

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-125**

### **PROCEDURAL HISTORY**

On October 2, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 2, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On October 23, 2020, the District requested an extension of time to respond to the complaint. OSPI granted the extension to October 29, 2020.

On October 30, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On November 25, 2020, OSPI received the Parent's reply to the District's response. The same day, OSPI determined additional clarifying information and documentation from the Parent was necessary and interviewed the Parent. The Parent provided OSPI with all the requested information and documentation the same day, along with additional information she requested be considered with the investigation. OSPI forwarded all documentation received from the Parent to the District on the same day.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. It also considered the information received by the complaint investigator during interviews.

### **ISSUES**

1. Did the District follow procedures to implement the Student's individualized education program (IEP) from March 2020 – June 2020?
2. Did the District follow procedures to implement the Student's IEP during the 2020-2021 school year, including considering the Student's need for in-person services?
3. Did the District follow IEP meeting procedures during the September 2020 IEP meeting?

### **LEGAL STANDARDS**

IEP Implementation during School Facility Closures for COVID-19: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible

to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

During the COVID-19 school facility closures during spring 2020, as students received general education instruction and student support services, districts were required to provide students with disabilities with the special education services—related services and specially designed instruction—supporting a free appropriate public education (FAPE). However, the U.S. Department of Education Office for Civil Rights (OCR) and Office for Special Education and Rehabilitative Services (OSERS) indicated the "exceptional circumstances" presented during the school facility closures caused by COVID-19 "may affect how all educational and related services and supports are provided" to students with disabilities. During the school facility closures of spring 2020, while Students were entitled to receive a FAPE, there was not an expectation that IEP services would be delivered exactly as stated in the IEP. *Questions and Answers: Provision of Services to Students with Disabilities During School Facility Closures for COVID-19* (OSPI March 24, 2020); *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (OCR/OSERS March 21, 2020) ("It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities...during this national emergency, schools may not be able to provide all services in the same manner they are typically provided...The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency...FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students.")

While there was not an expectation that districts implemented a student's IEP as written during school closures caused by COVID-19 in spring 2020, districts were required to have a plan for how students with disabilities were to receive a FAPE, including the provision of special education. *Questions and Answers* (OSPI, March 24, 2020); *Questions and Answers* (OSPI, May 5, 2020). See also, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (U.S. Department of Education, March 13, 2020) ("SEAs, LEAs, and schools must ensure that to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under the IDEA"). All schools were expected to have begun providing educational services for all students by March 30, 2020, which OSPI termed "Continuous Learning 2020." OSPI Bulletin 024-20 (March 23, 2020).

During spring 2020, individualized special education services being provided to a student during the school facility closures as part of continuous learning, were to be documented in writing using a student's annual IEP, IEP amendment (particularly if services to be provided during the closure were significantly different from what the IEP indicated), prior written notice, or optional

"Continuous Learning Plan" (CLP) or similar document. Districts had flexibility in how they chose to document decisions made in real-time. *Questions and Answers* (OSPI, April 13, 2020). Districts were encouraged to prioritize parent communication, including discussions of how special education services were to be provided during the closures. *Questions and Answers* (OSPI, May 5, 2020).

IEP Implementation Fall 2020: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 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 §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. During the 2020-2021 school year, districts must continue to implement students' written IEPs to the *greatest extent possible*, regardless of the district's preferred model of operation (e.g., remote, hybrid, in-person). Distance and continuous learning plans in effect during the spring 2020 should no longer be used.

Continuous Learning Plan (CLP): A CLP (or similar document) was used to document the temporary services that were made available and provided during school facility closures for COVID-19 from March to June 2020. *Questions and Answers* (OSPI, April 13, 2020). A CLP was a temporary plan that outlined the extent to which IEP services and accommodations were to be delivered differently or suspended due to emergency health and safety restrictions in spring of 2020, and documented decisions regarding services, timelines, and other student specific considerations during school facility closures. While the information recorded in an individual student CLP might have come from a student's IEP, such documentation was not intended to serve as, or to replace, the current IEP in effect at the time. Districts were required to also have a method for documenting decisions made for individual students during the spring 2020 school facility closures. *Questions and Answers* (OSPI, May 5, 2020). CLPs were not to be continued during the 2020-2021 school year.

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).

Provision of FAPE: An IEP is required to be “reasonably calculated to enable the child to receive educational benefit.” It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” An IEP must “aim to enable the child to make progress”, the educational program must be “appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom, ” and the student should have the opportunity to meet challenging objectives. *Endrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to receive educational benefits, the district is not in compliance with the IDEA. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982). Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE; and (3) caused a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); see 34 CFR §300.513; WAC 392-172A-05105.

IEP Team Meetings: Team meetings must be held periodically, but not less than annually to develop the IEP, and to revise or review it as necessary. 34 CFR §300.324; WAC 392-172A-03110. Additionally, when a parent or district believes that a required component of a student’s IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). A student’s parents and school personnel will develop, review, and revise an IEP for the student. Parents must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student. 34 CFR §300.501; WAC 392-172A-050005. A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the

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

## **FINDINGS OF FACT**

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

1. During the 2019-2020 school year, the Student attended a District elementary school, was in the fifth grade, and was eligible for special education services under the category autism.<sup>1</sup>
2. The District's 2019-2020 school year began on September 4, 2019.
3. The Student's May 2019 IEP was in effect prior to the COVID-19 pandemic school facility closures. The Student's May 2019 IEP included annual goals in the areas of communication (answering questions, self-advocacy), social-emotional (turn taking games), adaptive (transition time), behavior (ask for appropriate soothing time), math (addition with regrouping, counting, money skills), reading (fluency, reading comprehension), and writing (describing a scene). Progress toward the annual goals was to be measured every semester. The Student's IEP provided the Student with the following specially designed instruction and related services, which were to be provided in the *special education setting*:
  - Social-emotional: 30 minutes daily (to be provided by a special education teacher);
  - Behavior: 20 minutes daily (to be provided by a paraeducator);
  - Reading: 60 minutes daily (to be provided by a special education teacher);
  - Writing: 40 minutes daily (to be provided by a special education teacher);
  - Adaptive: 15 minutes daily (to be provided by a paraeducator);
  - Math: 45 minutes daily (to be provided by a paraeducator); and,
  - Speech-Language Pathology (as a related service): 45 minutes daily (to be provided by speech language pathologist (SLP)).<sup>2</sup>

The Student's IEP included the following supplementary aides and services:

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<sup>1</sup> The Student is mostly non-verbal and was placed in a District program for students with significant developmental and intellectual disabilities.

<sup>2</sup> The May 2019 IEP indicated that the speech-language pathology services included "30 minute communication services delivered by SLP and monitored by SLP (nonconcurrent, dedicated communication time)."

- 1:1 paraeducator support (concurrent service): 630 minutes weekly (to be provided in the *general education setting*); and,
- 1:1 paraeducator support (non-current service: 1260 minutes weekly (to be provided in the *special education setting*).<sup>3</sup>

The Student's May 2019 IEP additionally provided the Student with the following accommodations and modifications: access to a cool down space, a visual schedule, adapted clothing (e.g., body sock, weighted vest, compressive shirt), adaptive equipment, adult proximity, access to audio books when available, allow alternative models of response, allow extra processing time, movement breaks and standing while working, allow use of fidget objects, augmentative/alternative communication, break tasks into manageable parts, frequent communication between home and school regarding behavior, attention and academics, monitor sensory needs, right response trained staff, self-monitoring system, social stories, and use a positive reward system.

The Student's May 2019 IEP additionally included the following supports for school personnel:

- "The occupational therapist can be available [daily] to support [Student's] educational staff with sensory accommodations."<sup>4</sup>

The Student's IEP indicated the Student would spend approximately 37% of his time in the general education setting.<sup>5</sup>

4. On March 11, 2020, the Parent expressed she would be keeping the Student home from school due to the pandemic.
5. On March 12, 2020, the special education teacher sent a packet of work home to the Parent and added that she could send home more work if the Parent preferred. The special education teacher also offered to send the Student's iPad home, but the Parent responded that they already had two at home and did not have a need for additional technology at that time.
6. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the pandemic and resulting public health crisis.
7. On March 16, 2020, the special education teacher emailed the Parent that for at least the next two weeks, she would be developing a weekly schedule for her students consisting of teaching

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<sup>3</sup> The Student's May 2019 IEP indicated the Student required a 1:1 paraeducator in all settings to support the Student with "taking breaks when frustrated, accessing curriculum, using a visual schedule, token reinforcement and keeping [Student] and others safe when [Student] becomes frustrated."

