019 school year:
 - Period 1: TL Math
 - Period 2: PE/Fitness
 - Period 3: RR English
 - Period 4: No School
 - Period 5: RR English
 - Period 6: Independent Study
 - Period 7: Independent Study
11. The District provided no information that the Student received specially designed instruction from a counselor or a general education teacher, designed, monitored, and evaluated by a special education teacher, or instruction from a special education teacher as called for in the Student's May 2018 IEP.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student's IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student's academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

In May 2017, Student 14's District IEP team developed his annual IEP, which included a transition plan, measurable annual goals, and preferential seating as an accommodation. The May 2017 IEP provided the Student with specially designed instruction in behavior, math calculation, math reasoning, reading comprehension, and written language. In May 2018, the Student's IEP team met and developed his new annual IEP, which included a transition plan and measurable annual goals. OSPI notes that Student 14's May 2018 IEP goals built on his May 2017 goals, and required an increase in skill level, which indicates that the Student was making progress on his goals and receiving instruction. The IEP stated that the Student would not be provided with progress

reporting because May 2018 was the Student's "exit month." The May 2018 IEP also included several accommodations and provided specially designed instruction in behavior, math calculation, math reasoning, reading comprehension, and written language. The District did provide progress reporting in June 2018, which stated that the Student was making "SP" (sufficient progress) in all of his goals. For the 2018-2019 school year, Student 14 was enrolled in two periods of resource room English and Title math, where he was scheduled to receive his specially designed instruction.

OSPI reminds the District that the Student's IEP should not state that progress reporting is never provided, as the IEP was still being implemented and therefore progress monitoring and reporting should still be occurring. However, besides this error, the IEP was properly developed. The District did not provide specific information, beyond the progress reporting, that the Student's IEP was being implemented, including specifically that the accommodations were being provided. Both the May 2017 and May 2018 IEPs stated that specially designed instruction would be provided by a general education teacher. The District provided no information that the Student received specially designed instruction from a counselor or a general education teacher, designed, monitored, and evaluated by a special education teacher. OSPI finds that the District failed to substantiate it implemented Student 14's IEP, and OSPI finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the student to achieve those goals.

Here, the District's documentation does indicate that Student 14's IEP team discussed his progress at the May 2018 IEP meeting because most of his goals built on the May 2017 IEP's goals and required an increased level of skill, indicating that the Student made progress on most of his 2017 IEP goals. However, the IEP also stated that progress reporting would not be provided going forwarded (presumably because the IEP also said that May 2018 was the Student's "exit" month). Despite this, the District entered progress reporting on June 6, 2018, which stated that Student 14 made "SP" (sufficient progress) on all of his May 2018 IEP annual goals. The progress reporting contains no data or further information beyond the standard codes. While the Student may have been making sufficient progress on most of his goals, the existing progress reporting does not provide a parent/adult student with enough information to be informed of the extent of student progress and the extent to which the student will be able to achieve the IEP goals. A violation is found, as OSPI finds that this progress report is insufficient.

Student 15

1. During the 2017-2018 school year, Student 15 was in the eleventh grade and eligible for special education services under the category other health impairment.

The Complaint Timeline Began On October 20, 2017

2. Student 15 was transferred to school 1 from a different Washington school district on March 21, 2018.
3. According to the District's documentation, on April 9, 10, 11, and 13, 2018, the District requested the Student's special education records. The District received the requested records on April 16, 2018.
4. On April 17, 2018, the District issued a prior written notice, "proposing to continue specially designed instruction for [Student 15] in accordance with his previous IEP." This notice stated that Student 15 "needs specially designed instruction in reading, written language, math, and behavior skills to be successful in the general education curriculum." The District's response also noted that Student 15 entered school 1 with an "IEP that is not part of our IEP Online system" and therefore school 1 did not "have a way to report progress yet."
5. On May 1, 2018, Student 15's parent provided consent for the District to reevaluate Student 15. The 'Reevaluation Notification/Consent' form stated that Student 15 would be reevaluated in the following areas: cognitive, review of existing data, social/emotional, academic, review of relevant juvenile rehabilitation records including health center, and transition/vocational.
6. On June 5, 2018, the District completed a reevaluation of Student 15. The reevaluation included assessments in the areas of: medical-physical, social/emotional, cognitive, academic, and age appropriate transition assessment. The June 2018 reevaluation report was signed by the school psychologist, the general education teacher, the special education teacher (Complainant³⁸), and the dean of students. Student 15's reevaluation group found that Student 15 continued to be eligible for special education services, now under the category of emotional behavioral disability. Student 15's reevaluation team recommended that he receive specially designed instruction in the following areas: reading comprehension, math calculation, math reasoning, written language, and behavior.
7. On June 5, 2018, the District issued the parent of Student 15 a prior written notice, "proposing to change [Student 15's] eligibility category from 'other health impairment (ADHD)' to 'emotional/behavioral disability.'"
8. On June 28, 2018, Student 15's IEP team, including the parent by phone, developed a new IEP for the Student. The June 2018 IEP included a secondary transition plan, and annual goals in the areas of reading comprehension, reading fluency, written language, math, and

³⁸ In his reply, the Complainant stated that he was "compelled" to sign the reevaluation report. In an email to the principal, the Complainant stated that on June 5, 2018, he "participated in what I thought was going to be a reevaluation meeting. It ended up being a meeting between our school psychologist and myself about a student's reevaluation. After she went through her findings with me, I was asked to sign the otherwise un-signed document. I hesitated and it was explained to me that she preferred to meet with this student alone due to certain sensitive issues...Though I understand her explanation, I am troubled by what appears to be the discontinuation of reevaluation meetings at [school 1]."

social/emotional. The June 2018 IEP provided the Student with the following specially designed instruction in a special education setting to be provided by a special education teacher:

- Written language: 25 minutes, 5 times a week
- Math reasoning: 25 minutes, 5 times a week

The June 2018 IEP provided the Student with the following specially designed instruction in a general education setting, monitored by a special education teacher:

- Behavior: 60 minutes, 1 time per week (counselor)
- Math calculations: 25 minutes, 5 times per week (general education teacher)
- Reading comprehension: 25 minutes, 5 times per week (special education teacher)

The June 2018 IEP provided the Student with several accommodations and modifications.

9. According to the District's response, Student 15 left school 1 during the summer of 2018 and therefore, there was no summer progress reporting.

Issue 2 – Reevaluation: The Complainant alleged that students are not reevaluated when necessary and that no reevaluation meetings are held. A district should consider conducting a reevaluation when the needs of a student require a reevaluation, when a parent or teacher requests a reevaluation, or when significant change in placement occurs. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. At minimum, a student should be reevaluated every three years (unless the parent and district agree that an evaluation is not necessary). A reevaluation must include a review of existing data, and if the student's IEP and other qualified professionals determine that no additional data are needed to determine whether the student continues to be eligible and/or to determine educational needs, no further assessments are required. The evaluation group's review of existing data does not need to be conducted through a meeting, but if a meeting is held, parents/adult student must be provided notice and afforded an opportunity to participate.

