

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-39**

### **PROCEDURAL HISTORY**

On March 10, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint filed by an attorney (Complainant) on behalf of two students (Student A and Student B)<sup>1</sup> attending the Echo Glen School (School), and all other students with individualized education programs (IEPs) who "have been at [School]...during the 2019-2020 school year."<sup>2</sup> Echo Glen School is the educational institution at the Echo Glen Children's Center (referred to as the juvenile rehabilitation center or JRC), located in the Issaquah School District (District).<sup>3</sup> The Complainant alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the education of Student A, Student B, and also that the District violated the IDEA regarding the education of all students with IEPs at the School.

On March 12, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent the same day. OSPI asked the District to fully respond to the allegations made in the complaint by April 3, 2020, and also that the District provide some information by March 19, 2020, to assist OSPI in investigating the allegations impacting all students with IEPs.

On March 19, 2020, OSPI received the initial requested documents from the District.

On March 25, 2020, OSPI requested additional documents from the District.

On March 29, 2020, the District notified OSPI that it was unable to enter the School building due to the novel coronavirus outbreak (COVID-19) and was unable to obtain all of the documents requested on March 25, 2020 until April 3, 2020, and would require an extension.

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<sup>1</sup> The attorney signed the complaint submitted to OSPI on behalf of Student A, Student A's father, Student B, and all other "students who were denied a free and appropriate public education by the Issaquah School District in the 2019-2020 school year." For simplicity, the attorney who filed the complaint is referred to throughout the decision as the "Complainant."

<sup>2</sup> The Complainant alleged that according to Washington state data, during the 2019-2020 school year, 36.7% of students at EGS have a disability.

<sup>3</sup> The Echo Glen School (School) is located within the Echo Glen Children's Center (EGCC). The EGCC is a medium/maximum juvenile rehabilitation center (JRC) located within the District that is run by Juvenile Rehabilitation (JR) under the Department of Children, Youth and Families (DCYF). For the purpose of this complaint, the EGCC is referred to as the "JRC." The JRC provides treatment services for younger male offenders and gender specific programming for female offenders and provides educational services for a wide range of youth with varying needs, including youth with disabilities. Beginning in the 2019-2020 school year, the School underwent severe funding cuts resulting in cuts to staffing, instruction, and programs, which impacted the delivery of special education services, including those received by Students A and B.

On April 3, 2020, OSPI reviewed the records it already had in its possession, including multiple email exchanges between the District and OSPI regarding the issues alleged in the complaint. OSPI determined that in order for it to complete its investigation, including making findings on each of the allegations raised, it was not necessary for the District to provide all of the documents initially requested on March 25, 2020, but that it did require the District to provide a response to the allegations raised and some documents specific to Students A and B. OSPI requested the District provide OSPI with the requested documents and its response to the allegations.

On April 7, 2020, the OSPI investigator spoke on the phone with the Complainant to explain the change in documents requested by OSPI from the District due to the documents already in OSPI's possession, which would be considered as part of the investigation. The same day, the Complainant provided OSPI with releases for both Student A and Student B.

On April 9, 2020, OSPI received the District's response. On April 10, 2020, OSPI forwarded the District's response to the Complainant.

On April 22, 2020, OSPI received the Complainant's reply. OSPI forwarded that reply to the District the same day.

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

### **SCOPE OF INVESTIGATION**

Based on the allegations in the complaint, the time period under investigation begins on September 4, 2019—the first day of school for the District for the 2019-2020 school year. Any information included from events prior to September 4, 2019 is mentioned for informative, background purposes only.

### **ISSUES**

1. Did the District follow procedures to implement the individualized education programs (IEPs) of students attending [EGS] during the 2019-2020 school year, including providing the students with their specially designed instruction, accommodations and modifications as written on their IEPs?
2. Did the District follow procedures to conduct progress monitoring on its students with IEPs attending [EGS] during the 2019-2020 school year?
3. Did the District follow procedures to revise or amend the IEPs of students attending [EGS] during the 2019-2020 school year, including Student A, in October 2019?
4. Did the District follow procedures regarding the maintenance of special education records for Student B, resulting in a denial of a free appropriate public education (FAPE)?

### **LEGAL STANDARDS**

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through

enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

Provider Responsibility for Implementation: Each school district must ensure a 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; and each provider is informed of their specific responsibilities related to implementing the student's IEP, as well as the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. 34 CFR §300.323(d); WAC 392-172A-03105(3).

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).

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

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

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

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

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

## **FINDINGS OF FACT**

### **Background: 2018-2019 School Year**

1. On January 29, 2019, Student A was transferred into the District and the School as a 10<sup>th</sup> grade student. In Student A's previous district, Student A was eligible for special education services under the category specific learning disability. The Student's most recent evaluation had been completed in April 2018 and the Student's May 2018 individualized education program (IEP) provided the Student specially designed instruction in reading, writing, and math.
2. On March 6, 2019, the District completed a transfer review for Student A and determined it would continue the Student's least restrictive environment placement in accordance with his previous IEP, which indicated the Student would spend 67.51% of his time in the general education setting. The same day, a prior written notice (PWN) was sent to Student A's parents, notifying them the IEP team had determined it would continue the Student's IEP from his previous district and provide comparable services until a reevaluation could be completed and a new IEP developed. According to the March 6, 2019 PWN, the School offered "a specialized and highly structured school setting with no more than 11 students per classroom with a low student ratio." The PWN explained the Student would be receiving specially designed instruction in the areas stipulated on the Student's previous evaluation (math, reading, and writing), that Student A would participate in the general education classroom per his schedule, and that a school-wide behavior intervention plan would also be implemented.<sup>4</sup> The PWN continued to say the Student "would be participating with non-disabled peers in general education classes," and that "[Student A] may also be participating with non-disabled peers when he receives specially designed instruction..."
3. From March 19 to May 31, 2019, the District maintained an open job posting for a special education teacher. According to the District's response to this complaint, the unfilled need for

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<sup>4</sup> Student A's IEP did not include a behavioral intervention plan (BIP). The School used a web-based behavior improvement system and IEP goal progress monitoring for all students called "Review 360." The Review 360 platform provided a system for paraeducators to collect behavior data throughout the school day on each student (or by a teacher if no paraeducator was present).

a special education teacher decreased the possibility of the District being able to hire teachers for the 2019-2020 school year.<sup>5</sup>

4. On May 24, 2019, the School reviewed Student A's IEP and determined he required adult support to make progress in the areas of reading, writing, and math. His May 2019 IEP provided him with the following specially designed instruction:
  - Math: 270 minutes weekly, to be delivered by a special education teacher in the special education setting;
  - Reading: 135 minutes weekly, to be delivered by a special education teacher in the special education setting; and,
  - Writing: 135 minutes weekly, to be delivered by a special education teacher in the special education setting.

Student A's May 2019 IEP additionally provided Student A with several accommodations in the classroom and during testing. In the classroom, accommodations included being permitted access to headphones during non-instructional time, having a designated space for student materials, having lessons broken into "manageable parts," and receiving a copy of all class notes for assessments. During state testing, Student A's IEP provided him with access to a calculator, a multiplication chart, and text-to-speech equipment. The Student's IEP also provided for modified classroom assignments, including modified grading.