<sup>4</sup> The May 2019 IEP noted the Student's motor support "can be supported in a variety of settings, for example in [Student's] classroom and in the motor room."

<sup>5</sup> The Student's May 2019 IEP noted the Student would receive "most of his Specially Designed Instruction in the special education classroom. He will participate with his general ed peers for [physical education (PE)], music, art, library, recess, lunch assemblies and field trips."

videos and assignments and would be posting them online using an online communication and videoconferencing platform (Microsoft Teams). The special education teacher explained she would also be using the Microsoft Teams to communicate with parents.

8. On March 18, 2020, the District's occupational therapist (OT) emailed parents of students receiving occupational therapy services. She requested input on ideas for continuing their child's fine motor skills while learning remotely and offered to send them additional activities, including worksheets. That same day, the Parent replied that she would like recommendations for activities to do with the Student, focusing on his sensory and fine motor needs.
9. On March 20, 2020, the SLP emailed the parents of students receiving speech and communication services that the District's SLPs had been working to develop resources for the unique communication needs of their children. The email stated that each week, the SLP would be sending parents a "Storybook Lesson with tiered levels of activities (e.g. basic, moderate, challenging)." Parents were directed to use the lessons received as a framework to work from and to "modify [the lessons] to meet the interests and dynamics" of their individual student. The SLP indicated she would be available by email in the coming weeks. That same day, the Parent confirmed she received the email.
10. On March 23, 2020, OSPI issued guidance, instructing districts that while school facilities were closed and not providing traditional in-person instruction, education must continue. OSPI's guidance outlined the expectation that "continuous learning" would begin for all students by Monday, March 30, 2020.
11. Also on March 23, 2020, the OT emailed the Parent and explained that during normal school operations, she worked with the Student's special education teacher to consult on sensory strategies to help the Student participate in daily learning. She attached four documents to the email, containing activities for the Student targeting his sensory needs during remote learning. The activities were developed considering the Student's individual preferences and needs.<sup>6</sup>
12. On March 25, 2020, the Parent and special education teacher exchanged emails regarding the Student's performance during remote learning that week. The special education teacher asked if the Parent had been able to log on to watch any of the videos she had posted. The Parent acknowledged that she had seen the videos, but that the Student did not seem to engage with them.
13. Also, on March 25, 2020, the District emailed the Parent notice that the IEP meeting the Parent had requested to discuss the results of the Student's most recent private, Parent-funded neuropsychological evaluation and to review the Student's instructional needs in light of the new evaluation, had been scheduled for March 27, 2020.

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<sup>6</sup> In her email to the Parent, the OT noted the Student "seemed to enjoy activities that allow [Student] to exert lots of force and energy prior to engaging in schoolwork or to help him calm his body..." The OT additionally stressed the importance of keeping a routine.

14. On March 26, 2020, the special education teacher informed the Parent she would be adding a social-emotional curriculum—a service area on the Student’s IEP—to the weekly schedule developed for the Student.
15. On March 27, 2020 the Student’s IEP team met to discuss the Student’s private neuropsychological evaluation. The Parent, special education teacher, SLP, general education teacher, Student’s private board-certified behavior analyst (BCBA), and a school administrator attended. The PWN documented the team’s proposal to hold a meeting as soon as possible once school commenced to make changes to the Student’s services, goals, and communication between the public school and Student’s private therapies.

The PWN indicated that changes were needed to the Student’s IEP, including a potential change to services “due to [Student’s] loss of skills across multiple areas, recent seizure activity, and behaviors of concern (i.e. elopement and self-injury such as scratching).” The PWN stated the team had declined to make changes immediately or to open a reevaluation revision at that time, because the Student was not in school and the team believed it would not have an opportunity to collect sufficient data in the school setting as needed to make appropriate changes to the Student’s program. Additionally, the PWN documented the team’s desire “to have data on how the school closures as a result of the pandemic may have positively or negatively affected [Student’s] learning and behaviors.” The PWN captured the team’s discussion about the Student’s trialing of a new anti-seizure medication and noted other issues—including medical concerns related to the Student’s disabilities and their potential impact the Student’s performance in school moving forward. The team agreed that if the school closures were to extend beyond three weeks, the IEP team would meet to review the Student’s IEP and make any necessary changes with the data available at that time. The team agreed that for the annual review, it would bring all collected data and supporting documentation to support conversation around changes to the Student’s program, including the recommendations made by the Student’s doctors. The PWN noted that the IEP meeting was held in lieu of potentially moving forward with a multi-disciplinary team meeting and taking more immediate action but stated the team “designed this plan moving forward in order to be proactive and flexible given the recent school closure.”

16. On March 30, 2020, continuous learning began in the District.
17. From March 30 to June 19, 2020, the special education teacher sent the Parent detailed weekly schedules of activities in the areas of social-emotional, reading, writing, math, specialist (art, music, library, computer science, physical education, and life skills), and adaptive. Each activity included detailed instructions for how the Parent was to implement the activity. For math, reading, and writing, the special education teacher additionally created supplemental worksheets accompanying the general class schedule that were tailored to the Student’s IEP goals.<sup>7</sup> Each week, the special education teacher invited parents to provide feedback, which

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<sup>7</sup> While the general schedule was sent to parents of all students in the Student’s class, a review of the activities included with the schedules submitted with the District’s response showed that the schedules regularly addressed each of the Student’s IEP goals. For example, during the week of March 23-27, 2020,



the special education teacher used to frequently modify the instruction and materials—often uploading additional or supplemental content to the online platform and providing additional worksheets to the Parent when the Student was unable to engage in online learning. During this time, the Parent and special education teacher remained in frequent communication. In her communications with the special education teacher, the Parent frequently reported that the Student was having difficulty engaging with online instruction, both because of his autism and his seizure disorder—which appeared to worsen over the course of online instruction.

18. From March 30 to June 19, 2020, the SLP also sent weekly packets of resources home to the Parent and remained in frequent contact with the Parent.<sup>8</sup> The SLP used the Parent's feedback to tailor future materials provided, to better meet the Student's individual needs while still building upon previous lessons which targeted Student's IEP goals.<sup>9</sup>
19. From March 30 to June 19, 2020, the OT also remained in frequent contact with the Parent and checked-in regarding the Student's self-injurious behaviors and to address individual sensory needs as they presented during remote learning and provide strategies the Parent could use at home.<sup>10</sup>

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the daily calendar/social-emotional time addressed the Student's goal of asking questions and taking turns. The schedule prompted parents to ask their student how his or her day was going and to have the student try to ask parent in return; similar activities were included in the schedules under social-emotional for subsequent weeks. For reading, during the week of March 23, 2020, the schedule provided parents with a link to a video book, and the Student received specific prompts targeting his reading fluency goal, including "mute the story after watching it a few times and see how many words your child can read." On March 24, 2020, the prompt read, "Continue [video book]. See if your child can read some words or point to a word you're looking for. 'Where is the word 'run'?" On March 25, 2020, the prompt targeted the Student's reading comprehension goal: "This time, try difficult questions (Why?) How does Gerald feel about dancing at the beginning of the story? How does he feel at the end? What caused him to change?" Similarly, the writing supplemental worksheets, which corresponded to the video books, targeted the Student's goal of describing a scene and included worksheets with fill-in-the blank questions, asking the Student to answer questions about the characters, setting, and what the Student saw in the video book.

<sup>8</sup> Weekly resources for speech and communication were emailed to the Parent on the following dates: March 30, 2020, April 7, 2020, April 20, 2020, April 28, 2020, May 4, 2020, May 11, 2020, May 18, 2020, May 26, 2020, and June 8, 2020.

<sup>9</sup> For example, on March 31, 2020, the SLP emailed the Parent a link to a resource which described words by function. She noted that "Last week he did great by describing by GROUP/CATEGORY. Now he can try FUNCTIONS! (emphasis in original)" The Parent frequently communicated with the SLP regarding what the Student was working on during private therapies, which the SLP responded to by trying to tailor the Student's lessons to complement his private therapies.