On May 1, 2018, Student 15's parent provided consent for the District to reevaluate the Student in the following: cognitive, review of existing data, social/emotional, academic, review of juvenile rehabilitation records, review of health information, and transition/vocational. On June 5, 2018, the reevaluation group (school psychologist, general education teacher, special education teacher/Complainant, and dean of students) met and determined that Student 15 continued to be eligible for special education services and recommended that he receive specially designed instruction in reading, math, written language, and behavior. The evaluation group changed the Student's eligibility category from other health impairment to emotional behavioral disability.

The Complainant did not raise any specific allegations regarding Student 15's reevaluation, beyond stating that generally reevaluation meetings did not occur. Here, the evaluation report indicates that the Student's reevaluation group did meet. If the Complainant disagreed with the results of the reevaluation, there is a space to note disagreement on the evaluation report. Here,

the District properly reevaluated the Student, considered multiple sources of information, and held a reevaluation meeting. OSPI finds that the District followed reevaluation procedures and that there is no violation.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student's IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student's academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

On March 21, 2018, Student 15 was transferred into school 1 and the District proposed to continue implementing the Student's previous IEP, which was not included in this complaint but provided specially designed instruction in reading, written language, math, and behavior (according to the District's prior written notice). After the Student was reevaluated, in June 2018, the District developed the Student's new IEP. The June 2018 IEP included a transition plan, measurable annual goals, and several accommodations and modifications. The IEP provided specially designed instruction in written language, math, behavior, and reading. The specially designed instruction was to be provided by a special education teacher, counselor, and general education teacher. The District did not provide any progress reporting or documentation regarding the implementation of the Student's IEP. The District provided no information that the Student received specially designed instruction from a counselor or a general education teacher, designed, monitored, and evaluated by a special education teacher, or instruction from a special education teacher. OSPI reminds the District that it bears more responsibility to verify the implementation of an IEP than simply stating the IEP was implemented as written. OSPI finds that the District failed to substantiate it implemented Student 14's IEP, and OSPI finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals.

Here, the District provided no progress reporting for Student 15. According to the District's documentation, the Student was transferred into school 1 in March 2018 and left during the

summer of 2018. While this is a short period of time, if the Student was attending class, the District should have been monitoring his progress and able to provide some amount of information about Student 15's progress toward his annual goals, even if no formal progress reports were entered. A violation is found, as OSPI finds that the progress information for this Student is insufficient.

Issue 7 – PE: The Complainant alleged that students receive credit for PE without meaningful attended or instruction. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to students who do not have disabilities, unless the student needs specially designed physical education as described in the student's IEP. Washington State graduation credit requirements require that students take a minimum of two credits in "health and fitness." While students eligible for special education services must be able to participate in PE, this does not necessarily mean that all students must take a PE class for the entirety of high school. However, Juvenile Rehabilitation Administration (JRA) policy requires that residents of correctional facilities get an hour of physical activity every day, and the policy states that PE may be counted as an hour of exercise as long as it is large muscle exercise. Youth placed on room confinement or in isolation must have access to one hour of exercise every twenty-four hours; although the required hour of activity can be denied if the resident is exhibiting behavior that may be harmful to self, staff, or others.

The District did not provide a class schedule or any specific information about Student 15's access to PE/recreation. OSPI reminds the District that it bears more responsibility to verify that students actually received PE instruction or recreation time beyond simply stating that all students receive an hour of recreation per day. While the importance of PE at school 1 is clear and there is agreement by all parties that students on open campus did generally have regular access to PE, here, the District did not provide sufficient information that Student 15 was afforded the opportunity to participate in PE. OSPI finds a violation.

Student 16

1. Student 16 is an adult student and is eligible for special education services under the category emotional behavioral disability.
2. Student 16's most recent reevaluation occurred in November 2015, while the Student attended school in another district in Washington. The November 2015 evaluation included assessments in the areas of: medical-physical, social/emotional, academic, behavior, cognitive, pre-vocational/vocational career-technical, and student observation. On November 24, 2015, Student 16's reevaluation group met and determined that the Student continued to be eligible for special education under the category of emotional behavioral disability. Student 16's reevaluation team recommended that he receive specially designed instruction in the following areas: social/emotional, reading comprehension, math computation, math problem-solving. It also recommended that he receive numerous accommodations and modifications.
3. Student 16 was transferred into school 1 from a different Washington school district on or about January 22, 2017. On January 22, 2017, the District issued a prior written notice, "proposing to continue specially designed instruction for [Student 16] in accordance with his

previous IEP.” This prior written notice stated that Student 16 “needs specially designed instruction in reading, written language, math, and behavior skills to be successful in the general education curriculum.”

4. On February 16, 2017, Student 16’s IEP team developed a new IEP for the Student. The February 2017 IEP included post-secondary goals, a course of study, and annual goals in the areas of math computation, social/emotional, and math problem-solving. The February 2017 IEP provided the Student with the following specially designed instruction in a special education setting, by a special education teacher:
 - Reading comprehension: 45 minutes, 5 times per week
 - Social/emotional: 10 minutes, 5 times per week
 - Math problem-solving: 28 minutes, 5 times per week
 - Math computation: 27 minutes, 5 times per week

The February 2017 IEP provided the Student with fourteen modifications. The IEP stated that the Student would spend 63.33% of his time in the general education setting, and listed his placement as “correctional facility.”

The Complaint Timeline Began On October 20, 2017

5. On March 9, 2018, the parent was invited to an IEP meeting scheduled for March 27, 2018 to develop a new IEP for Student 16.³⁹
6. On March 27, 2018, the parent provided written consent for Student 16 to be reevaluated.
7. Also on March 27, 2018, Student 16’s IEP team developed a new IEP for the Student. The March 2018 IEP continued to include a secondary transition plan (with updated post-secondary goals), and included annual goals in the areas of social/emotional, math problem-solving, math computation, and reading comprehension. The March 2018 IEP provided the Student with the following specially designed instruction in a special education setting from a special education teacher:
 - Reading comprehension: 50 minutes 5 times a week
 - Social/emotional: 60 minutes 1 time a week
 - Math problem-solving: 25 minutes 5 times a week
 - Math computation: 25 minutes 5 times a week

The March 2018 IEP provided the Student with several accommodations and modifications. The IEP stated that the Student would spend 60% of his time in the general education setting, and listed his placement as “correctional facility.”

8. On March 30, 2018, the District entered the following progress reporting on Student 16’s annual goals:
 - Reading comprehension: “SP”

³⁹ OSPI notes that the District did not develop the Student’s annual IEP on time (by February 16, 2017) and there is not documentation that explains the delay.