Student A's May 2019 IEP contained the following measurable annual goals:

- **Math:** "By 5/21/2020, when given real world word math problems, [Student A] will write simple expressions, identify mathematical tools that will help him evaluate expressions, and correctly solve order of operation problems, improving math calculation and reasoning skills, from 2 out of 10 correct, to 10 out of 10 correct, as measured by teacher observations, curriculum based assessment."
  - **Writing:** "By 5/21/2020, when given a writing prompt, [Student A] will compose a three paragraph essay, improving grammar and conventions of standard English, from composing a one paragraph response with no grammatical errors, to composing a three paragraph response with no grammatical errors, as measured by work samples, teacher created rubric."
  - **Reading:** "By 5/21/2020, when given informational text at the sixth grade reading level, [Student A] will cite textual evidence to support what the text says explicitly, improving reading comprehension, from citing one piece of textual evidence, to citing three pieces of text evidence, in 5 out of 5 assignments, as measured by work samples teacher created assessments."
5. On May 29, 2019, the District posted an ad seeking paraeducators. The ad did not receive any response from qualified applicants.

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<sup>5</sup> During this time period, on May 13, 2019, the District posted another ad for special education teachers for the 2019-2020 school year and hired one special education teacher (special education teacher 1) who started at the commencement of the 2019-2020 school year.

## Summer 2019

6. On July 31, 2019, August 1, 6, 16, 25, and 27, 2019, and on September 3, 2019, the District interviewed candidates for open special education and paraeducator positions at the School. On August 12, 2019, the District hired a second special education teacher for the 2019-2020 school year. By August 25, 2019, the District had allocated funds for 6 permanent paraeducator positions for the 2019-2020 school year. By the end of the summer, only 2 paraeducator positions had been filled for the 2019-2020 school year.
7. The JRC utilized the 2019 summer to provide orientation and training to School administration and staff:
  - On August 12, 2019, the JRC administration met to discuss staffing and specially designed instruction delivery planning.
  - On August 14 and 26, 2019, the School provided training and orientation for special education teacher 1<sup>6</sup> and new paraeducators.
  - On August 19, 2019, the School hosted new staff orientation for all general education and special education staff.
  - On August 22 and 28, 2019, the District provided training for administrative and School staff on Review 360 for how to track student behavior and conduct IEP goal progress monitoring.<sup>7</sup>

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<sup>6</sup> Start date for special education teacher 1 was September 4, 2019.

<sup>7</sup> According to information provided by the District's special education director (director) to the OSPI investigator on May 1, 2020, behavior and IEP goal data was supposed to be taken each period during the school day (6 periods total) on each student by paraeducators (or by a teacher if a paraeducator was not present in the classroom), and then entered into the online behavior management program to assist with behavior and IEP goal progress monitoring. The behavior goals included in the online behavior monitoring program were determined by School staff at the start of the 2019-2020 school year. During the 2019-2020 school year, the behavior goals were "MORSE" ("M=mindful, O=ownership, R=respect, S=safety, E=engagement"). The director explained that behavior goals were entered by the principal, who was a certificated special education teacher, following a review of each student's IEP upon enrollment at the School. The principal then provided a binder for each classroom teacher of all students' IEP goals as entered into the online behavior monitoring program, along with examples of how to "score" each goal with examples of "what being met, partially met, and not met" looked like in order to support paraeducators and general education teachers in entering data accurately into the program. Training on using the online behavior management program to monitor and track student behaviors and progress on IEP goals occurred prior to the commencement of the 2019-2020 school year, and throughout the year. According to the director, the trainings were facilitated by the principal and several changes were made regarding how to use the online behavior management program following staff feedback during the 2019-2020 school year. It is noted that neither of the students named in this complaint had a behavioral intervention plan (BIP) and their IEPs did not indicate they had behaviors that interfered with their learning. Accordingly, the behavior monitoring program implemented by EGS existed outside of their IEP. For students with an IEP that includes an existing BIP, the IEP team would still need to consider the student's individual needs related to behavior and whether additional behavior supports are necessary. A student may also require additional behavior goals as determined by the student's IEP team.

- On August 27 and 28, training was planned for administrative and School staff to review Edgenuity, an online learning platform the District was planning on using during the 2019-2020 school year.<sup>8</sup>
8. On August 27, 2019, OSPI's institutional education leadership team met to discuss special education funding, including for the School.

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

9. The District's first day of school for the 2019-2020 school year was September 4, 2019. The timeline for this complaint also began on September 4, 2019.
10. At the commencement of the school year, Student A was an 11th grade student in the District and continued to be eligible for special education services under the category of specific learning disability. Student A's May 2019 IEP continued to be in effect.<sup>9</sup>
11. According to the complaint and District's response, at the commencement of the 2019-2020 school year, the District faced significant staffing and funding shortages which continued into the 2019-2020 school year. Both the complaint and District's response asserted that these staffing and funding shortages impacted the District's ability to develop and implement the IEPs of Student A (and eventually Student B), as well as other students with IEPs at the School. During an interview with OSPI, the District's director of special education (director) noted that on September 4, 2019, the District had one full-time special education teacher (special education teacher 1) and one full-time paraeducator on staff.<sup>10</sup> By September 16, 2019, the District had two full-time special education teachers (special education teacher 1 and special education teacher 2) and 1 full-time paraeducator. The District was filling the remaining paraeducator positions with substitutes. The director noted that the decrease in full-time special education teachers and lack of consistency with paraeducators due to the School's reliance on substitutes impacted the District's ability to consistently implement IEPs and likely contributed to the "chaotic" environment described by Students A and B in the complaint.
12. During September 2019, in an attempt to respond to both staffing and budget constraints, the District began using an online learning platform to deliver specially designed instruction to students with IEPs in the areas of English and math, and to implement accommodations. The online learning platform was also used to provide instruction to students in general

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<sup>8</sup> On August 30, 2019, a training was scheduled for all staff on how to use the online platform; however, the trainers from the provider of the online learning platform did not show up and no one received training on this day. Training was provided for staff in September.

<sup>9</sup> At the commencement of the school year, Student B was a 20-year-old Student attending another high school in the District. She did not return to the School until October 2019.

<sup>10</sup> While the District was supposed to have two special education teachers on staff, one special education teacher did not show up on the first day. A second special education teacher replaced that teacher on September 16, 2020.



education classes in grades 6-12 in all content areas necessary for students to meet State graduation requirements. According to an interview with the director, this was done through a contract between the District and the online learning provider, whereby the District agreed to provide the online learning provider with the content that needed to be delivered to each student,<sup>11</sup> the IEPs of students specifying the specially designed instruction required (i.e., how the instructional method of delivery for each student needed to be modified, adapted or otherwise altered to meet the students' unique needs), and any other accommodations required by the IEPs.