<sup>10</sup> For example, on April 1, 2020, the Parent informed the OT that she had started incorporating a few sensory breaks into the Student's routine, including water beads—reporting that she had seen a slight decrease in self-injurious behavior. The same day, the OT replied she had noticed in school the Student liked engaging in activities that enabled him to stay calm and focused. She recommended similar activities, including

20. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
21. Also on April 6, 2020, the special education teacher emailed the parents of students in her class to confirm parents were able to access online worksheets and asked them if they would be open to meeting as a class once or twice per week for their child to participate in social skills work. She wrote that on April 20, 2020, the class would be meeting together live. The Parent responded that she would like the Student to participate, but noted his difficulties engaging with online material, including that he often became frustrated. The special education teacher suggested the Parent try playing the video in the same room as the Student without the Student being in front of the screen. She additionally noted that following spring break, they could be in touch regarding scheduling the Student's IEP meeting to discuss if any changes were needed to his program. The Parent agreed to try the recommended strategies.
22. The District was on spring break from April 13 to April 17, 2020.
23. On April 20, 2020, the SLP led an online communication group for an earth day lesson. The Student was in attendance.
24. On April 24, 2020, the special education teacher emailed the Parent to discuss scheduling the Student's annual IEP review. That day, the special education teacher and Parent exchanged emails regarding possible changes to the Student's IEP goals, classroom options for the Student for the upcoming year, and additional 1:1 behavior support.
25. On May 3, 2020, the Parent sent the Student's finalized Parent-funded private neuropsychological evaluation to the special education teacher. She also provided an update on the Student's progress while explaining the Student had also been experiencing "a lot more seizures" that week due to a change in seizure medication that she hoped would be better the following week.
26. On May 6, 2020, the SLP led an online group communication skills class, which the Student attended.
27. On May 7, 2020, the special education teacher emailed the Parent a continuous learning plan (CLP), describing the services the District had been providing the Student since March 30, 2020. The CLP indicated the District had provided the Student the following special education services during the school facility closures:
  - Social-emotional: 300 minutes monthly (to be provided by a special education teacher);
  - Behavior: concurrent throughout instructional time (to be provided by a special education teacher);
  - Reading: 300 minutes monthly (to be provided by a special education teacher);
  - Writing: 200 minutes monthly (to be provided by a special education teacher);
  - Adaptive: 200 minutes monthly (to be provided by a special education teacher);

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puzzles, beading, building, sorting, and coloring. The Parent and OT frequently emailed to try different strategies to support the Student's significant sensory needs.

- Math: 200 minutes monthly (to be provided by a special education teacher);
- Speech Language pathology (related service): email resources – 20 minutes weekly, and video lesson – 10 minutes weekly (to be provided by the SLP);<sup>11</sup> and,
- Occupational therapy (consult): monthly check in (to be provided by the OT).<sup>12</sup>

The CLP further clarified how services would be provided to the Student during remote learning:

Remote learning opportunities during these times can possibly include, but are not limited to: Teams meetings, practice activities, small group work, video messages, question and answer sessions, or other methods as appropriate. For the remainder of the school year, special education teacher will provide instructional opportunities every Monday to provide enough instruction in all service areas for the week. Additional resources are accessible to the student and their family on Teams if there is extra available time at home to complete additional instruction. Special Education Teacher holds class meetings 40 minutes 2 times weekly. Live class meetings will include structured social opportunities, some math instruction, exercise, and science. If families require additional support for their child in any service area, teacher is available by email and video teams to provide support to families. 1:1 social interactions weekly with the special education teacher are offered to all students and families can request to meet regularly with teacher beginning at any time.

The CLP stated that the District recognized that “students may not be receiving all services documented in the IEP during the closure caused by COVID-19,” and that:

Information will be collected on learning opportunities provided during the school closure, and baseline data will begin to be collected when normal school activities resume. Individualized Education Program (IEP) teams will conduct meetings on a staggered basis when school opens, to address student-specific needs resulting from the closure. Meetings will include the discussions of services needed to address any inability to fully implement a student’s IEP. This information will be used to inform IEP teams, including parents, regarding any amendments that may need to be made to IEPs.

28. On May 15, 2020, the special education teacher emailed the Parent a draft copy of the Student’s IEP and behavioral intervention plan (BIP) to all members of the Student’s IEP team, in preparation for the Student’s annual review.

29. On May 18, 2020 the SLP led an online communication class, which the Student attended.

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<sup>11</sup> The CLP explained that regarding communication (“speech therapy”), that services include “weekly email with 2-3 resources,” and that “Materials are designed to target AAC use, describing skills, communicating/requesting skills, answering with questions, etc.” It added that additionally, “SLP will run one weekly group lesson with [class] that is designed to target goals and model various language skills.”

<sup>12</sup> The CLP noted that “Materials that support the continuation of sensory regulation has been provided. Materials includes step by step tutorials on how to participate in various activities with visuals. Communication and materials are available in multiple languages. The fine motor material is voluntary and can be completed at family’s own unique pace. Email and small group video support has been offered to answer any specific questions.”

30. On May 19, 2020, the Student's IEP team met for his annual review. The Parents, Student's current special education teacher (special education teacher), future special education teacher, and case manager at the middle school the Student would be attending the following year (case manager), general education teacher, current SLP (SLP 1), future SLP (SLP 2), principal, and private BCBA attended. The team agreed to change the Student's 1:1 from a paraeducator to a registered behavior technician (RBT), to add BCBA consultation services, to add several accommodations to support the Student's behavior across all settings to correlate with strategies utilized by the Student's private therapies, to increase SLP consultation services by twenty (20) minutes per month to support implementation of communication strategies and training for various communication areas (including Proloqui2Go), and to add a monthly thirty (30) minute IEP meeting.<sup>13</sup> The PWN additionally stated that during the remaining school closures, the Student would be provided "virtual options/learning opportunities through a combination of emails, worksheets, recorded lessons, live social interactions, videos and activities." It indicated the Student's IEP would be implemented as discussed at the meeting and documented in the Student's IEP "once schools are back in session."

The Student's May 2020 IEP included measurable annual goals in the following areas: social-emotional (identify personal emotions, identify peers' names), adaptive (transitions), behavior (complete 5 minute work task without aggressive behavior<sup>14</sup>), math (money addition with calculator, skip counting, addition with calculator), reading (fluency with visuals, complete a sentence about a text), writing (typing personal information), and communication as a related service (answering questions, self-advocacy, describing). Progress toward the annual goals was to be measured every semester. The Student's IEP provided the Student with the following specially designed instruction and related services to be provided in the *special education setting*:<sup>15</sup>

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<sup>13</sup> The changes to the Student's IEP were documented in a PWN, dated May 22, 2020. The PWN stated the Student would continue to receive the services in his CLP until school resumed, and that the changes documented in the PWN would be implemented once school resumed.

<sup>14</sup> During an interview with the OSPI complaint investigator on November 25, 2020, the Parent explained that she did not agree with this goal because it was created with the intent of being able to get the Student to be able to tolerate online instruction, which the Student was unable to do for more than five minutes without engaging in self-injurious behaviors. The Parent explained that she had provided the District with letters of support from the Student's doctors and providers, indicating the Student was not able to benefit from online instruction and might experience regression. She indicated she requested in person instruction and that she wanted the Student's goals to focus on other skills required for his needs, rather than those targeting improvement in his ability to sit at a computer, which she indicated she felt was harmful to the Student. The Parent indicated she did not believe the PWN accurately documented what she expressed at the meeting.

<sup>15</sup> Services listed here were to begin on June 20, 2020 through May 24, 2021. The IEP additionally provided that from May 26 through June 29, 2020, the Student would receive the following specially designed instruction daily in the special education setting by a special education teacher or paraeducator: social-emotional (30 minutes), behavior (20 minutes), reading (60 minutes), writing (40 minutes), adaptive (15 minutes), math (45 minutes). The IEP also provided that during this time the Student would receive 30

- Adaptive: 240 minutes weekly (to be provided by a special education teacher);
- Behavior: 240 minutes weekly (to be provided by a special education teacher);<sup>16</sup>
- Math: 240 minutes weekly (to be provided by a special education teacher);
- Reading: 240 minutes weekly (to be provided by a special education teacher);
- Social-Emotional: 240 minutes weekly (to be provided by a special education teacher);
- Writing: 240 minutes weekly (to be provided by a special education teacher); and,
- Speech-language pathology (as a related service); 30 minutes weekly.