- Social/emotional: "SP"
- Math problem-solving: [blank]
- Math computation: "SP"

9. According to the District's documentation, Student 16 was transferred out of the District to school 3, and thus, the District had not completed the reevaluation that was initiated in March 2018. In an email from the school psychologist to staff at school 3, the school psychologist stated that Student 16 "recently had an IEP and the special ed teacher reported that he probably no longer needed a reading goal but likely did need a written language goal." The email went on to state that the Student was "initially evaluated he was found to need a written language goal along with a math and behavior goal." But on the Student's "most recent reevaluation the written language goal was dropped and a reading goal was added. At this time, his teacher was recommended [sic] we reevaluate again to determine the appropriate goal areas. We obtained consent but testing had not begun when he was transferred."

Issue 2 – Reevaluation: The Complainant alleged that students are not reevaluated when necessary and that no reevaluation meetings are held. A district should consider conducting a reevaluation when the needs of a student require a reevaluation, when a parent or teacher requests a reevaluation, or when significant change in placement occurs. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. At minimum, a student should be reevaluated every three years (unless the parent and district agree that an evaluation is not necessary). A reevaluation must include a review of existing data, and if the student's IEP and other qualified professionals determine that no additional data are needed to determine whether the student continues to be eligible and/or to determine educational needs, no further assessments are required. The evaluation group's review of existing data does not need to be conducted through a meeting, but if a meeting is held, parents/adult student must be provided notice and afforded an opportunity to participate.

Student 16's most recent evaluation was in November 2015 and his triennial reevaluation was due in November 2018. On March 27, 2018, Student 16's parent provided written consent for Student 16 to be reevaluated. According to the District's documentation, a reevaluation was initiated in March 2018; however, the Student was transferred out of the District to school 3 (at a different juvenile correction setting) prior to the District's completion of the reevaluation. The District provided school 3 with information on the status of the reevaluation. OSPI finds that the District followed procedures to initiate a reevaluation (obtaining parent consent and beginning to review existing data). The Student's transfer was outside the District's control, and the District is not at fault for not completing the reevaluation. OSPI finds no violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information

to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals.

Here, the District entered progress reporting on March 30, 2018, which indicated that Student 16 was making "SP" sufficient progress on three of four goals. No code was entered for the fourth goal and the progress reporting contains no data or further information beyond the standard codes. While the Student may have been making sufficient progress on most of his goals, the existing progress reporting does not provide a parent/adult student with enough information to be informed of student progress and the extent to which the student will be able to achieve the IEP goals. For example, it was not clear what, if any, progress the Student was making on one goal because nothing was entered. A violation is found, as OSPI finds that this progress report is insufficient.

Student 17

1. Student 17 is an adult student and is eligible for special education services under the category specific learning disability.
2. Student 17's most recent evaluation was in June 2012, which was his initial evaluation, and was conducted in another school district in Washington. The Student's evaluation group found him eligible for special education under the category specific learning disability and recommended that he receive specially designed instruction in the areas of math, reading, written language, social/behavior, and study/organizational skills. The evaluation report also recommended that the Student receive related services in transportation, and supplementary aids and services in communication.
3. The Student's next triennial reevaluation was due in June 2015. While the Student attended school in the other district in Washington, the district requested and the Student's caseworker granted consent to waive the Student's reevaluation on October 17, 2016. The "request for reevaluation waiver" stated that the district believed the Student needed to regain "the trust of the educational system" and once that occurred, the district "recommended a comprehensive reevaluation [be] completed."
4. On October 18, 2016, the Student's IEP team developed his IEP while he attended an alternative school in another district in Washington. His IEP included post-secondary goals and a course of study, and included annual goals in the following areas: math, reading, written language, study/organizational skills, and social/behavioral (with quarterly progress reporting). The October 2016 IEP included accommodations and modifications, and stated that the Student would participate in State and district assessments with accommodations. The IEP provided Student 17 with the following specially designed instruction in the general education setting, provided by a general education teacher, monitored by a special education teacher:
 - Math: 20 minutes, 4 times per week
 - Reading: 20 minutes, 4 times per week
 - Written Language: 20 minutes, 4 times per week

- Social/Behavior: 10 minutes, 3 times per week
- Study/Organization: 10 minutes, 3 times per week

The IEP stated that the Student would spend 100% of his time in the general education setting.

5. According to the District's documentation, on October 19 and 20, 2017, the District requested the Student's special education records. On October 24, 2017, the District received the requested records.

The Complaint Timeline Began On October 20, 2017

6. According to the District's prior written notice, dated November 1, the District stated it would continue to provide "specially designed instruction for [Student 17] in accordance with his previous IEP."
7. On November 28, 2017, the Student met with his IEP team, including surrogate 1, and developed his IEP. The IEP noted that the Student attended the IEP meeting, but refused to sign the IEP, and that the Student "needs a re-evaluation as soon as possible. [School 1] is [Student 17's] fifth placement in the past 18 months. All institutions (including ours) have failed to complete an adequate evaluation for [Student 17]." The IEP noted that the District did not have "current diagnostic information available...[and was] proceeding with the IEP in order provide what little information we do have." The IEP included a secondary transition plan and a measurable annual goal in each of the following areas: behavior, written language, reading, reading fluency, and math. The IEP included accommodations and modifications, and provided the Student the following specially designed instruction, monitored by a special education teacher:
 - Math: 50 minutes, 5 times per week (special education teacher, special education setting)
 - Reading: 25 minutes, 5 times per week (special education teacher, special education setting)
 - Written Expression: 25 minutes, 5 times per week (special education teacher, special education setting)
 - Study/Organization: 15 minutes, 5 times per week (special education teacher/Educational Assistant (EA), special education setting)
 - Social/Behavior: 60 minutes, 1 times per week (counselor, general education setting)

The IEP stated that the Student would spend 60% of his time in the general education setting and listed his placement as "correctional facility."

8. The District acknowledged that Student 17 may need a reevaluation, and stated it would monitor this Student and initiate a reevaluation when necessary.

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student IEPs when student placements were changed. When a student transfers into the District, the District is required to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student's placement should be determined annually by a group of persons, including the parents,

and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student's IEP, LRE (LRE includes a consideration of educating a student to the maximum extent appropriate in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student's educational program), a reevaluation must be completed. In determining whether a significant change in placement has occurred, the team should consider whether the student's educational program has been revised, whether the student's LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

In October 2016, Student 17's IEP team, in another district in Washington, developed his IEP, which stated he would spend 100% of his time in the general education setting. In November 2017, after being transferred to school 1, the District adopted Student 17's transfer IEP. Then, on November 28, 2017, the Student's IEP team developed his new annual IEP, which stated that the Student would spend 60% of his time in the general education setting. This change may represent a significant change in placement; further, as discussed below, the District acknowledges that Student 17 needed to be reevaluated. Here, there is no evidence that the Student's IEP team discussed the impact or potential benefits of the change in LRE. OSPI finds that the District did not follow placement procedures and finds a violation. Student specific corrective action for Student 17 is required.