According to the District, the contract provided for the online platform's certified special education teachers to design and deliver specially designed instruction in English and math according to the students' IEPs and using the content provided by the District, and also to implement accommodations in the instruction provided in general education classes. Specially designed instruction in these areas could be provided in courses other than the areas the specially designed instruction was required in. The intention, according to the director, was to make the special education teachers on staff at the School available to design and deliver specially designed instruction to students who were unable to receive their instruction in an online learning format,<sup>12</sup> and to students who required specially designed instruction in areas other than those that can be provided in English and math, and to assist with developing and writing IEPs. Paraeducators were to be used in the classroom to provide additional support. Using the online learning platform, progress monitoring was supposed to be done by teachers weekly in all classes and incentives were linked to student progress, as provided for as part of the online behavior incentive program.<sup>13</sup>

13. During the first two weeks of September 2019, the District provided multiple opportunities to its staff to receive training on how to use and implement the online learning platform prior to its implementation on September 13, 2019. According to the District's response, training occurred through weekly staff meetings and was facilitated by both the principal and staff from the online training platform. The School's dean of students also facilitated training and provided additional support. Specifically, according to the District's response, during the month of September 2019, the following training was provided:
  - On September 4, 2019, staff received training on how to use the online learning platform, including training on how the different options for differentiation in the online platform aligned with needs identified in IEPs;
  - On September 6 and 10, 2019, the online learning platform provider trained staff on the accommodations and modifications included with the program;

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<sup>11</sup> The provider of the online learning platform did not alter or modify the content provided. If a student's IEP required modifications to content, those modifications had to be done by a District special education teacher.

<sup>12</sup> Some students, as a condition of their court order, were not permitted to access online learning or other technology.

<sup>13</sup> The expectation for progress monitoring was more frequent than the scheduled progress reports to parents in most IEPs.

- On September 13, 2019, students began using the online learning platform for the first time.<sup>14</sup>
14. In the complaint, the Complainant alleged that Students A and B, “along with many other students at [School]... reported that for the first few weeks of the school year, [School] provided close to no classes due to the lack of staffing,” and that instead, “students were told to participate in games or sent back to their residential cottages.” The complaint additionally alleged that “On the rare occasions when students stayed in the classroom, students observed that paraeducators were the only adults present and instructed students to simply sit at computers.” Student A reported that he did not receive any specially designed instruction or accommodations during this time.
  15. During an interview with the OSPI investigator, the director responded that while the District did not implement the online learning platform from September 4-13, 2019, that during the first two weeks of the school year, the focus at the School was on activities to build trust and relationships between students in cottages and between students and staff. She noted that the successful building of these relationships was necessary for student engagement and learning to occur throughout the school year and to reduce student on student violence that was known to disrupt learning. For these reasons, the director explained that full days of academic instruction does not begin at the School on the first day of school, but rather is phased in throughout the first few weeks of school as students become accustomed to their schedules, their peers within their cottages, and staff.<sup>15</sup>
  16. On September 13, 2019, the Washington State Department of Child and Youth Family Services (DCYF) administration held a meeting to discuss special education staffing and the delivery of specially designed instruction at the School. The same day, District administration and District special education administration met to discuss issues surrounding IEP writing, locating IEP files, and changes to IEP file management at the District level.
  17. September 16, 2019 was special education teacher 2’s first day teaching at the School. Special education teacher 2 was provided training on his current caseload, how to use the online behavior monitoring program and online learning platform, and also informed how to receive additional support from the principal. According to the District’s response and an interview with the director, the master schedule was changed on September 16, 2019 to decrease the class size for students receiving specially designed instruction and to increase students receiving specially designed instruction’s access to a special education teacher.
  18. On September 20, 2019, special education teachers 1 and 2 were provided an “IEP writing day” to complete writing IEPs, writing evaluations, and other tasks necessary for compliance related

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<sup>14</sup> According to the District’s response, when the online learning platform was first implemented, it included a “differentiated leveled curriculum aligned with IEP goals.”

<sup>15</sup> OSPI notes that IEPs should be implemented the first day of the school year, unless otherwise stated in a student’s IEP.

matters.<sup>16</sup> On September 20, 2019, and on other "IEP writing days," the District provided a substitute for both special education teachers.

19. Also, on September 20, 2019, the director emailed the assistant superintendent of special education (assistant superintendent) regarding setting up a meeting to discuss the situation at the School.
20. According to the District's response and an interview with the District's director, on September 23-24, 2019, special education teacher 2 struggled to perform the tasks associated with his position. Documentation showed he was provided with support and opportunities for professional development on these days.<sup>17</sup>
21. On September 25, 2019, the District and DCYF entered into an updated agreement pursuant to RCW 19.34 to define the respective responsibilities and areas of collaboration between JR and the District, as it specifically relates to the provision of educational services to youth under supervision at the JR's facility.
22. Around September 26, 2019, the assistant superintendent received a call from the Office of the Education Ombudsman (OEO) regarding safety concerns at the School. Specially, the OEO reported to the assistant superintendent that a school employee at the School reported an overall consensus among teachers that there was a lack of security, staff felt fearful, and that there were reports of assault. In addition, the staff member reported that students were not being supported in learning due to a reduction of teachers, that there was an increase in behavioral health reports, and that the School did not have enough resources or support. In response to the concerns, OSPI scheduled a meeting with JR staff for September 30, 2019 to discuss these concerns. The assistant superintendent also notified the District and the School principal of the information provided.
23. On September 27, 2019, the assistant superintendent received a call regarding concerns expressed by a student with disabilities at the School. The student described not receiving his specially designed instruction per his IEP and feelings that computer-based instruction was not meeting his needs. The same day, the assistant superintendent emailed the director to schedule a meeting to discuss these concerns. In her email to the director, the assistant superintendent acknowledged the School had been facing budgetary constraints and a reduced teaching staff, but noted the students at the School retained the protections afforded them under the IDEA and WAC 392-172A, including that their IEPs must be implemented and a free appropriate public education (FAPE) be provided. The email recognized the District had

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<sup>16</sup> The District provides special education teachers at the School with 10 "IEP writing/release days" per year. During these days, the District provides substitutes for all the special education teacher's classes.

<sup>17</sup> On September 23, 2019, the principal provided special education teacher 2 with training on the differences between IEP accommodations and modifications. On September 24, 2019, the principal and dean of students offered support to special education teacher 2 regarding the completion of IEPs and reminded special education teacher 2 of his obligation to meet compliance deadlines relating to timelines for developing draft IEPs and for goal writing for new transfer students.

exhibited an understanding of these obligations, but that there remained concerns about the impact of a reduction in funds. The email noted possible consideration of additional avenues of funding support for students with disabilities and requested a meeting to discuss these considerations. The director responded the same day that she was interested in working with OSPI and would coordinate a time to meet.

24. Also, on September 27, 2019, the District held interviews for paraeducators. The interviews did not produce any qualified applicants; thus, the District continued to staff its paraeducators with substitutes.