The Student's IEP provided the Student with the following supplementary aides and services:

- Speech-Language Pathologist (consultation): 30 minutes weekly (to be provided in the *special education setting*);
- 1:1 para-educator support: 1230 minutes weekly (to be provided by a 1:1 behavior paraeducator in the *special education setting*);
- 1:1 paraeducator support: 575 minutes weekly (to be provided by a 1:1 behavior paraeducator in the *general education setting*);
- 1:1 paraeducator support: 225 minutes weekly (to be provided by a 1:1 behavior paraeducator in the *special education setting*);<sup>17</sup> and,
- BCBA Consultation and program implementation: 2 hours monthly (to be provided by a paraeducator in the *special education setting*).

The May 2020 IEP included the following supports for school personnel:

- The occupational therapist can be available to support [Student's] educational staff with sensory accommodations;
- Monthly meetings with IEP team (30 minutes); and,
- BCBA Consultation<sup>18</sup>

The Student's IEP added the following accommodations: adult proximity, chaining (teaching sequences of a task analysis), differential reinforcement, errorless learning (prompting correct

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minutes weekly of speech-language pathology services from an SLP as a related service, in the special education setting.

<sup>16</sup> Behavior services are concurrent with adaptive services.

<sup>17</sup> The IEP noted the Student required full-time 1:1 behavior support for his two general education class periods and during lunch and that an additional two hundred twenty-five (225) minutes was added to support the Student during passing periods between classes and during the fifteen (15) minutes the Student was at school prior to other students due to his bus schedule.

<sup>18</sup> The IEP specified the Student would have BCBA consulting on the behavioral needs and implementation of daily schedule and instruction for two (2) hours per month, with one hour of time dedicated to consulting with the classroom teacher on program needs, instructional needs, reviewing student needs, and discussing behavior trends as they are occurring and developing. It was noted that this consultation may occur "over the phone, via video-conferencing, or in-person meetings." The other thirty (30) minutes was dedicated to the BCBA "working hands on with support staff on behavioral triggers, instructional strategies, reviewing behavior needs, supports as trends flux based on behavior triggers, and supporting reinforcement system implementation to support positive behavior changes. The last [thirty (30) minutes] will be used for data review and support as needed."

responses), daily communication between home and school regarding behavior, attention and academics, Premark principals (first, then boards), shaping (praising close approximation to appropriate behavior).

31. On June 1, 3, 10, and 15, 2020, the SLP led online communication group sessions, which the Student attended.<sup>19</sup>
32. On June 15, 2020, the special education teacher emailed the Parent resources for the Student to use over the summer. The same day, the SLP led an online communication group session, which the Student attended.
33. On June 19, 2020, the special education teacher emailed the Parent the Student's progress report. The goals included in the progress report were based on those developed at the May 2020 IEP meeting. In the email, the special education teacher wrote that "in the progress report, you will notice there is not much data recorded. Because we were not able to record accurate data on many goals, these goals will be re-assessed when we return to school or find better means of collecting data remotely." The District reported on progress using a rating scale of 1-8, with 8 indicating, "Due to limitations of remote learning, progress towards goal will be assessed when in-person services resume." In each area of the progress report, the Student's progress was reported as an "8."
34. June 19, 2020 was the last day of the 2019-2020 school year for the District.

### **2020 Summer**

35. On August 31, 2020, the Parent emailed the District's BCBA and requested in-person services for the Student for the 2020-2021 school year. The Parent noted it was becoming increasingly difficult to keep the Student in front of a computer screen, and that the Student was only able to pay attention for a maximum of 15 to 20 minutes, during which time he was engaging in self-injurious behaviors (hitting himself and trying to escape). The Parent wrote that she had tried using high value reinforcement items, but it was not working. She added that the Student was rapidly losing skills and that it was also becoming increasingly difficult to get the Student to go outside the home and that she worried about being able to transition the Student back into a school setting. That same day, the District's BCBA responded that someone from the school would be in touch soon to discuss her request further.
36. On September 1, 2020, the Student's case manager sent an email to parents, inquiring about their interest in in-person services and attached a form to fill out to help the school determine eligibility for in-person services once they became available. That same day, the Parent responded to the case manager's email, requesting in-person services—noting that in the six

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<sup>19</sup> Following the SLP small group session on June 1, 2020, the SLP created an additional power-point presentation for the Student to practice using the program and spoke with the Parent regarding how to use it with the Student. The Parent responded that day to thank the SLP and indicated she would practice with the Student that afternoon on his iPad, but noted the Student had not wanted to use his iPad the previous day.

months since online learning began, the Student had “dozens, maybe even hundreds of seizures, giant regressions in behavior, and probably other domains, and lots of [self injurious behaviors].” She added that private services were also cut off and had decreased from fourteen to two hours per week, and that the Student may also require a gradual transition back to school, as he had become comfortable at home.

37. On September 2, 2020, the case manager sent an email, introducing herself and provided the schedule for the upcoming school year. She explained that morning instructional time would be provided for all students as synchronous learning, and that in the afternoon, students would receive small group and 1:1 instruction individualized for their needs.
38. On September 3, 2020, the Parent informed the Student’s SLP 2 that the Student had medication resistant epilepsy and was currently only able to sit in front of a computer for five minutes and would not be able to attend any online instruction for more than that amount of time.
39. On September 4, 2020, the Parent emailed the case manager to request an IEP meeting, stating she did not believe the Student could benefit from online learning. She explained the Student was unable to understand most of what he was seeing on the computer screen, which was causing him to become frustrated and increasingly engage in self-injurious behaviors. She expressed that she was open to helping him, but did not want to continue to see him in that state.
40. On September 8, 2020, the Parent emailed the school nurse the Student’s updated seizure care plan.<sup>20</sup> The Parent explained the Student was having multiple daily seizures<sup>21</sup> and that some could be painful for the Student and result in short-term behavior outbursts. The Parent also noted some difficulties with the Student’s medications.
41. Also, on September 8, 2020, the case manager emailed the Parent to schedule an IEP meeting to discuss in-person services and provided available dates. The Parent responded the same day that she was available the following day on September 9, 2020.

### **2020-2021 School Year**

42. During the 2020-2021 school year, the Student was in the sixth grade, was enrolled in a District middle school and continued to be eligible for special education services under the category autism.
43. September 9, 2020 was the first day of the 2020-2021 school year for the District.

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<sup>20</sup> Updated as of August 2020.

<sup>21</sup> The Parent reported the Student was having more than 50 seizures daily, which impacted the Student’s cognitive and neurological functioning.

44. On September 9, 2020, the Student's IEP team met to discuss the Student's barriers to virtual learning and the Parent's request for in-person services. According to the PWN sent a few days after the meeting,<sup>22</sup> the IEP team proposed "necessary changes to the online learning environment in order to meet [Student's] learning needs," which included "1:1 [virtual] meetings with [Student] and one staff (i.e., special education teacher, paraeducator, etc.) at the beginning of each [virtual] class period for shorter periods of time (5-10 minutes),<sup>23</sup> versus the entire period length; [and] materials related to the areas of [specially designed instruction] to be sent home via email for completion outside of synchronous online learning."<sup>24</sup> The team also adjusted the online learning service delivery to 1:1/small group instruction in addition to the materials sent home "to accommodate [Student's current learning needs in addition to aligning with his behavior goal related to remaining on task for 5 minutes." The PWN provided to the Parent following the IEP meeting noted the IEP team also considered continuing virtual learning in a whole group setting for each period of the school day (instead of providing instruction for 5 minutes), but declined that proposal because the Student "benefits from smaller group settings where the point of the instruction is clear." The PWN documented that the decision was made taking into consideration parent input, home-based BCBA input, state and district-wide mandates, and informal teacher observation.
45. On September 10, 2020, the case manager emailed the Parent to confirm her understanding that for his general education courses, the Student would go and stay for the group online lesson to understand how to complete the activity, and then work with his paraeducator on the activity in the 1:1 virtual breakout room.<sup>25</sup>

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<sup>22</sup> The PWN for the September 9, 2020 IEP meeting was sent to the Parents on September 14, 2020.

<sup>23</sup> The PWN stated the small group meetings would be scheduled at the beginning of each class period in the special education setting. It noted that "if [Student] is present in these meetings for any duration, attendance will reflect that he was 'present' for the period. [Student] will not be required to remain online for the entire class period in order to be counted as 'present.'" The PWN also noted that the Student was currently participating in two elective classes (French and physical education), and that a paraeducator would be attending these classes with the Student. In the general education setting, the PWN stated the Student would "check-in with the whole class first and then meet in a break-out room with his 1:1 paraeducator."