Issue 2 – Reevaluation: The Complainant alleged that students are not reevaluated when necessary and that no reevaluation meetings are held. A district should consider conducting a reevaluation when the needs of a student require a reevaluation, when a parent or teacher requests a reevaluation, or when significant change in placement occurs. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. At minimum, a student should be reevaluated every three years (unless the parent and district agree that an evaluation is not necessary). A reevaluation must include a review of existing data, and if the student's IEP and other qualified professionals determine that no additional data are needed to determine whether the student continues to be eligible and/or to determine educational needs, no further assessments are required. The evaluation group's review of existing data does not need to be conducted through a meeting, but if a meeting is held, parents/adult student must be provided notice and afforded an opportunity to participate.

Student 17's most recent reevaluation occurred in June 2012. While the Student attended school in another district in Washington, that district requested and obtained consent (from the Student's caseworker) to waive the Student's June 2015 triennial reevaluation. This waiver was based on the fact that the Student needed to regain "the trust of the educational system." In November 2017, while attending school 1, the District developed the Student's IEP and noted that the Student needed a reevaluation. The IEP stated that all institutions, including school 1, have failed to complete an adequate evaluation for Student 17. The IEP noted that it did not have current

diagnostic information and was proceeding with developing the IEP based on very little information. The District acknowledged that Student 17 may need a reevaluation, and stated it would monitor this Student and initiate a reevaluation when necessary.

OSPI notes that it is concerning that in November 2017, the District acknowledged that Student 17 needed a reevaluation, and now a full year later, a reevaluation has still not occurred. While there may have been challenges obtaining information, it is problematic that the Student's education program seems to be based off a six-year-old, initial evaluation (June 2012 evaluation), especially given that the documentation acknowledges that there is limited other diagnostic information available. OSPI finds that the District has not followed procedures to reevaluate Student 17, and if Student 17 is still enrolled at school 1, the District will immediately initiate a reevaluation.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define the required elements of an IEP (which must be developed annually), state that an IEP must be in effect for each student at the start of the school year, state that a district must ensure it provides all services in a student's IEP, and state that the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student's academic and functional needs. And for students aged 16 years old and older, the IEP must include a transition plan: appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

Student 17 was transferred to school 1 at the beginning of November 2017, and the District stated it would implement his previous IEP. On November 28, 2017, the District's IEP team met with the Student and developed a new IEP. The IEP included a transition plan, measurable annual goals (in behavior, written language, reading, reading fluency, and math), and accommodations and modifications. The November 2017 IEP provided specially designed instruction in the areas of math, reading, written expression, study/organization, and social/behavior. OSPI notes that while the Student is supposed to receive specially designed instruction in study/organization, he does not have a measurable annual goal in this area. Based on this, the Student's 2017 IEP was not properly developed. The District did not provide progress reporting or any other information about the implementation of Student 17's IEP. OSPI reminds the District that it bears more responsibility to verify the implementation of an IEP than simply stating the IEP was implemented as written. OSPI finds that the District failed to substantiate it implemented Student 17's IEP, and OSPI finds a violation.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student's IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to

the parents (or the adult student) on the student's progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals.

For Student 17, the documentation provided in this complaint did not include any progress reporting. The Student was transferred to school 1 in November 2017. It is unclear why there is no progress reporting. A violation is found, as OSPI finds that the progress information for Student 17 is insufficient.

Issue 6 – Surrogate Parent: The Complainant alleged that surrogate parents are not prepared to competently represent students. Surrogate parents are appointed by a district to act on behalf of a student, for a number of reasons, including when no parent can be identified or located. A surrogate parent may not be an employee of the district, OSPI, DSHS, or any other agency that is involved in the education or care of the student. The surrogate parent must have the knowledge and skills necessary to ensure adequate representation of the student in all matters related to the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE) to the student.

The District's documentation indicates that surrogate 1 has a background in special education (she worked as a paraeducator and previously worked at school 1, but is currently retired) and that surrogate 1 received training as to her role as a surrogate parent. Surrogate 1 met with adult Student 17 and attended his November 2017 IEP meeting. It is unclear why the District had surrogate 1 attend, given that the Student is an adult. It is also unclear whether the Student consented to the presence of surrogate 1. The District's documentation does not indicate how much the surrogate participated in the meeting, but the District stated that its practice was to have the surrogate parent meet with the Student prior to the IEP meeting and that student records are available to surrogates upon request. Given that there were no specific concerns raised about surrogate 1's representation of Student 17, the District has substantiated that surrogate 1 competently represented Student 17.

DISTRICT CONCLUSIONS

Issue 1 – Placement: The Complainant alleged that the District routinely failed to document changes to student IEPs when student placements were changed. When a student transfers into the District, the District is required, in consultation with parents, to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. This includes determining the appropriate placement for the student. A student's placement should be determined annually by a group of persons, including the parents or adult student, and other persons knowledgeable about the student, evaluation data, and placement options. Placement decisions should be based on the student's IEP, LRE (LRE includes a consideration of educating a student to the maximum extent appropriate in general education), and placement options. Prior to a significant change in placement (a change that substantially or materially alters the student's educational program), a reevaluation must be completed. In determining whether a significant change in placement has

occurred, the team should consider whether the student's educational program has been revised, whether the student's LRE has changed, whether the student will have the same opportunities to participate in nonacademic and extracurricular activities, and whether the new placement option is the same option on the continuum of alternative placements.

The District maintains that because students are transferred to school 1, the District has no control over a student's placement. However, placement refers to more than just the fact that a student has been transferred to a school within a correctional setting. Placement decisions must also take into consideration the appropriate LRE for the student at school 1 (percentage of time in general versus special education) and whether a significant change in placement has occurred, which might necessitate a reevaluation.

Based on the documentation in this complaint, there are several students whose LRE changed quite substantially (in one case from zero time in the general education setting to 97% of his time in the general education setting). There is no indication in the documentation that IEP teams are discussing the continuum of placement options for students, including changes to the percentage of time a student spends in the general or special education setting and the necessary accommodations/modifications that might allow a student to spend more time in the general education setting. There is also no documentation that the IEP teams consider whether these changes in LRE represent a significant change in placement, which may necessitate a reevaluation. If IEP teams are in fact having these discussions, this is not being captured on IEPs and prior written notices. OSPI encourages the District to begin taking meeting notes at IEP meetings or document IEP team considerations in more detail on prior written notices.

The District did admit that when it initially creates the class schedule for a student transferring into school 1, there is a certain amount of guesswork due to the delay in obtaining records, records not existing, or obtaining records that are out of date. While OSPI acknowledges this reality, OSPI notes that this supports adopting a practice of conducting reevaluations when students transfer into the District with little to no information. Further, the lack of information makes the discussion of a continuum of placement options and the appropriate LRE even more important.