25. In October 2019, Student B returned to the School. Student B was a twenty-year-old student in the District and was eligible for special education services under the category of intellectual disability.<sup>18</sup> The School implemented Student B's May 2018 IEP.<sup>19</sup> Her May 2018 IEP provided her with the following specially designed instruction:

- Social/emotional: 125 minutes weekly, delivered by a general education teacher and monitored by a special education teacher in the general education setting;
- Adaptive: 100 minutes weekly, delivered by a general education teacher and monitored by a special education teacher in the general education setting;
- Math: 175 minutes weekly, delivered by a special education teacher in a special education setting;
- Reading: 150 minutes weekly, delivered by a special education teacher in a special education setting;
- Writing: 125 minutes weekly, delivered by a special education teacher in a special education setting.

Student B's May 2018 IEP also provided Student B with the following accommodations and modifications:

- Monitor/assist project planning;
- Break material into manageable parts;
- Provide brief verbal directions;

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<sup>18</sup> It appears Student B entered the School with an IEP that expired shortly after her arrival. However, the May 2018 revelation and IEP were the only records the District was able to produce for Student B. These records indicated that in addition to requiring specially designed instruction in reading, writing and math, Student B required additional assistance in the areas of "social-emotional behavior and adaptive skills." Student B also had medical diagnoses of attention deficit hyper-activity disorder (ADHD), post-traumatic stress disorder (PTSD), depressive disorder, and "possible Bipolar Disorder," which her IEP indicated exacerbated the adverse impact of her intellectual disability on her ability to stay "engaged and focused in the classroom." Because of this, the Student's 2018 reevaluation noted a former teacher of Student B commented that Student B "requires extra help for all tasks," and "needs one-on-one assistance to understand the task."

<sup>19</sup> The Complainant provided documents showing she requested updated documents, including a May 2019 IEP, on behalf of Student B, but was unable to obtain a May 2019 IEP from the District. OSPI also requested updated records from the District and only received a May 2018 IEP for Student B. It is unclear if the District was unable to locate and obtain updated records for the Student, or, if the Student has not received an updated IEP since May 2018.

- Provide copy of class notes;
- Allow an oral rather than written response;
- Allow use of a calculator;
- Allow use of a multiplication chart;
- Allow for short work breaks;
- Check for understanding;
- Preferential seating (to reduce distractions);
- Testing: allow for frequent breaks;
- Testing: extended time to complete tests (annual assessment window);
- Testing: text-to-speech;
- Modified Classroom Assignments (e.g., off-grade level, decrease in complexity, decrease in length/amount);
- Curriculum: Shortened assignments (daily/classroom); and,
- Modified Behavior Expectations (different than grade level/general education expectations).

The May 2018 IEP included the following goals for Student B:

- **Social (Self Advocacy):** "By 05/29/2019, when given a challenging academic task, [Student B] will first attempt task independently before asking teacher or designated [sic] peer for assistance in completing the task, improving self-advocacy and task completion, from 3 out of 5 opportunities, to 5 out of 5 opportunities. as measured by teacher observation, student reflection, work samples."
- **Writing (Functional Writing [Adaptive]):** "By 05/29/2019, when given an application or form to complete, [Student B] will accurately complete the form with necessary information, improving functional writing skills, from independently completing an application in 0 out of 3 opportunities, to independently completing an application in 3 out of 3 opportunities. as measured by work samples, teacher observation."
- **Math:** "By 05/29/2019, when given a multiple digit subtraction problem requiring regrouping, [Student B] will accurately solve the equation, improving math computation, from accurately solving 0 out of 5 problems, to accurately solving 5 out of 5 problems. as measured by teacher created assessment, curriculum, work samples."
- **Reading:** "By 05/29/2019, when given an informational passage to read, [Student B] will identify key details within the text that support the main idea, improving reading comprehension, from not being able to pull key details from the text, to identifying 3 key details in the text."
- **Written Expression:** "By 05/29/2019, when given a writing prompt, [Student B] will produce a clear and coherent give sentence paragraph, improving conventions of standard English, from composing a paragraph with 10 conventional errors, to composing a paragraph with less than 3 conventional errors. as measured by work samples, teacher created rubric."

26. The complaint alleged that when Student B was enrolled in October 2019, Student B "was enrolled in an online history class," and that Student B "did not take any other class until she completed the history course." The complaint asserted that "during this time, [Student B] received no specially designed instruction—and no instruction whatsoever—in any of the areas listed on her IEP."

27. From October 1-18, 2019, administrative staff at the School provided support, training, and administrative warnings for special education teacher 2 as he continued to struggle with

completing tasks essential to his job function and was not completing assignments on time required to maintain compliance with special education tasks.<sup>20</sup>

28. Also, on October 2, 2019, a staff meeting was held on the topic of classroom management, and instruction was given to support creation of all specially designed instruction. A District meeting was held the same day with special education administrative staff regarding staffing at the School.
29. On October 9, 2019, the District conducted additional interviews for paraeducators for the School.
30. On October 10, 2019, the District's human resources administration met with paraeducators to discuss their responsibility for collecting data as part of progress monitoring. That same day, a meeting was held with the online learning platform provider to discuss modifying curriculum content.
31. On October 15, 2019, the JRC administration met to discuss special education staffing needs and the delivery of services.
32. On October 16, 2019, the principal provided binders of each student's goal and goal scoring rubric from the behavior monitoring program to each classroom for paraeducators to use for goal tracking for students with IEPs.
33. Also, on October 16, 2019, a staff meeting was held to discuss classroom layout to allow for increased delivery space for providing specially designed instruction to students with IEPs, to review the online learning platform for IEP goal leveled content, and to review the data collected from the behavior monitoring program.
34. On October 17, 2019, the DCYF JR technology coordination team met. During the meeting, attendees discussed including delivery of specially designed instruction in the schedule. DCYF administration also met on October 17, 2019, to discuss special education processes at the School.
35. Also, on October 17, 2019, an IEP meeting was held at which Student A's IEP was reviewed and revised to indicate that a paraeducator would be delivering the Student's specially designed instruction and responsible for reporting on the Student's progress.<sup>21</sup> The goals which Student

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<sup>20</sup> The District provided documentation to show special education teacher 2 was provided additional support and professional development opportunities on the following dates: October 1, 2, 3, 4, 8, 9, and 10, 2019. On October 14, 2019, the District sent special education 2 a letter of direction requiring he comply with deadlines. On October 17, 2019, the principal met with special education teacher 2 to review his performance and provide additional support. A follow up meeting was scheduled for October 25, 2019.

<sup>21</sup> According to the meeting summary and signature document maintained by the District, on October 25, 29, 2019, the District called the parent at the number provided and left multiple messages regarding

A were supposed to have made progress on in math, writing, and reading by May 21, 2020 were listed, but no data had been collected and no narrative comments were provided. Language was added to the IEP to indicate that the Student's academic present levels should include information from reading and math assessments using the Renaissance STARS assessment<sup>22</sup> and credit accumulation through the online learning, but no information from these assessments was provided.

36. According to information provided by the director to the OSPI investigator during an interview, toward the end of October 2019, it became clear to District administration and School administration that special education teacher 2 was unable to perform the necessary requirements of his job. The director further stated that it became clear to the District administration and School administration around the same time that the online learning platform was "not working."