<sup>24</sup> The Parent told the OSPI complaint investigator during her interview on November 25, 2020, that she was responsible for completing all work sent home that was not completed with the Student during the five-minute virtual instruction periods. She stated she requested the District provide additional support at home if the Student was unable to receive in-person services at school, but that the District denied her request. In response, the Parent reported she had the Student's private BCBA therapists come to the home in the mornings to prepare the Student for virtual learning, but indicated she was becoming unable to sustain the financial costs of that support.

<sup>25</sup> During her interview with the OSPI complaint investigator, the Parent reported that as the semester continued, she had to sit next to the Student during the entire duration of this instruction and that the Student "did not appear to understand what was going on," even during the breakout sessions with the 1:1



46. Also, on September 10, 2020, SLP 2 emailed the Parent to introduce herself and to inform the Parent that she was working on creating the Student's schedule. She attached a form, requesting Parent input for the purpose of helping her get to know the Student.
47. On September 11, 2020, SLP 2 reported in her therapy log that she saw the Student in her special education virtual adaptive class for 30 minutes.<sup>26</sup> Also on September 11, the Parent emailed the SLP 2 an update on the Student's progress in each of his IEP goals that week. The Parent continued to be in frequent contact with SLP 2 regarding the Student's engagement with the materials provided through the duration of the time period under review for this complaint.
48. On September 14, 2020, the SLP reported in her therapy log that she saw the Student in her virtual special education social skills class for 30 minutes.
49. On September 16, 2020, the District sent the Parent PWN that it was proposing to continue the Student's IEP instruction in a virtual setting.<sup>27</sup> The PWN indicated that "Following the guidelines from the District, building teams determined students who met eligibility criteria for in-person services. Guidelines were based on recommendations from the implementation team for in-person services and follow guidelines from OSPI and Public Health of Seattle and King County." It noted that all students with the Student's LRE code of 0-39% were considered for in-person services, but that the individual Student was denied approval for in-person services in the building because he was unable to meet certain criteria, including "ability to independently follow safety and physical distancing requirements," and due to his "engagement in behaviors that can compromise staff safety and [personalize protective equipment (PPE)]." The PWN indicated that the date for the second wave of in-person services had not yet been determined, but would be communicated by the District and that families would be contacted accordingly.
50. Also, on September 16, 2020, the case manager emailed the Parent that the building team would like to proceed with an evaluation of the Student for in-person services on October 5 and 6, 2020. The Parent responded that she was "very disappointed, sad and angry" that the Student was not being permitted to receive in-person services the following week and again noted it was becoming increasingly difficult for the Student to be in front of a computer screen, and that consequently, he was unable to be present for his full instructional time. That

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paraeducator. She further reported the Student was continuing to become increasingly frustrated and that these sessions would frequently be cut short due to the Student's inability to tolerate virtual instruction.

<sup>26</sup> The Parent reported the Student was not always in attendance for the full class period due to his inability to tolerate the full amount of time without becoming frustrated and sometimes engaging in self-injurious behaviors.

<sup>27</sup> A meeting notice was attached to the PWN, stating a meeting had been scheduled for September 16, 2020 to review the Student's eligibility for services.

case manager responded that she understood the Parent's frustration, as "virtual learning is not ideal for anyone." She added that she would do her best to engage the Student online.

51. Later, on September 16, 2020, the Parent emailed the District's executive director of special education (executive director). She explained that she had received a call that morning, informing her the Student would not be receiving any in-person services because his behavior (elopement, self-hitting, biting) was not in accordance with the safety rules he was required to follow to enter the building. She informed the executive director of the Student's diagnoses, including autism, epilepsy, a sensory processing disorder, and apraxia of speech. She stated the Student was unable to learn online and that five minutes of instruction or services was not sufficient for him to meet his goals. In particular, she wrote:

[Student] is able to keep his mask for at least 2 hours (and [put it] back when he is told to), does not elope and rarely has some [self-injurious behaviors] when he is working with his private team. Most of the behaviors ([which] seem to make him not allowed at school) occurred at school last year, that is why we insisted so much and fought to have a BCBA and a behavior trained para[educator] and this is why we asked that it was written in his IEP. The more we wait, the more difficult it will be for him to go back to school.

52. On September 17, 2020, the director of special education (director) responded to the Parent's email to the executive director that it was her understanding the BCBA had been in touch with her regarding setting up an evaluation of the Student for in-person services. The Parent responded that the BCBA had contacted her, but that the evaluation was still at least two weeks away. She expressed concern that the Student was only receiving five minutes of instruction in his service areas, and that she believed the Student had been denied approximately 1,410 minutes of special education services since the Student began remote learning in the spring of 2020. She also expressed frustration with the District's policy for determining eligibility for in-person services, noting that the Student's behaviors were related to his disability and that he was able to wear a mask.

53. On September 18, 2020, the middle school occupational therapist (OT 2) emailed the Parent to inform her what steps were being taken to provide the Student's individualized occupational therapy services remotely. The email noted services would be provided in a 1:1 virtual setting and explained that "[Occupational therapy] services may look like 1:1 virtual time with the student, recommendation, trainings and communication to the staff, resource materials, modifications, and supporting the student and team in the scope of [occupational therapy]." The Parent responded the same day that she was frustrated because the Student was unable to do anything online despite her efforts. The Parent also stated that she was not an OT and that she did not feel she had been as effective of a service provider as what the Student required to access learning. She communicated her concerns that the District had denied her request for in-person services.

54. On September 21, 2020, the special education teacher sent activity sheets to the Parent to complete with the Student that week. The activities targeted the Student's specific IEP goal areas. That same day, the special education teacher reached out to the Parent regarding scheduling a meeting with the English language learners (ELL) coordinator to set up an

introductory meeting to discuss strategies for the Student regarding his pronunciation, and to schedule meetings of five minutes in duration (consistent with the Student's programming) to work with him. The Parent agreed, and the first meeting was scheduled for September 30, 2020.

55. On September 22, 2020, the SLP 2 reported in her therapy log that she met virtually with the Parent for 30 minutes regarding an AAC device for the Student.

56. Also, on September 22, 2020, the Parent emailed the special education teacher that she was concerned the Student was not learning. She explained the Student's private ABA therapists were coming to the Student's home each morning to try and help engage the Student in online learning, but that the Student was still only able to engage in five to twenty minutes and that he engaged in a lot of self injurious behavior during that time. The Parent explained that worksheets were better, but that he needed more instruction time.

57. On September 23, 2020, the Parent emailed the case manager the following concerns:

It may be easier to do another PWN or an IEP meeting stating that online is not possible at all and that I will teach another way with the lesson or material you can send me. I am totally able to adapt your lesson in order to work at home. I was an elementary teacher for more than 10 years [and] a sped teacher in France and I have ABA and Montessori teaching certifications from 1 to 12 years old, so I can do it. Or, as [District] school district does not want him in his buildings, they could send someone at home or send him in a private school who will teach in person or pay for the behavioral technicians to work daily with him. We need to discuss it because the online part is not doable for him, nor for me nor for you. There are too many obstacles for him to learn that way.

This week we scheduled meetings with all this therapists, health care providers teams. We already talked with the pediatrician, SLP, some of his ABA team members, neurodevelopmental psychologist, neurodevelopmental nurse at [hospital], and with his psychiatrist. All of them told us and confirmed that online learning is not at all what he needs and that we need to find a solution to have some in person time. Some of them went as far as stating that we are doing more harm than good by pushing him to work online.

58. Also, on September 23, 2020, the case manager emailed the Parent to ask when she would like to schedule the Student's monthly IEP meeting, as required by his IEP, and suggested they discuss her concerns about online learning at that time. The meeting was scheduled for October 12, 2020.

59. Also, on September 23, 2020, the Student's developmental nurse practitioner provided the Parent with a statement to provide the District regarding her opinion that the Student required in-person services, which stated:

[Student] is a patient at [Children's Hospital Autism Center] and carries a diagnosis of autism spectrum disorder, attention deficit hyperactivity disorder (ADHD) and a seizure disorder. [Student] is minimally verbal and is learning to use an augmentative and alternative communication device (AAC). Receptively, he has difficulty understanding and following multistep direction, particularly through virtual settings. [Student] engages in repetitive motor and play behaviors and has sensory sensitivities and sensory seeking

behaviors. He often walks/paces and needs sensory objects to help with learning/instruction; sitting for periods of time in front of a screen is extremely difficult for [Student]. Over the past several years, [Student] has undergone neuropsychological evaluation which has revealed concern regarding a regression in skills; he could potentially have an even more significant loss of learning without in-person instruction. Areas that are especially important to target are [Student's] language and social communication deficits, social-learning abilities, executive functioning and adaptive skills. Therefore, it is strongly recommended that [Student] have access to in-person classroom instruction and intervention with specialists (e.g. SLP, OT, BCBA) in an effort to maximize his learning capacity).