Finally, OSPI notes that in the documentation provided, that it is not clear that the District is determining placement in consultation with parents or adult students when students are transferred into the District. Again, when a student transfers into the District, the District is required, in consultation with parents or the adult student, to either adopt the student's previous IEP or develop a new IEP within a reasonable period of time. Here, some student files include meeting notices for transfer review meetings, but there is no documentation that parents or the adult student participated in these meetings. The transfer review notices are signed only by the dean of students. In all the students reviewed with transfer IEPs, the District adopted the transfer IEP. However, there is evidence that transfer IEPs are not being reviewed carefully as some transfer IEPs are out of compliance and for some students, several months later the District itself stated that the transfer IEP was incompatible with the student's placement and the education services school 1 can offer.

Based on the documentation provided, the District has not substantiated that it has followed placement procedures both when students are transferred to the District and when the District IEP team is developing new or amending student IEPs. OSPI finds a violation and the District will be required to undergo training on transfer and placement procedures.

Issue 2 – Reevaluation: The Complainant alleged that students are not reevaluated when necessary and that no reevaluation meetings are held. A district should consider conducting a reevaluation when the needs of a student require a reevaluation, when a parent, adult student, or teacher requests a reevaluation, or when significant change in placement occurs. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student’s educational program. At minimum, a student should be reevaluated every three years (unless the parent/adult student and district agree that an evaluation is not necessary). A reevaluation must include a review of existing data, and if the student’s IEP team and other qualified professionals determine that no additional data are needed to determine whether the student continues to be eligible and/or to determine educational needs, no further assessments are required. The evaluation group’s review of existing data does not need to be conducted through a meeting, but if a meeting is held, parents/adult student must be provided notice and afforded an opportunity to participate.

The documentation in this complaint does include a few specific examples of areas in which the District could improve its practices for reevaluations. For example, in the case of Student 3, an adult student (like the parents of a minor student) should be involved and able to participate in the eligibility determination if the District holds an evaluation meeting. OSPI reminds the District that when it conducts a reevaluation based on a review of existing data only, the District is not required to hold a meeting. But, if a meeting is held, parents or adult students must be provided notice and afforded an opportunity to participate. Additionally, in the case of Student 17, the District acknowledged that the Student was overdue for a reevaluation and that the information in the Student’s record was inadequate; and yet, the District has not yet conducted a reevaluation. Further, for Student 6, the adult Student agreed to waive his triennial reevaluation and then several months later, the District’s documentation indicates it believed the Student needed to be reevaluated; however, the District did not initiate a reevaluation. For Students 6 and 17, student specific corrective actions will be required. OSPI finds that the District is not consistently initiating reevaluations when reevaluations are necessary, and thus finds that the District is in violation. The District will conduct training on reevaluation procedures.

Once the District does initiate a reevaluation, the District is following reevaluation procedures when it conducts reevaluations. The District provided examples of how it obtains consent, reviews existing data, conducts new assessments when necessary, and holds evaluation group meetings when necessary. The District is generally conducting triennial evaluations within the proper timelines, and is correct that it does not necessarily need to conduct a reevaluation based solely on the fact that a new student arrives at school 1. Once the reevaluation is initiated, the District has substantiated that it follows the required procedures.

Issue 3 & 4 – IEP Development & Implementation: The Complainant alleged that the District failed to properly develop IEPs and that the District failed to provide service minutes and accommodations/modifications. The IDEA and Washington special education regulations define special education as specially designed instruction that meets the unique needs of a student eligible for special education. Specially designed instruction means adapting, as appropriate to the needs of the student, the content, methodology, or delivery of instruction. The regulations further define the required elements of an IEP—which must be developed annually—and state that an IEP must be in effect for each student at the start of the school year, a district must provide all services in a student’s IEP, and the IEP must be accessible to each general education teacher, special education teacher, and related service provider responsible for providing services. A certificated special education teacher must provide services, or if a general education teacher or paraeducator is assisting in the provision of special education, that instruction must be designed, monitored, and evaluated by special education certificated staff. IEPs must include measurable annual goals designed to meet a student’s academic and functional needs. For students aged 16 years old and older, the IEP must additionally include a transition plan, appropriate, measurable postsecondary goals, transition services, and the course of study needed to assist the student in reaching those goals.

IEP Development: Some students had IEPs that were properly developed. However, as discussed above, in Students 1-17, OSPI finds various errors in the development of several students’ IEPs. For example, one student’s goals were not measurable and another student did not have a measurable annual goal at all for one of his service areas. In other cases, there was no explanation for changes, including the removal of a service area from one student’s IEP or significant changes to the number of accommodations and modifications in several other students’ IEPs. Overall, based on the inconsistent development, OSPI finds a violation regarding the development of IEPs. Consequently, the District will be required to hold IEP meetings for all applicable students identified in this complaint to address the above discussed violations specific to each student. The District will also conduct training on procedures for developing IEPs.

IEP Implementation – Access to IEPs: The District stated that staff are aware of student IEPs, goals, and accommodations and that this information is made available on a shared drive and during meetings. Special education teachers have access to the District’s online IEP system and any teacher can meet with the dean of student to discuss a student’s IEP further. The Complainant stated that the shared drive is not user friendly and that it is difficult to track all of the emails sent about students. In interviews with teachers, teachers confirmed that students with IEPs are flagged on the attendance sheet and that there is a shared drive with information about students with IEPs. However, some teachers thought that they would need to talk to the dean of students to get access to the shared drive and others stated that the shared drive does not contain information about the specially designed instruction a student is supposed to receive. The shared drive did seem to contain information about accommodations and other student needs. There was no consensus on how often meetings were held – some staff stated one or two times a month and the Complainant stated that staff meetings were held less than once a month. OSPI believes that the District has made IEP information available; however, the District needs to ensure that all

necessary teachers not only have access to information about student IEPs, but actually use the system, access the information, and implement student IEPs accordingly.

IEP Implementation – IEPs as Written: Regarding the implementation of student IEPs and the provision of specially designed instruction, the District provided some progress reporting but very little specific information regarding the implementation of Students 1-17s' IEPs. Based on interviews with teachers, it appears that neither special education teachers nor general education teachers at school 1 have a good understanding of the purpose of special education and specially designed instruction, despite their good intentions to provide instruction at the student's assessed grade level.

When asked about IEP implementation, teachers gave examples that indicate some teachers are providing some amount of specially designed instruction for students (e.g., individual instruction, modifying assignments based on grade or ability level, repetition of instructions, or breaking assignments into smaller pieces). Several teachers focused on providing work that reflects the student's grade level performance and allows the student to benefit from credit recovery. However, some teachers also conflated specially designed instruction with accommodations. For example, one teacher stated that he gives all students the same assignment/set of instructions but allows students to complete the assignment in different ways, in other words, he provides a modified grading accommodation/modification, but does not actually adapt the content or delivery of instruction. Other teachers gave examples like letting students take more frequent breaks and typing instead of writing when asked about specially designed instruction. When asked specifically about providing accommodations and modifications, some teachers provided examples of accommodations they provided (e.g., a "wobble" seat, preferential seating, speech to text, or taking more frequent breaks) and other teachers stated that none of their students had any accommodations. It did not appear, however, that teacher instructional decisions were determined by the contents of the student's IEP or by IEP team decisions.