In response to continued staffing concerns and acknowledgement that the online learning platform was not able to deliver specially designed instruction as anticipated, the director stated the School started to transition back to having special education teacher 1 design the instruction and paraeducators deliver the instruction in-person—however, she noted the process was gradual. The quality of the delivery of specially designed instruction during fall 2019 also continued to be impacted by the lack of full-time special education staff. The director explained that the School faced additional difficulties with providing specially designed instruction outside of the online platform because of the lack of full-time special education staff and barriers to scheduling resulting from the unique needs of the population served by the school. Some of these barriers included a decrease in minutes of instructional time and an increased need to consider the security and safety of students and staff when designing a schedule and staffing model. The director shared that weekly instructional time was decreased due to the school schedule, which permitted independent study time per WAC 392-122-212, and enabled students to receive court-mandated counseling and other therapeutic activities during the school day. The director additionally shared that during fall 2019, there was trial and error as District, JR, and School administration attempted to find a schedule and staffing model that continued to minimize student on student violence, kept boys and girls separate as much as possible, and provided necessary security across all settings, while also implementing IEPs.

37. On October 21, 2019, the District administration met to discuss special education processes at the School and staffing concerns, including concerns regarding special education teacher 2 and problems with the ability of the online learning platform to deliver specially designed instruction as indicated in students' IEPs. The same day, the principal met with special education teacher 2 to "check-in" on his delivery of specially designed instruction and on

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scheduling a meeting to discuss the proposed amendment of Student A's IEP, but never received a return call.

<sup>22</sup> STARS scores represent how many months into a school year a student is demonstrating skills for (e.g., a score of 9.2 reflects 2 months into the 9<sup>th</sup> grade school year).

progress monitoring. During her interview with OSPI, the director explained that when the principal checked in with special education teacher 2 and reviewed the documents the special education teacher was supposed to be creating, including IEPs for students on his caseload which needed to be written to reflect recent IEP meetings and amendments, and to include updated goals and progress information, most had not been started or completed.

In response on October 21, 2019, the District began using a "ghostwriter" to write IEPs for students who were entering the School. The director told the OSPI investigator that the ghostwriter was a tutor who had previously provided instruction to students in the District who were receiving home hospital placement and had a relationship with some of the students because she had previously served as a substitute. However, the ghostwriter did not have a special education background. Accordingly, the director acknowledged that some of the IEPs of students that were written during this time may have been written in a more "formulaic manner" rather than in response to the Student's needs.

38. Starting on October 22, 2019, special education teacher 2 did not show up for work and continued to be absent on leave for the remainder of the first semester. The District filled his position with paraeducators and substitutes.
39. On October 23, 2019, School staff met with a professional learning coach to discuss classroom management and student engagement.
40. Also, on October 23, 2019, the District interviewed paraprofessionals for open positions.
41. On October 24, 2019, Student A's IEP team met with the Student, but without the parent. The purpose of the meeting listed on the meeting invitation was to "review and amend [Student A's] IEP due to a change in placement to a correctional facility." The following participants were in attendance: Student, LEA representative, special education provider, and general education teacher. That same day, the District issued a prior written notice (PWN) that it was proposing to amend the Student's IEP minutes.<sup>23</sup> The reasons for the proposed change provided on the PWN was that the "IEP minutes needed to be in alignment with the [School] program." The PWN additionally stated that the change was being made to reflect a change in placement and noted that the team proposed the Student would continue with all current goals, except one behavior goal which the Student had shown mastery in. The PWN also indicated the IEP team had considered adding modified grading to the Student's IEP for courses in which the Student was receiving instruction online.

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<sup>23</sup> The amended IEP decreased the minutes of specially designed instruction in writing from 135 minutes weekly to 100 minutes weekly and shifted the instruction from a special education teacher to a paraeducator. The Complainant stated there was no indication that the Student had improved in writing such that he no longer required 135 minutes of specially designed instruction from a certified special education teacher, and noted that the Student's goals showed no growth or change. The Complainant further alleged that the change was made without a reevaluation or assessment to justify a change in minutes. The Student's revised IEP also reflected a decrease in math minutes (from 270 to 100 minutes weekly) and reading (from 135 to 100 minutes weekly).



42. In the complaint, the Complainant alleged the October 23, 2019 amendment to the Student's IEP, which resulted in both a reduction in IEP minutes and a change in the delivery method, was improper. The Complainant asserted that the School "decreased the specially designed instruction in writing from 135 minutes to 100 minutes a week and shifted the instruction in writing from 135 minutes to 100 minutes a week and changed the delivery method to a paraeducator without having a reason for doing so." The Complainant alleged these changes were made entirely for scheduling reasons and were not based on the Student's needs. The Complainant further alleged that the School similarly amended the IEPs of other students and that the amendments were improper.
43. During an interview with the director, the director told the OSPI investigator that the amendments to Student A's IEP were made during an IEP meeting following a review of the Student's needs while at the School—needs which the director stated were different because the court had ordered the Student to be placed in a setting with a different number of instructional minutes per week available to all students.

In the District's response, the director acknowledged that the District had received previous guidance not to amend IEP's based only the schedule at the School but rather that amendments needed to be based on a student's needs, and that the School no longer engaged in that practice. However, during the interview, she noted that students often arrive at the School with IEPs and evaluations that are out of date or are not appropriate because they do not reflect the student's needs in the current setting. When this happens, the director stated the student may require a reevaluation and/or an IEP meeting to amend the IEP in light of the changed setting and schedule. The director noted the School's week includes less instructional minutes than many other schools due to its therapeutic program offerings and 220-day school year, which results in many students entering with IEPs that do not reflect the student's current needs, which require amendments to keep them current and in compliance with regulations requiring students to have current IEPs.

The director also acknowledged that because of the District's practice of using a ghostwriter who was not a certified special education teacher and because of their difficulties with staff writing IEP amendments who may not have been qualified to do so, there may have been some IEPs that were not properly written to reflect the decisions of the IEP teams.

The director also noted that there continues to be ongoing confusion among special education staff regarding whether IEPs for students at the School should reflect the student's current educational needs and setting as determined by the IEP team, or whether the IEP teams should determine and write the IEPs to reflect the student's needs in a comprehensive school setting—in recognition that the Student will only be at the School temporarily and that the evaluations may not be completed by the time the student leaves. The director noted that this confusion among staff has continued to result in some inconsistencies in the IEPs and amendments written by staff, particularly regarding how the service matrix is written.

44. Also, on October 24, 2019, OSPI conducted an on-site monitoring visit and interviewed school staff to discuss the delivery of special education services to students at the school.