60. On September 25, 2020, the student's developmental pediatrician also wrote a letter in support of the Student receiving in-person services, which the Parent provided to the District and which stated: "[Student's] [medical and developmental] conditions have significant impact on his ability to learn in certain environments. He is at high risk of not only lack of progression but actual regression. I strongly support [Student]' family's advocacy for in person speech therapy and learning."

61. On September 30, 2020, the Parent emailed the case manager that she had been reviewing the PWN, dated September 16, 2020, which stated the Student would not have any in-person learning and noted that it stated there was an IEP meeting that same day. She added there was a meeting notice included with the PWN, which indicated she had been invited, but that she was never invited to the meeting, nor was she aware of one occurring. The Parent requested an explanation.

That same day, the case manager responded that the system used to write PWNs "auto-populates that a meeting occurred, even when a meeting does not take place." She confirmed that an IEP meeting did not take place on September 16, 2020, and asked the Parent if she would like a new PWN, documenting that no meeting took place on that date, and that the Student would be receiving an in-person evaluation on October 5 and 6, 2020, upon the Parent's request. The Parent responded to the special education teacher that she accepted the offer for a new PWN, and added that she would like the document to specifically state that "there was no IEP meeting, that we weren't invited to the meeting where and when the decision was taken, and that nobody asked us [or] our private team any [for] any input for the decision written on the PWN." The Parent added that she consented to the behavior evaluation for in-person services on the October 5 and 6, 2020.

62. Also, on September 30, 2020, the Student's private BCBA wrote a statement regarding his opinion on the Student's need for in-person services, which the Parent provided to the District. It stated, in relevant part:

[Student] has a complex profile since he has co-diagnoses of autism and seizure disorder. Unfortunately, these co-diagnoses have affected his cognitive ability and communication skills. Due to the neurological impact and communication deficits, [Student] does engage in episodes of maladaptive behavior that does include tantrums, self-injury, elopement, aggression, and property destruction. Based on this information, I strongly feel that [Student] is not a candidate for the remote educational option currently available by the

district. [Student] has been receiving remote educational services since school began in September. Unfortunately, it has been nearly impossible for him to maintain engagement with the instructors or paraprofessionals remotely because he does not understand what is happening on the screen. His mother, [Parent], always must remain seated next to him so she can immediately prompt him to respond to all requests. This level of support is extremely difficult for his parents to implement and certainly to sustain. [Student] is not being provided with adequate educational services via an online format nor does this system help him make meaningful progress toward his IEP goals... [Student] does tolerate wearing a facemask but has difficulty wearing it for several hours consecutively. He also does not understand social distancing requirements. [Student] has always required high levels of prompting and error correction from staff during instruction, so this prevents staff from remaining more than six feet away from him. With his history of elopement, staff also must remain in close proximity for safety. [Student] also required visual schedules and access to instruction based on his current skill level. Given that [Student] is not able to appropriately access his IEP services remotely, he should meet some portion of the district and school team's criteria for in-person placement...I understand and empathize with the district and school team's safety concerns when considering in-person placement for learnings...However, I strongly disagree with the team's decision to deny [Student] access to Free Appropriate Public Education (FAPE). His most effective learning techniques are not appropriately implemented by remote learning which is causing an increase in maladaptive behaviors and non-compliance.

63. On October 1, 2020, according to the SLP therapy log, the Student received five minutes of instruction.

64. On October 2, 2020, the case manager emailed the Parent an updated PWN based on their September 30, 2020 discussion, which included the following statement:

This PWN includes information sent to [Student's] family on 9/16/2020 in a prior PWN. The purpose of this PWN is to clarify that no meeting was held in relation to the PWN sent on 9/16/2020. Rather, the PWN auto-populates with meeting information, regardless of whether a meeting was held. No meeting occurred with the IEP team or family to discuss [Student's] in-person eligibility. Rather, building teams determined eligibility based on criteria listed above, and the family was sent notification of the decision in the PWN sent on 9/16/2020. [Student] will have an informal evaluation for in-person services on 10/5/2020 and 10/6/2020. During this informal evaluation, the same criteria<sup>28</sup> listed above will be examined, with [Student] in the school building.

65. Also, on October 2, 2020, the Parent filed this complaint.

66. On October 3, 2020, the lead behavior technician with the Student's private ABA provider wrote a statement in support of the Student's need for in-person services, which stated, in relevant part:

I believe that due to [Student's] diagnoses and profile, he is not a viable candidate for online learning and should be attending classes in person. Online learning requires a level of comprehension, communication skills and executive functioning that he simply does not

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<sup>28</sup> Criteria included whether the Student was able to independently follow safety and physical distancing requirements, and whether the Student engaged in behaviors that could compromise staff safety and PPE.

demonstrate. Online learning also requires the ability to recognize and communicate with a face on a monitor that he has never interacted with in-person. I was given the opportunity to observe [Student] during his online classes on September 21, 2020. During the entirety of the school day I saw [Student] only being provided with 1-1 services online totaling 30 minutes. Additionally, the lack of understanding and mutual intelligibility between [Student] and the teacher or para-educator resulted in heightened stress and anxiety for [Student], the anxiety served as a setting event for increased aggression...I have provided at home ABA services twice weekly for a total of 4 hours [since April 2020]. At no point has [Student] ever attempted to adjust or remove my PPE...While [Student] does have a history of aggressive behavior since April, he has only had two instances of tantrum behavior during our session...However, even during these moments of aggression, at no point did [Student] ever grab or even reach for my PPE...Even though [Student] does not understand social distancing, when asked by any staff member or even his peers to 'give them space,' [during weekend activities during community based instruction program], he does.

67. On October 21, 2020, the Student's IEP team met to again discuss the Student's need for in-person services. The Parent provided the District with the statements received from the Student's medical providers and therapists. At the meeting, the team agreed to initiate a schedule of in-person services two days per week. According to the District's response, "The IEP team discussed how to best make use of the limited in-person time available, and agreed to prioritize specially designed instruction during in-person learning, along with efforts to support engagement in remote general education programming to the extent that his participation is beneficial to the Student. This in-person engagement [gives] the staff an opportunity to help Student develop the skills to participate in remote learning during the remote portion of the school week."

The District clarified in its response that the services were being provided in accordance with the Student's goal of being able to attend to five minutes of instruction without aggressive behavior with the intention of helping the Student be able to engage in online learning, which it believed would improve the Student's ability to access instruction. In her reply, the Parent wrote that "in fact, [District] put [Student] alone in a classroom with his [paraeducator] (and sometimes his BCBA), in front of his computer to listen to online classes given by his teachers somewhere else, with the goal to teach him how to learn online and stay without moving on a chair doing it." The Parent explained to the OSPI investigator that she did not believe this met the Student's needs or provided FAPE.<sup>29</sup>

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<sup>29</sup> The Parent told the OSPI investigator that when the Student was going to the school building, she did not feel the Student was safe or that his IEP was followed. She relayed that when the Student was at school, he was brought to general education classes for five minutes to watch a virtual session and then a behavior paraeducator would sit with the Student in a breakout room and try to work with the Student on how to "attend to a computer screen for a longer period of time" and "sit in his seat." She reported that if the Student expressed a break was needed, the Student would be permitted to play outside or would be taken for a walk; however, the Parent indicated she felt the Student was not receiving the proper supports for this to be safe and would sometimes be told the Student went into traffic. The Parent also expressed that the Student was not receiving his accommodations or other supports, including those to meet his sensory

68. On October 26, 2020, the case manager emailed the Parent "accuracy data" collected in the Student's goals, which was provided to the Parent upon request.<sup>30</sup> Data was collected based on the Student's accuracy of response using the errorless learning method in the areas of social emotional (identifying peer names, identifying personal emotion), math (coin addition, money addition, skip counting), reading (complete a sentence, fluency), and writing (typing personal information). Data was also provided on the Student's progress on his behavior goal (data tracked occurrences of challenging behavior in a virtual setting for 5 minute intervals). It was noted that transition data was unable to be measured until the Student returned to a traditional learning environment.