In all of the interviews with teachers, the teachers stated that they made adjustments to assignments, in instruction, and provided accommodations based on what they each individually observed about students, rather than referencing what was written in an IEP. Based on the documentation and interviews in this complaint, the District is not consistently providing specially designed instruction or accommodations based on students' IEPs. Further, specially designed instruction and accommodations appear to be provided based on individual teacher observation rather than what is required in a student's IEP. Therefore, the District is not implementing student IEPs as written.

IEP Implementation – By General Education Teachers: When asked about special education teachers designing, monitoring, and evaluating specially designed instruction when the instruction itself is provided by a general education teacher or counselor, the special education teachers stated that they either do not do this or they share information about students (and strategies and interventions tried) informally. One special education teacher stated that often, general education teachers tell him that they do not want to know anything about a student's IEP or disability because they want to see how a student does without "any special treatment." This was confirmed in interviews with a general education teacher who stated that he does not review

student IEPs because he does not want the IEP to “cloud his judgment” and that he wants to see how the student does without an IEP first. One general education teacher stated that she did meet a couple times a month with other teachers in the same subject area to share information, although it is not clear that this included working with special education teachers to design and monitor specially designed instruction. Many of the students identified in this complaint have IEPs that stated that specially designed instruction will be provided by a general education teacher in a general education setting. OSPI finds that IEPs are not being implemented in the general education setting as special education teachers are not designing/monitoring/evaluating instruction and general education teachers do not appear to be referring to IEPs to determine what they are required to provide students with IEPs in the general education setting.

Provision of Special Education Services: Further, all the teachers interviewed emphasized that instruction for all students (general education and those eligible for special education) is individualized. Teachers stated that this is because all students arrive with a different number of credits and come to school 1 having faced different hardship, which impacts their ability to learn. Several teachers shared the belief that it is important to see how a student does without an IEP prior to providing accommodations, and noted that what a student needs changes from day to day. None of the teachers interviewed seemed to connect the students’ need for special education with their disability or that an IEP team has determined the necessary specialized instruction, but again focused on academic performance and credit recovery.

This indicates that there is a fundamental gap in understanding about the purposes of special education. Performance at grade level and academic ability are an element of specially designed instruction, as the purpose of specially designed instruction is, in part, to help ensure access to the general curriculum, so that a student can meet educational standards. However, specially designed instruction is also designed to address the unique needs of students with disabilities, to enable students eligible for special education to make progress appropriate in light of their unique circumstances. While OSPI acknowledges the reality that most of the students at school 1 do arrive at different grade levels, OSPI reminds the District that there is a difference between credit recovery programs⁴⁰ and specially designed instruction, which is designed to address a student’s unique disability based needs as determined by the evaluation group and IEP team.

The fact that teachers adjust instruction based on what they observe is not necessarily a problem; however, it is a violation of the IDEA and state regulations for teachers to adjust instruction based on observation without also implementing student IEPs, which is what is occurring here. Further, it is alarming that general education teachers do not look at IEPs and state that they do not want to look at IEPs. At a minimum, accommodations and modifications should be provided in the general education setting. Many students’ IEPs state that they should also be receiving specially designed instruction in the general education setting, which does not appear to be happening. Finally, the attitude that it is best to see how a student does first without implementing his IEP is

⁴⁰ In the documentation related to Students 1-17, many of them had been previously disengaged from school, had struggled with attendance, had moved many times, or had moved between several different correctional settings. Thus, the reality is that many of these students were several grade levels behind peers for a number of different reasons, in addition to an identified disability.

unacceptable and contrary to the federal IDEA and Washington State rules. If a student has an IEP, the District is required to implement that IEP as written.

It is clear that all the teachers interviewed work very hard to provide high quality instruction to students at school 1. Teachers identified valid barriers to doing this work based on the unique setting – a school within a correctional setting. Overall, OSPI finds that, good intentions aside, the District has not ensured that teachers are implementing IEPs as written, and is providing students with specially designed instruction and accommodations/modifications inconsistently at best.

OSPI finds a violation on the allegation of IEP development and implementation. The District will be required to provide training for staff and develop policies and practices to address the identified issues.

Issue 5 – Progress Monitoring: The Complainant alleged that the District failed to provide progress reports. A student’s IEP must include a statement indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents (or the adult student) on the student’s progress toward meeting those annual goals. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student’s progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. If a student is not making expected progress toward annual goals in the general education curriculum, a student’s IEP must be reviewed and revised.

In interviews with general and special education teachers at school 1, teachers stated that they monitored student progress in their heads, estimated student progress, or use forms they individually created to collect data. The general education teachers stated that they believe progress meant progress towards a grade, not necessarily progress on any specific IEP goal. For the majority of the students identified in this complaint, the progress reports either did not exist or provided insufficient information for the parent or adult student to assess the student’s progress toward the annual IEP goals. Using only a code, without supporting data or narrative, does not provide sufficient information. Further, when students are not making progress, it appears IEP meetings were not being held to address the lack of expected progress. While the District stated that it sends progress reporting to parents and gives progress reporting to adult students quarterly, at least two adult students identified in this complaint stated that they had never received a special education progress report. The District’s documentation—while it indicates some progress reporting is being entered—does not confirm if or when progress reporting was sent. OSPI finds that the District is inconsistently monitoring student progress, is not providing sufficient progress reporting, and is in violation.

The District acknowledged that for “incoming IEPs not [being] linked to our electronic program is not an acceptable reason for not progress reporting in a timely manner.” The District proposed that by December 20, 2018, the principal, dean of students, special education director, and a special education teacher will meet and develop a written process to address this oversight. OSPI accepts this proposed corrective action with the below additions to address the other issues identified, including sufficiency of progress reporting.

Issue 6 – Surrogate Parent: The Complainant alleged that surrogate parents are not prepared to competently represent students. Specifically, the Complainant felt that surrogate parents were only involved in IEP meetings (and not involved in evaluation meetings and placement decisions) and that surrogates do not actively reach out to teachers to obtain information about students. Surrogate parents are appointed by a district to act on behalf of a student, for a number of reasons, including when no parent can be identified or located. A surrogate parent may not be an employee of the district, OSPI, DSHS, or any other agency that is involved in the education or care of the student. The surrogate parent must have the knowledge and skills necessary to ensure adequate representation of the student in all matters related to the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE) to the student.

The District’s surrogate parents are individuals with education backgrounds, but are not current District employees. For example, surrogate 1 has a background in special education (she worked as a paraeducator and previously worked at school 1, but is currently retired). The District noted that in the past, it has stopped using certain surrogates because the District no longer felt the surrogate was adequately representing students. The District also has developed training materials and has a process for training surrogates. Surrogate 1 stated that she spent her career working as a paraeducator in special education and that this background has helped prepare her to volunteer as a surrogate, and that she felt as though she receive sufficient training.