45. On October 25, 2019, the principal reassigned some of special education teacher 2's caseload to special education teacher 1 and the ghostwriter in recognition that special education teacher 2 would likely not be returning. The same day, the District sent a written directive to special education teacher 1 to use remaining IEP writing days to work on completing IEPs.
46. Also, on October 25, 2019, the Governor's office and the Office of Financial Management (OFM) met to discuss special education funding to the School and District and the challenges with delivering specially designed instruction to students at the School.
47. On October 29, 2019, a meeting was held with the online learning provider to discuss the possibility of developing below grade level 6 content in support of students with IEPs who required the delivery of modified content below the 6<sup>th</sup> grade level.
48. During the month of November 2019, special education teacher 2 remained out of the office. The District filled his role with substitutes.
49. On November 6, 2019, the District posted an ad seeking paraeducators for open positions at the School.
50. On November 7, 2019, District special education administrative staff met to discuss issues regarding staffing and special education service delivery. Also, on November 7, 2019, a new paraeducator began working at the District. The paraeducator became a full-time employee on November 13, 2019.
51. On November 14, 2019, the OSPI institutional education leadership team met with the District's special education administration to discuss special education planning and the need for compensatory education.
52. On November 15, 2019, a meeting was held between OSPI, the director, and the principal to discuss delivery of special education services. The same day, the District's human resources met to discuss special education staffing.
53. From November 15-18, 2019, OSPI also had internal conversations regarding ways the State could support the District in contracting for additional staff and by facilitating emergency certification necessary to bring on qualified staff to fill vacant special education positions.
54. On November 19, 2019, the director, assistant superintendent, and director of special programs for the Puget Sound educational service district (PSES) serving that District exchanged emails regarding strategies for hiring services to use and to locate qualified special education teachers and paraeducators to assist in providing compensatory services.
55. On November 20, 2019, training was provided to the School staff on how to implement IEP accommodations in general education classes using the online learning platform.
56. On November 21, 2019, the District paraeducator coach provided support to paraeducators on the special education data entry process in support of progress monitoring.

57. November 22, 2019 was one of the two full-time paraeducator's last day.
58. On November 25, 2019, the District permanently filled special education teacher's 2 position with a long-term substitute who was a certificated special education teacher. This special education teacher was also utilized to begin providing compensatory services to students in accordance with the compensatory services required by OSPI.
59. Also, on November 25, 2019, OSPI's institutional educational leadership group met to continue planning for how to improve the delivery of special education services.
60. On November 26, 2019, the School's administrative staff met and discussed the specially designed instruction delivery process. That same day, the director emailed the assistant superintendent the District's draft proposal and funding model for providing specially designed instruction and compensatory services during the 2019-2020 school year at the School.
61. The District was on Thanksgiving break from November 28-29, 2020.
62. On December 4, 2019, the director emailed the assistant superintendent that she was close to being able to move forward with the classified union to be able to hire an agency paraeducator for the School. She noted that the contract would require the paraeducator to be hired for an 8-hour day instead of a 6-hour school day, but that the District would use the additional time to provide compensatory services.
63. On December 5, 2019, the assistant superintendent responded to the District's draft proposal for providing specially designed instruction and compensatory services during the 2019-2020 school year by providing comments and questions in the text of the draft proposal. The assistant superintendent also scheduled a meeting with the director to discuss her comments for the following Monday, December 9, 2019.
64. On December 7, 2019, in preparation for the December 9, 2019 meeting, the director emailed the assistant superintendent in response to some of the questions raised by the assistant superintendent. The director answered questions regarding the calculation of missed minutes for specially designed instruction not provided. The director added that for the majority of the 2019-2010 school year thus far, there had only been one special education teacher and "a cast of paraprofessionals, so there have been some [specially designed instruction] minutes delivered, but not all." In her email, the director discussed possible ways the District could calculate missed instructional minutes. The director added the District had offered a position to "a strong para candidate" and that another promising interview was scheduled for December 9, 2019. The director noted that once these positions were filled, a significant number of missed minutes could "immediately be resolved."
65. On December 9, 2019, the director emailed the assistant superintendent her response to the assistant superintendent's comments on the draft proposal for providing specially designed and instruction and compensatory services during the 2019-2020 school year.

66. On December 16, 2019, the assistant superintendent wrote a letter to the director,<sup>24</sup> confirming the District's acknowledgment that the District had not been providing FAPE to students at the School since the fall 2019, which the letter indicated was "contrary to the assurances made by [District] leadership on June 26, 2019 when they applied for federal special education funds and contrary to the requirements under Part B of the Individuals with Disabilities Act (IDEA) and its implementing federal and state regulations." The letter noted that the State consequently identified a violation of WAC 392-172A-0200 and it was requested that the District correct this violation as soon as possible and no later than July 1, 2020.

The December 16, 2019 letter further acknowledged that while the District contributed their failure to provide FAPE to State funding constraints and inability to fill educator and paraeducator positions, and that these concerns were under review by OSPI and legislative fiscal staff, there remained an "immediate need to provide special education services, as identified in students' IEPs, and appropriate compensatory services to students at [School]." Under 34 C.F.R. 300.227, OSPI must use IDEA funds available to the district or the state to provide services if the district is unable to establish and maintain FAPE. As such, OSPI made a temporary, time-limited reimbursement to the District from State-level IDEA funds for the provision of FAPE at the school through June 30, 2020. As a condition of the funds, the District was required to "create and implement a plan that ensures students with an IEP located at [School] receive a FAPE, as per their IEP."

67. Also, on December 16, 2019, the online learning platform program met with the District and the School to discuss including modifications and accommodations within the curriculum.

68. On December 18, 2019, a new paraeducator was hired.

69. On December 19, 2019, District administration met and discussed IEP compliance.

70. From December 23, 2019-January 3, 2020, the District was on its first winter break.

71. In January 2020, Student A left the School. At the time Student A left the School, Student A reported that he had not received any instruction, including specially designed instruction in writing. Similarly, the Student reported having received limited instruction in reading. Although the Student reported having received general education instruction in math, the Student reported only receiving packets of information and alleged that he did not receive any support.

72. During January 2020, Student B reported being enrolled in additional courses, but reported she "did not have a full course schedule." She alleged that she received some general instruction through the online platform, but no specially designed instruction in the areas in which she was provided online instruction.

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<sup>24</sup>See December 16, 2019 Letter (Exhibit A).

73. On January 1, 2020, a staff meeting was held to review the online learning platform and behavior monitoring program in support of IEP implementation and progress monitoring. The same day, an optional master schedule planning meeting was held for all staff. According to an interview with the director, beginning January 2020, the online learning platform was no longer being used to deliver specially designed instruction.
74. On January 5, 2020, School and District administration met to discuss staffing issues.<sup>25</sup> The same day, the District held interviews for open paraeducator positions.
75. On January 6, 2020, a new paraeducator began work at the School.
76. Also, on January 6, 2020, a change was made to the School master schedule to provide two 1-hour class periods each week for students with IEPs to receive their specially designed instruction in a special education setting. According to the District's response, the change impacted the delivery of specially designed instruction to all students in the special education schedule. The District's response indicated this was done to "[ensure] delivery to all students eligible [for special education]." The change required cottages and genders to be mixed for the purposes of delivering specially designed instruction, which resulted in some female students, including Student B, refusing to come to class.<sup>26</sup> However, the director also noted it enabled the greatest number of students with IEPs an opportunity to receive minutes of specially designed instruction in a special education setting where he or she can receive more individualized support.<sup>27</sup> During this time, the director confirmed all special education teachers and paraprofessionals were in the same room. The director indicated that should the District receive additional funding for the School and additional staff, the School would be able to split this class into smaller classes based on individual student need.
77. On January 8, 27, 28, and 31 2020, District's human resources department met to discuss funding issues, implementation of specially designed instruction, and application of additional grant funding.