69. On October 27, 2020, the Student's pediatric neuropsychologist wrote a statement in support of the Student's need for in-person services which stated, in part:

Since this is a new situation COVID-19 and remote learning, there is no hard research to give [to show remote learning is harmful]. However, it should be clear as day that for a child similar to your son that this type of approach to teaching him anything is ridiculous and will cause him to not make any progress and possibly a regression. Due to his profile and severity, he needs direct 1:1 ABA instruction, and asking him to remain focused on Zoom will only lead to frustration and a total lack of learning. You don't have to be a doctor to know this – tell the lawyers that months is totally not appropriate and that we need to help him now.

70. On November 25, 2020, the Parent submitted her reply to the District's response. Her reply included an additional letter from the Student's private speech therapist supporting the Student's ability to safely receive in-person services:

I have been seeing [Student] for weekly speech therapy in person at [private speech therapy provider] since July 10, 2020. Due to COVID-19, precautions have been put in place for the safety of the speech therapist (myself) and for our patients. I have worn a mask and/or face shield at all times during my interaction with [Student]. He has not attempted to take the mask or face shield off of me. [Student] is able to put his own mask on without physical assistance. I do give him a verbal prompt (e.g. 'put your mask on') before we exit the treatment room to greet his mother at the end of the session. [Student] is expected to wash his hands with hand sanitizer routinely in the session, which he does, when I squirt the hand

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needs. The Parent also expressed that she did not feel the Student was receiving adequate instruction by attending classes for five minutes, even though he was receiving his virtual instruction in-person at school.

<sup>30</sup> The email and attached data maintained by the case manager was provided with the Parent's reply. The Parent reported to the OSPI complaint investigator that the data was provided per her request after her request for recovery services was denied during the October 21, 2020 IEP meeting due to reports that the Student had made progress in all areas of his IEP (it is noted that because progress is reported each semester, the District did not include a current progress report with its response as the semester was not yet over). There was no documentation of the Parent's request for recovery services or of the IEP team's denial of the request provided as part of the complaint investigation. The Parent relayed that she disagreed with data being collected based on accuracy from the "errorless learning" method, which was added as an accommodation to the Student's IEP in May 2020. The Parent stated the Student was repeating answers quickly given to him, rather than demonstrating progress and that it was inappropriate to use it as a basis for determining the Student's need for additional services.

sanitizer into his hands. I have not attempted teletherapy sessions with [Student]. In his in-person sessions, he frequently requires prompts to attend to (i.e. look at) the book or activity we are working on.

71. On November 25, 2020, the OSPI complaint investigator interviewed the Parent. The Parent reported that she had filed her notice of intent to homeschool the Student on November 3, 2020. The Parent requested the District continue to provide speech therapy services. OSPI received confirmation of this by the District the same day.

## CONCLUSIONS

**Issue One: IEP Implementation during 2020 Spring School Facility Closures** – The Parent alleged the District failed to implement the Student’s individualized education program (IEP) during the school facility closures from March through June 2020, caused by the COVID-19 pandemic. Specifically, the Parent alleged the Student did not receive the full number of minutes of specially designed instruction in math, writing, reading, behavior, social-emotional, and adaptive, or the number of minutes of related services in communication.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services that is compliant with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs may not have always be implemented as written as school facilities shut down and districts transitioned to various distance learning formats during spring 2020. While there was not an expectation that districts implement a student’s IEP as written during school facility closures caused by COVID-19 in spring 2020, districts had to have a plan for how students with disabilities were to receive a free appropriate public education (FAPE), including the provision of specially designed instruction and related services. Accordingly, all schools were required to have begun continuous learning for all students by or around March 30, 2020, which was to include a written plan for providing special education services, including specially designed instruction and related services to the greatest extent possible, to students during the school facility closures. In addition, districts were required to document in writing, the individualized special education services it was providing to each student with an IEP.

The District closed its facilities on March 13, 2020. Around that time, the Student’s special education teacher began developing comprehensive weekly schedules of activities that targeted the Student’s IEP goals in the areas of social-emotional, reading, writing, math and adaptive, which she emailed to the Parent each Monday. The special education teacher also provided supplemental worksheets and activities—usually in the areas of math, writing and reading—which were more specifically tailored to the Student’s individual needs and goals. In addition, the special education teacher led online virtual class sessions twice-weekly and weekly opportunities for online structured group social interaction. The Parent regularly provided the special education teacher feedback, particularly when the Student was struggling to engage in online learning or



was working on something in his private therapies to support the Student during remote learning that the Parent wanted to continue reinforcing during the school day. The special education teacher promptly responded to the Parent's feedback, acknowledging the significant support required by the Parent due to the Student's complex needs, and frequently modified or adapted the materials and instruction she provided the Student in response to that feedback. During this time, the occupational therapist (OT) regularly checked in with the Parent and responded to the Parent's feedback to provide support for the Student's sensory needs, and the SLP sent home resources and assignments tailored to the Student's IEP goals at least twice weekly (more often when requested), and offered group communication classes. In May 2020, the District developed a continuous learning plan (CLP) for the Student to document the services it had been providing the Student. The services documented on the CLP align with the documentation showing what the Student received, including therapy logs, communication logs, emails, and Student work product provided by the District.

The Student's special education teacher and service providers were in frequent communication regarding the Student's complex unique needs during the spring of 2020. It is acknowledged that the Parent also provided significant support to the Student, as the documentation showed the Student required the Parent to remain seated next to the Student for the entirety of the remote learning instruction and to provide constant prompting and redirection in order for the Student to engage in learning. It is further noted that even with the full support of the Student's special education teacher and service providers that the District was unable to implement all of the instruction and service minutes as written on the Student's IEP. However, as previously stated, the District was not required to implement the Student's IEP as written during the school facility closures in the spring of 2020. It was, however, required to have a plan for providing students with special education services, including specially designed instruction and related services, and to have written documentation of the individualized special education services it provided the Student by or around March 30, 2020. The documentation showed the District complied with this.

Regardless of its inability to implement the IEP as written during the school facility closure, the District was required to continue monitoring the Student's progress on his IEP goals during that time, which would help the IEP team determine the Student's need for additional services to mitigate the impact of the school closures on the Student. Here, the District informed the Parent no data was collected on the Student's goals in the spring of 2020, and as such, the progress report the District provided to the Parent at the end of the 2019-2020 school year stated in each area that "due to limitations of remote learning, progress towards goal will be assessed when in-person services resume." OSPI accordingly finds the District in violation for not having collected progress data during spring semester 2020. While it appears the District began collecting data on the Student's progress on his IEP goals once the 2020-2021 school year began, it is unclear from the documentation provided if or how the documentation was considered as part of the District's determination regarding the Student's need for additional services to mitigate the impact of the school facility closure during the spring of 2020. Because the District has demonstrated it is currently conducting progress monitoring of students during remote learning, systemic corrective actions are not required.

If the Parent chooses to reenroll the Student, OSPI recommends the District include data from the Student's time prior to homeschooling and progress from speech services provided during home schooling to determine if the Student requires services to mitigate the impact of the school closures from the spring of 2020.

**Issue Two: IEP Implementation during 2020-2021 School Year** – The Parent additionally alleged the District failed to implement the Student's IEP during the current school year (September 9, 2020 through the filing of this complaint on October 3, 2020), and that it did not respond appropriately to the Parent's request to consider in-person services, thus resulting in a denial of a FAPE for the Student.

For a district to meet its substantive obligation under IDEA, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The student should have the opportunity to meet challenging objectives. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

At the commencement of the 2020-2021 school year, OSPI informed districts that they should no longer be implementing continuous learning plans developed during the spring of the 2019-2020 school year, and instead were required to implement students' IEPs as written to the *greatest extent possible*, regardless of the district's preferred model of operation. Districts must also continue to implement appropriate accommodations and related services, regardless of setting or model of operation used, to ensure students are able to equally access their learning and are receiving the intended educational benefits of their IEP to the greatest extent possible.