The District stated that its practice was to have the surrogate parent meet with the students for 15 to 20 minutes prior to the IEP meeting, and that surrogates are expected to be part of the meeting and not just an observer. Surrogate 1 participated in the IEP meetings of two students identified in this complaint, no specific issues were raised regarding surrogate 1’s participation in these meetings and the District’s documentation indicates that surrogate 1 competently represented these students.

There is no requirement that a surrogate parent discuss a student with all of that student’s teachers, and here, the surrogate parent stated she felt comfortable asking the District for more information about a student when necessary. The documentation in this complaint indicates that the surrogate parent participated and contributed to IEP meetings. OSPI does remind the District that a surrogate parent should be involved in representing the student in all matters related to the identification, evaluation, educational placement, and the provision FAPE – not just IEP meetings. But here, the District has substantiated that its surrogate parents are trained and prepared to represent students and no violation is found.

Issue 7 – PE: The Complainant alleged that students receive credit for PE without meaningful attended or instruction. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to students who do not have disabilities, unless the student needs specially designed physical education as described in the student’s IEP. Washington State graduation credit requirements require that students take a minimum of two credits in “health and fitness.” While students eligible for special education services must be able to participate in PE, this does not necessarily mean that all students must take a PE class for the entirety of high school. However, Juvenile Rehabilitation Administration

(JRA) policy requires that residents of correctional facilities get an hour of physical activity every day, and the policy states that PE may be counted as an hour of exercise as long as it is large muscle exercise. Youth placed on room confinement or in isolation must have access to one hour of exercise every twenty-four hours; although the required hour of activity can be denied if the resident is exhibiting behavior that may be harmful to self, staff, or others.

Provision of PE/Recreation

The District stated that recreation time is "sacred" at school 1 and that staff go to great lengths to ensure students get their allotted time. School 1 has a complicated system for attempting to ensure that all students get daily PE/recreation based on the unique limitations of the setting: a correctional facility with housing units of varying levels of restrictiveness, the size of the gym/recreation facilities, the length of the school day, and the need to balance legitimate safety concerns (including the need to keep opposing gangs separated). This is further complicated by the fact that based on the living units (students attend PE/recreation with their unit), there are nine groups of students that have recreation time and a six-period school day, this means three groups (in the more restrictive units) have recreation outside the school day. The District stated that while the PE teacher is not required to work during the three recreation times that are outside of the school day, these groups of students have access to a staff member who is a certified personal trainer who helps students set and track fitness goals. The District stated that due to space limitations, students do not always have PE/recreation in the gym/recreation center. On days students are not in the recreation center, they have recreation time in the courtyard of the unit or every unit has fitness systems inside. While the students in the more restrictive units are not taking a traditional PE class, the District grants a PE credit to these students for their daily participation in recreation time. The District stated that this is the most equitable solution "to a space problem that students or school staff can't control (not enough separate gym/recreation space to allow each student access during the school day)."

While the documentation provided in this complaint related to Students 1-17 is inconsistent about their participation in PE/recreation, there is documentation that students were scheduled for and attending PE. Students 3, 7, and 8 all stated that they have and are attending PE/recreation. Given the constraints, some of which are outside of the District's control, the District has substantiated that it has afforded students the opportunity to participate in the general PE program.

Equal Access to PE/Recreation

The Complainant and several students interviewed in this complaint acknowledge that the majority of students do go to PE/recreation every day. The Complainant and students also bring forth legitimate concerns regarding the potential fact that students in the more restrictive units have access to fewer minutes of recreation time than others on open campus and perhaps have unequal access to recreation (while other students get a PE class with instruction from a PE teacher and more access to the gym/recreation center, students in the restrictive units often must utilize limited in-unit exercise equipment and have their recreation time outside of the school day). However, upon investigation, this concern is not something that can be resolved in a special education citizen complaint. State regulations require a district afford students the opportunity

to participate in the general PE program; however, the regulations do not require that a student have a PE classes every quarter/semester for the entirety of high school (students must take two credits of health and fitness to graduate). Unless a student eligible for special education requires specially designed instruction in PE or adaptive PE, there is no obligation to provide sixty minutes a day of daily PE. The hour of daily recreation requirement comes from JRA policy, and because this is the general PE/recreation program provided to all students, it must be available for students eligible for special education (which documentation indicates it is). Further, the concern here is not that students eligible for special education have less access to PE, but that students in the more restrictive units (some of whom are students with IEPs) have less access to PE. Again, while this is concerning, it is not something can be resolved through this process.

Documentation of PE & Credit Awarded

The Complainant also raised a concern about students being awarded full credit for "PE" when there either is no documentation for their PE attendance or for the students that have "recreation" time outside of the school day instead of "PE class" (discussed above).

OSPI understands school 1's method for awarding PE credit for participation in an hour of daily recreation. It would be inequitable to deny these students PE credit for factors that are outside their control (i.e., the length of the school day and limited size of the gym/recreation facilities). If the students are indeed participating in an hour of recreation, the District could continue awarding them credit for PE. However, OSPI does note concern that there is some indication that students may be awarded credit regardless of attendance. For example, one student's IEP states that the student is "unable to receive PE instruction for a substantial portion of the 2017-2018 academic year but was granted full credit regardless of attendance."

The Complainant also expressed concern with the fact that recreation time is outside of the school day, that school 1 did not provide attendance or documentation to verify participation in PE, and that school 1 grants all students full credit for participating in PE without verifying documentation. This may indicate that while the student was not attending PE class, he was getting recreation time. As mentioned above in the student specific conclusions, OSPI recommends that if the District includes statements such as this in a student's IEP, it also include a brief statement explaining how the student otherwise participates in PE/recreation. OSPI also reminds the District that it bears more responsibility to verify that students actually received PE instruction or recreation time beyond simply stating that all students receive an hour of recreation per day. OSPI also reminds the District that if it provides PE credit for recreation time, the District must ensure that during this time, students are receiving instruction that is aligned with State learning standards.

Overall, the District has substantiated that it has met its obligation under the special education regulations to ensure that students eligible for special education have an opportunity to participate in the general PE/recreation program at school 1.

CORRECTIVE ACTIONS

By or before **December 31, 2018, January 18, 2019, March 8, 2019, March 29, 2019, May 7, 2019, June 14, 2019, August 1, 2019, September 6, 2019, October 7, 2019, and November 22, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Reevaluations

By **March 1, 2019**, the District will conduct reevaluations for Students 6, 9, and 17. By **March 8, 2019**, the District will provide OSPI with a copy of the reevaluation report for each student, including documentation that the adult student or minor student's parents were invited to and participated in the evaluation group meeting.

IEP Meetings

By **April 30, 2019**, the District will hold IEP meetings for Students 1-17. The IEP meetings will be held after the District completes the training (part one) ordered below. These meetings should include the adult student or the minor student's parents. Prior to the meeting, the Student's IEP team should review the applicable student specific conclusion in this decision.