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<sup>25</sup> In January 2020, the District began using an agency hiring service to locate qualified special education teachers and paraeducators. The District reported success with the hiring agency in bringing in qualified staff to fill open positions.

<sup>26</sup> It is noted that while Student B expressed discomfort being educated with male students, her IEP did not indicate she was unable to be educated with males. The Complainant additionally did not allege that other students had IEPs, indicating they could not be educated with the opposite gender.

<sup>27</sup> Student B's account aligned with the director's recollection. Student B reported to the Complainant that all students with an IEP were "offered an additional class two times a week for about an hour each session," and that there "were about two to three adults, only one of whom was certified in special education," in the room. The Student stated the additional classes for students with IEPs were "chaotic" because "all IEP students are in the same room," and the one-to-one support the Student required was not offered. Consequently, Student B reported she stopped going to the class because the atmosphere "aggravates her existing disabilities."

78. On January 9, 2020, the District and School administration met to discuss the specially designed instruction delivery process.
79. Also, on January 9, 2020, the District held interviews for open paraeducator positions.
80. On January 13, 2020, the District special education administration held a meeting to discuss compliance concerns.
81. On January 15, 2020, the District posted a 2020 summer special education job posting that it stated would be open until filled.
82. On January 24 and 29, 2020 OSPI's institutional education leadership group met to discuss special education planning.
83. On January 27, 2020, the assistant superintendent emailed the director to request an update on the special education services at the School, as per the funds provided in the December 16, 2019 letter.
84. On January 29, 2020, the director emailed the assistant superintendent an update regarding the District's plan to deliver specially designed instruction and compensatory services, noting that as of January 6, 2020, the school was in compliance with its plan to provide specially designed instruction for all students currently enrolled. The email provided the following additional updates:
- "We have two internal special education teachers willing to do comp ed after school one day a week and security to support;"
  - "We have two agency hire paraprofessionals ready to hire that can work the 8 hour work day, which is school day plus after school comp ed five days a week;"
  - "We have had a hurdle getting the [vocational technical school] pieces happening, and our goal is to get those wrinkles ironed out soon. I have an appointment with all stakeholders Friday."

The email noted concerns regarding identifying students who were entitled to specially designed instruction for minutes missed in the fall of 2019 who were no longer at the School. The director wrote:

The principal reports that of the students who have since left [School], she has little to no information about those who we owe comp ed. No requests for records, release statements that say, 'released to [city].' Can you direct me to who might be able to help us track down these students? Our first goal is to work with students currently at [School], and maximize comp ed minutes who those who are set to be discharged within the next 30 days. We are a bit stymied on how to track down the other students.

85. On February 5, 6, 7, and 21, 2020, the OSPI institutional education leadership team met to discuss special education planning. On February 10, and 11, 2020, the OSPI institutional education HB2116<sup>28</sup> planning committee met to discuss special education services.
86. From February 18-21, 2020, the District was on its second winter break.

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<sup>28</sup> HB2116 was a legislative bill related to the funding of institutional education.

87. On February 24, 2020, the principal emailed the assistant superintendent a list of all students no longer residing at the School who it believed were entitled to compensatory education.<sup>29</sup>
88. On February 26, 2020, the director emailed the assistant superintendent regarding difficulties she was facing with implementation of compensatory services at the School. First, she noted the principal had shared that some facility staff were keeping students at their cottages when they refused to attend special education classes, which they would also do when students refused to attend compensatory services offered from 3-4 in the afternoon. It was noted that the facility team "has competing events during that time such as art docent, swimming etc., and the DCYF facility staff may not support our comp ed efforts. It has happened that the students are escorted to their general ed classes but somehow miss their special education classes." The director asked if she could send a message to the superintendents at the School and to the principal, stating that the upcoming compensatory education was a requirement. The director additionally noted that the principal had shared that "female students are expressing concerns about attending classes co-ed and co-cottage, specifically expressing school refusal and feelings of feeling unsafe." The director wrote that "to this end," she was "focusing the first comp ed to these students, because even though school is happening, if they feel they cannot access school, it is still not delivering!" The director requested the assistant superintendent's permission to include her in the copy line of the email—permission which the assistant superintendent granted.
89. Also, on February 26, 2020, principal emailed the assistant superintendent a chart with the total minutes of specially designed instruction the students who are no longer enrolled at the School should have received.
90. On February 27, 2020, the School held a meeting with the online learning platform program to discuss support for implementing specially designed instruction and accommodations on the online learning platform during general education classes.
91. On February 28, 2020, the principal sent an email to School staff, and copied the assistant superintendent, of all students with active enrollment who were entitled to compensatory education. Student B was on the list of students who were entitled to compensatory education.
92. On February 29, 2020, the director sent School administration and staff the following email:  
The students at [School] who are warranted compensatory ed for [specially designed instruction] not delivered from June 20, 2019 to December 20, 2019 will be delivered after school from 3-4 following the schedule provided. It is my expectation that students be made available to receive these lessons. We will require security staff provided by DCYF during this time. As we hire more staff, more comp ed lessons will be available, and this schedule will be amended. We will be serving students through their cottages for safety reasons. Lessons will be offered in either the library or the special education classroom, with the exceptions of [cottage 1] and [cottage 2] as well as [cottage 3] and [cottage 4], where lessons will be provided in the classrooms adjacent to the cottages. Additionally, we

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<sup>29</sup> OSPI is currently working with DCYF to track down these students and offer them compensatory education.

will provide lessons during the [District] spring break. Students will be offered [specially designed instruction] in three hour increments in either a morning or afternoon session. Security staff will need to be provided. Following Spring Break, an update on comp ed delivered will be communicated to all parties. As soon as a student has received all comp ed, he/she is released from this schedule. Priority will be given to students with earlier release dates. If any new information becomes available, please include all parties.

93. On March 1, 2020, the director emailed the assistant superintendent that the District “has intention to be in compliance immediately and going forward to be in compliance for the [specially designed instruction] and FAPE for students...Currently, the stated schedule at [School] is in compliance for [specially designed instruction] and has been since school resumed in January.”<sup>30</sup> The email continued to explain the following:

Specifically, the [District] has allocated [full time employment] for special education teachers and paraprofessionals that meet the stated [specially designed instruction], has redoubled efforts to hire staff to fill these positions and will continue to do so. Additionally, central office special education staff has worked to bring into compliance IEP documents expediently so that when students return to their home districts, they will do so with correct and updated special education documents.

[District] will continue to advocate for resources through the legislature that will assure the continued opportunity to serve special education students residing at [school] their FAPE.