At the Student's IEP annual review meeting in May 2020, the IEP team considered a new private neuropsychological evaluation when it increased the Student's level of behavior support and added several accommodations and modifications for the 2020-2021 school year. At the meeting, the IEP team also changed the Student's behavior goal to state the Student would be able to complete a five minute work task without aggressive behavior. The change was made in response to the observation that the Student was unable to engage with virtual instruction and often responded with aggressive (including self-injurious or escape) behaviors after five minutes. It was documented in the District's response that the IEP team believed the Student's inability to engage with virtual learning was a barrier to the Student being able to access instruction and services required in his IEP to receive FAPE. A PWN issued following the May 2020 IEP meeting stated that the IEP developed at that IEP meeting would be implemented "once schools are back in session," and that until then, the services described in the CLP would be implemented through "virtual options/learning opportunities through a combination of emails, worksheets, recorded lessons, live social interactions, videos and activities." As the 2019-2020 school year came to an end and the possibility of school being remote in the fall of 2020 became clear, the Parent began expressing her concerns that virtual learning was not appropriate for the Student.

At the commencement of the 2020-2021 school year, the Student's IEP developed in May 2020 was in effect. However, on September 9, 2020, following the Parent's request for in-person services, the Student's IEP team met to discuss the Student's needs during virtual learning. At the meeting, the IEP team changed the Student's service delivery model to individualized 1:1 or small group instruction and documented that the Student would receive individualized virtual instruction for five minutes at the beginning of each class, with the remainder of the work being mailed home to the Parent to complete with the Student. According to the PWN and the District's response, the IEP team determined the services provided aligned with the Student's behavior goal of engaging in work without aggression for five minutes. The documentation showed that during this time, the Parent raised frequent concerns with the District about the Student's inability to receive an educational benefit from virtual learning and expressed concerns about her own limitations on continuing to provide the level of specialized support being asked of her, particularly due to the Student's communication needs and her own limitations with the English language. Although the Parent provided the District with several statements from medical providers and the Student's private therapists in support of the Student's need for in-person instruction, documenting the Student's cognitive and developmental limitations to be able to engage and benefit from virtual learning and risk of regression caused by his seizure disorder, almost the entirety of the instruction being provided to the Student focused on improving the Student's ability to engage in virtual instruction for five minute increments.

The Student's May 2020 IEP provided the Student with 240 minutes weekly of specially designed instruction in math, reading, writing, behavior, social-emotional and adaptive, as well as support for communication, sensory, and behavior needs. While the IEP team agreed to a behavior goal addressing the Student's ability to engage in a work task for five minutes without aggressive behavior, the District was also required to implement the Student's IEP to the greatest extent possible in light of the Student's circumstances, which included the Student's unique disability profile of severe autism, an uncontrolled seizure disorder, attention deficit hyperactivity disorder, and a communication disorder, as well as the Student's status as an English language learner. At the start of the 2020-2021 school year, the District was no longer permitted to implement the Student's CLP, and thus the Student's May 2020 IEP, which the District did *not* amend, remained in effect throughout the duration of this complaint. The May 2020 IEP included IEP goals in areas other than behavior surrounding the Student's ability to engage in virtual learning and provided the Student with specially designed instruction, related services, and other therapies and supports to help the Student make progress on these goals. Implementing the Student's IEP and robust services therein by providing only five minutes of virtual instruction, targeting predominately the Student's behavior goal, and then requiring the Parent to implement the remainder of the minutes of instruction and services for all other service areas on the Student's IEP, does not constitute implementing the Student's IEP to the greatest extent possible, nor does provide the Student with the intended educational benefits of his IEP at public expense.

Further, although in light of the District's determination that the Student did not qualify for in-person services, the PWN issued following the September 9, 2020 IEP meeting detailed the IEP team's proposal to focus on the Student's behavior goal and provide increments of five minutes of instruction per class and five minutes twice weekly of SLP services, there was more than a minor

discrepancy between the services the Student was intended to receive under his IEP (240 minutes of instruction weekly [48 minutes daily], in each area of the IEP, in addition to 30 minutes weekly of SLP therapy), and the implementation methods proscribed in the September 9, 2020 PWN. Although there is flexibility regarding the methods used by districts to implement students' IEPs during remote learning (e.g., synchronous versus asynchronous), the changes made to how an IEP is implemented must still provide FAPE. Although the District documented health and safety concerns in its decision to not provide the Student in-person services at the school, it needed to identify an alternative method for delivering appropriate services, which it did not do. OSPI accordingly finds the District in violation for not implementing the Student's IEP to the greatest extent possible from the commencement of the school year (September 9, 2009) to the date this complaint was filed (October 3, 2020).

Although the Student is not currently enrolled in the District, the District will be required to provide compensatory services to the Student for the duration of the time period under review for this complaint (September 9, 2020 through October 3, 2020). Compensatory services will be provided by a certified special education teacher or SLP at the rate of one half the time indicated on the Student's IEP. Thus, the District will be required to provide 7.5 each of adaptive, behavior, math, reading, social-emotional, and writing and 1 hour of speech.

**Issue Three: IEP Meeting Procedures** – The Parent alleged the District did not follow IEP meeting procedures during September 2020. While the Parent did not specify the particular IEP meetings in her complaint, the documentation showed one IEP meeting was held on September 9, 2020.

When a parent believes that a required component of a student's IEP should be changed or wishes to discuss or something implicating the provision of FAPE, the district must conduct an IEP meeting containing all required members. Districts must provide parents with sufficient notice of meetings and afford them an opportunity to meaningfully participate. When the district proposes or refuses a parent's request to initiate or change something impacting the provision of FAPE to the student, it must provide the parent with prior written notice (PWN) containing all required components.

On September 9, 2020, following the Parent's request for in-person services, the Student's IEP team met to discuss the Student's needs during virtual learning. The Parent was provided sufficient notice for the meeting and was afforded an opportunity to participate. All required team members were present. At the meeting, the IEP team decided to change the Student's service delivery model to individualized 1:1 or small group instruction, whereby the team determined the Student would receive individualized virtual instruction for five minutes at the beginning of each class, and then the remainder of the work would be mailed home to the Parent to complete with the Student. Although decisions regarding what model to use to deliver services across the District and to certain groups of qualifying services may be District or building-level decisions, the request by the Parent to consider in-person services for this particular Student to implement his IEP was an individual request, impacting the individual Student's provision of FAPE. Thus, if a parent requests an IEP meeting to request in-person instruction, as this Parent did, to meet what she believed to be the individual needs of the Student as necessary for the Student to receive a FAPE, and the IEP team declines to address this request or declined the Parent's request at a meeting, as the District

did here, the District should include this on the PWN. The PWN should contain all required elements, including the District's reason for declining the Parent's request, and alternatives considered, if relevant. OSPI finds the District in violation for not providing the Parent with a compliant PWN.

The Parent also alleged the District violated procedures by providing her with PWN on September 16, 2020 that included a meeting notice, indicating a meeting was also held on September 16, 2020. The September 16, 2020 PWN indicated the District determined the Student was not eligible for in-person services. On September 30, 2020 the Parent expressed concern to the District that the PWN was inaccurate, as she was not invited to a meeting on September 16, 2020. The case manager responded to the Parent that a meeting had not occurred on that date and explained the meeting notice was auto-populated when the PWN was sent. The case manager further explained that the decision regarding what criteria were being used to determine what students to bring back for in-person learning were building-level decisions. The District was not required to send a PWN on the September 16, 2020 for a building level determination and could have informed the Parent in a letter. However, as the Parent specifically requested to discuss in-person services at the September 9, 2020 IEP meeting, the District should have addressed this in the earlier PWN, instead of a separate PWN. As the District made clear that a meeting did not occur without the Parent, OSPI finds no violation related to IEP meeting procedures. OSPI reminds the District, however, that if it is responding to an individual request for in-person services made at an IEP meeting, the District should document its decision in the PWN.

### **CORRECTIVE ACTIONS**

By or before **February 12, 2021** and **September 3, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

By or before **February 5, 2021**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 7.5 hours of specially designed instruction adaptive, 7.5 hours in behavior, 7.5 hours in math, 7.5 hours in reading, 7.5 hours in social-emotional, 7.5 hours in writing, and 1 hour in speech and language pathology.

The District will provide OSPI with documentation of the schedule for services by or before **February 12, 2021**.

The compensatory education will occur in a one-on-one setting, in-person, and be provided by a certificated special education teacher and speech language pathologist. 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 27, 2021**, including those needing to be rescheduled.*

No later than **September 3, 2021**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates,

times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **September 3, 2021**.

**DISTRICT SPECIFIC:**

None.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

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

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

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

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