At the IEP meeting, the student's IEP team should review the student's current evaluation, current IEP, progress, and placement (including a consideration of a continuum of options and the percentage LRE). The team will determine if the student needs any additional or different services and supports. OSPI also recommends that the District also consider the recommendations suggested below as applicable to each student. Additionally, for Students 6, 9, and 17, the IEP meeting should consider whether the student's IEP needs to be amended based on the reevaluation required above.

Further, all students in this complaint will receive, at a minimum, five (5) hours of compensatory services. At the IEP team meeting for each student, the IEP team will determine which areas the student should receive the compensatory education in and whether the student needs more than 5 hours to address any lack of progress. The District is encouraged to offer more hours of compensatory services if the student needs the extra support. Services will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may be accessed over District breaks. 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 **August 30, 2019**. The District will provide OSPI with documentation of the schedule for services by or before **May 7, 2019**.

By or before **May 7, 2019**, District will submit to OSPI: 1) a copy of the meeting invitation; 2) a copy of the amended IEP; 3) a copy of any related prior written notices; 4) a copy of the agenda and notes on the topics discussed at the meeting; 5) schedule and plan for compensatory services; and, 6) any other related information.

By or before **September 6, 2019**, the District must provide OSPI with documentation that it has completed compensatory services for the students. 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.

If the student has been transferred *during this complaint investigation* and is no longer enrolled in the District, the District will not be required to hold an IEP meeting, conduct a reevaluation, or provide compensatory services. The District will provide clear documentation that the student is no longer enrolled in the District.

If the student is transferred *after this complaint decision is issued*, depending on the date of transfer, the District will still be required to conduct a reevaluation, hold the IEP meeting, and provide compensatory services. If the student is transferred, the District should provide OSPI with documentation of the attempt to reevaluate and hold an IEP meeting (or documentation of wherever in the process the District was at date of transfer). If the student is transferred, the District must still provide compensatory services and may need to contract with the student's new district to provide those hours. The District should provide OSPI with documentation of the District's attempts to locate the student and provide compensatory services.

If any questions arise regarding students that are transferred and next steps regarding corrective actions, please contact OSPI immediately.

DISTRICT SPECIFIC:

Progress Reporting

By **January 11, 2019**, as proposed by the District, the District will develop a draft written process to address the following: 1) providing progress reporting for when transfer IEPs are not linked in the District's online IEP system; and 2) a process for teachers to collect progress data and provide that data to the case manager to be included in progress reporting.

By **January 18, 2019**, the District will provide OSPI with the draft written process. OSPI will approve the draft process or provide comments by February 1, 2019, and additional dates for review, if needed.

By **March 1, 2019**, the District will review the new process with staff (special education teachers, general education teachers, principal, and dean of students) at a staff meeting and by **March 8, 2019**, will provide OSPI with documentation that this occurred. This documentation will include: 1) an agenda or meeting notes from the staff meeting; 2) a sign-in sheet from the staff meeting;

and, 3) an official District roster of all the staff required to attend the meeting, so OSPI can verify that all required staff participated in the meeting.

By or before **March 29, 2019, June 14, 2019, and November 22, 2019**, the District will submit a sampling of progress reports for twenty (20) randomly selected students attending school 1. The progress reports should include sufficient information to determine whether or not the student is making progress, and the amount of progress towards the annual goal. This should also include documentation that confirms the progress report was also provided to the adult student or mailed to the minor student's parents.

Training

The District will complete a two-part training regarding the topics raised in this complaint decision. The trainings will be provided by someone outside the District, knowledgeable of IDEA and state special education requirements, as well as familiar with institutional education settings. The trainings will be for all special education certificated staff, the principal, the dean of students, and all general education teachers at the school identified in this complaint. At a minimum, the training topics will include the following:

- Placement procedures;
- Transfer procedures;
- When IEPs should be in effect;
- Reevaluation procedures;
- IEP development;
- Conducting progress monitoring;
- Progress reporting; and,
- IEP implementation, including when services are to be designed, monitored, and evaluated by special education personnel.

The second training should build on, reinforce, and evaluate the implementation of the topics introduced at the first training. The District may choose to address some of the topics at the first training and some of the topics at the second training. The trainings should include examples/hypotheticals and resources for IEP teams.

By **December 31, 2018**, the District will notify OSPI of the name of the outside trainer, and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By **January 18, 2019**, the District will submit a draft of the part one training materials to OSPI for review. OSPI will approve the materials or provide comments by January 25, 2019 and additional dates for review, if needed.

By **March 1, 2019**, the District will provide part one of the training regarding the topics raised in this complaint decision.

By **March 8, 2019**, the District will submit documentation that staff participated in part one of the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human

resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

By **August 1, 2019**, the District will submit a draft of the part two training materials to OSPI for review. OSPI will approve the materials or provide comments by August 16, 2019 and additional dates for review, if needed.

By **September 30, 2019**, the District will provide part two of the training regarding the topics raised in this complaint decision.

By **October 7, 2019**, the District will submit documentation that staff participated in part two of the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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 noted several areas of concern in the investigation of this complaint that did not rise to the level of a violation. However, OSPI strongly recommends the following:

- As mentioned in several student specific conclusions, OSPI recommends that if the District includes a statement regarding a student not participating in PE due to residence in a restrictive unit, that the District also include a brief statement explaining how the student will otherwise participate in recreation time. OSPI also recommends that the District review State learning standards for PE/health to ensure students are receiving PE instruction that is aligned with these standards.
- Require IEP teams to take meeting notes to record discussion and why certain decisions were made.
- OSPI noted that several IEP transition plans included other agencies such as DVR, but the IEPs do not indicate that a representative of these agencies attended the IEP meeting. OSPI reminds the District that a representative from the responsible agency should attend the IEP meeting and participate in the development of the transition plan.
- OSPI reminds the District that, based on recent OSPI guidance, for purpose of graduation, any student who does not earn a Level 3 or 4 score on either the ELA or math SBA assessment, then can retake the exam or access an assessment alternative. For students eligible for special education, additional assessment alternatives are available, and a student's IEP team determines what assessment alternative a student will access. One of the available assessment alternatives an IEP team can choose, is the cut-score alternative, which allows a student to fulfill the graduation assessment requirement with a Level 2 score, also referred to as basic score. OSPI notes that it has recently released updated guidance on alternate assessments and encourages the District to review this guidance.
- OSPI notes that the District stated that surrogate parents are provided for students whose parents are unable or choose not to participate in the IEP process. WAC 392-172A-05130 states that surrogate parents be provided when no parent can be identified, the parent cannot be located, the student is a ward of the state, or the student is an unaccompanied homeless youth. Also, OSPI

notes that the surrogate parent should be participating in the identification, evaluation, and other decisions related to the student's receipt of a free appropriate public education (FAPE), not just attending the IEP meeting. OSPI recommends that the District review WAC 392-172A-05130.

Dated this ____ day of December, 2018

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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