94. On March 3, 2020, special education teacher 3 was hired full time.

95. On March 4, 2020, a School administration meeting was held to discuss the specially designed instruction delivery process.

96. On March 5, 2020, a District special education meeting was held to discuss applying for the “Community Impact” grant for more funding.

97. On March 6, 2020, the District held interviews for open paraeducator spots.

98. On March 9, 2020, the School changed the master schedule for special education teacher 1 to provide space for school-wide caseload management.

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<sup>30</sup> In her reply, the Complainant disputed the District’s claim that it has been providing specially designed instruction in compliance with students’ IEPs since January 2020. Specifically, the Complainant stated: “Neither the general education classes through [online learning platform] nor the additional IEP classes since January is sufficient.” The Complainant stated the District acknowledged in its response that the online learning platform was unable to properly modify materials for students with IEPs and that the IEP classes provided at the beginning of January 2020 were “insufficient in scope, quantity, and quality.” The Complainant further noted that Student B reported the IEP classes “exacerbated her learning struggles.” The Complainant additionally alleged that the District had not provided any evidence that it was implementing the accommodations in Student B’s or others’ IEPs, noting the “varied needs articulated in students’ IEPs and the lack of evidence regarding accommodations or compliance in general” suggest that the school “has not—and continues to not—comply with students’ IEPs since January 2020.”



99. On March 10, 2020, OSPI confirmed with the District that when providing compensatory education as an administrative remedy, time is not always ordered 1:1, but rather is ordered at a what is necessary for the student to receive FAPE.
100. On March 11, 2020, the District held a staff meeting to discuss student engagement and the delivery of specially designed instruction. The same day, the School administration met to discuss student attendance for students eligible for special education services.
101. On March 16, 2020, the OSPI institutional education leadership team met to discuss special education process and staffing.
102. On March 18, 2020, the director emailed the assistant superintendent to request guidance on what the parameters were for providing compensatory services to students during the shutdown for COVID-19. In particular, the director asked for guidance on the following options: (1) in person delivered at School with available paraeducators and certified teaching staff; (2) via an online learning platform delivered 1:1 or in very small groups in the students' cottages; or (3) via an online learning platform from special education teachers to cottage staff to deliver instruction materials.
103. On March 24 and 26, 2020, the District special education administration met to discuss compensatory education.
104. On March 25, 2020, the director emailed the assistant superintendent that the District had staff members outside of the bargaining unit ready to work in person or via an online platform, to begin delivering compensatory education, but that she had been told that "students in cottages cannot use DCYF computers, they do not have email accounts, and do not have laptop computers."
105. On March 26, 2020, the assistant superintendent emailed DCYF to schedule a meeting to discuss ongoing barriers to providing compensatory education to students with IEPs at ECGs.
106. On March 30, 2020, the director emailed the assistant superintendent regarding limitations in being able to deliver compensatory education during COVID-19. In particular, the director noted that "paper documents delivered to the cottages for the week of [March 16-20, 2020] were not given to students and the email documents from teachers to the cottage staff for the week of [March 23-27, 2020] were not printed or delivered to students." The director expressed additional concerns regarding setting up online distance learning technology at students' cottages, and suggested alternatives, but also requested additional assistance.
107. On March 31, 2020, the District met with two of its special education teachers to discuss the provision of special education services during the school facility closure due COVID-19 using an online platform. The District also met with one of the special education teachers to discuss using the time to provide compensatory education.

108. According to the District's response, on April 1, 2020, a meeting was held at the School to discuss using the online learning platform and to provide services, and the use of special education supports built into the online platform.

109. On April 2, 2020, the District held a meeting with paraeducators to discuss their availability to provide compensatory education during the school facility closure. Also, on April 2, 2020, the director of institution programs at DCYF emailed the principal to note that implementing compensatory education at that time was not feasible. He wrote:

We appreciate the effort to provide this important part of these youth's education. I met with my team today and we reviewed our current trends in staffing...and we do not have the staffing capacity to support the supervision this program requires. In some of these situations, there are only 1 youth which would require a 1:1 staffing ratio off the floor to accommodate this proposed schedule and this is not feasible. We also cannot be responsible for this technology equipment that you are proposing be placed in the units under our responsibility. We understand this is how the district is solving the problem in the community by providing laptops and hotspots to parents. Our staff are considered essential employees to provide a safe environment and designated treatment groups. They cannot also provide education and supervision of expensive equipment. Unfortunately, we will not be able to institute this proposed plan.

110. On April 3, 2020, the District met with special education teacher 3 to discuss his availability for providing compensatory education. The director told the OSPI investigator that she believes special education teacher 3 will be available to provide compensatory services.

111. On April 3, 2020, the assistant superintendent sent a letter<sup>31</sup> to the District director, confirming that the District:

has been responsive [to the issues of noncompliance identified in the December 16, 2019 letter]; addressed the concerns; provided assurance that they are and intend to continue, complying with the requirements of the Individuals with Disabilities Education Act (IDEA) and Washington Administrative Code (WAC) 392-172A; and secured the additional staffing needed to provide a free appropriate public education (FAPE) to students enrolled in [School].

The letter documented how "at the time the letter was sent, that despite plans from the District and OSPI, compensatory services had not been provided to students who were denied a FAPE during the fall of 2019, and that the provision of those services were impacted negatively by the COVID-19 pandemic (e.g., additional safety precautions in place for facilities, closure of school facilities, and communication gaps during transitions)." The letter documented that while there is still an expectation that these compensatory services be provided, that they are not expected to be provided during the school facility closure and the "stay home, stay safe" mandate from the Governor. OSPI requested the District schedule a meeting by May 25, 2020 with the School and DCYF leadership to discuss and plan compensatory services. The letter also confirmed what was stated in the December 2019 letter regarding the deadline for completing compensatory services being July 1, 2020.

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<sup>31</sup> See, April 3, 2020 Letter (Exhibit B).

112. On April 6, 2020, the District special education administration met to discuss compensatory education.
113. From April 13-17, 2020, the District was on spring break.
114. On April 19, 2020, the District submitted its response to the Complainant. In its response, the District acknowledged the District denied students a FAPE from June 20, 2019 through December 20, 2019, for failing to provide specially designed instruction in accordance with students' IEPs due to staffing and funding constraints. However, the District maintained that it became in compliance starting in January 2020 and that it has been implementing specially designed instruction for all enrolled students since that time. The District additionally asserted that it has been working on a plan to deliver compensatory services and has the staff available to deliver the required compensatory services, but that COVID-19 has delayed their efforts. Regarding accommodations, the District acknowledged some accommodations may not have been able to be provided online and it is currently reviewing its practices. The District additionally acknowledged that it did not implement progress monitoring as required and has proposed progress monitoring occur more frequently. The District also acknowledged it was unable to produce records for Student B other than what was provided, but added that it had hired additional staff to assist in locating and maintaining student records.
115. On April 22, 2020, the Complainant submitted a reply to the District's response. In her reply, the Complainant acknowledged the District's transparency and recognized the efforts taken by the District to begin remedying the denial of FAPE that occurred from June-December 2019. However, the Complainant stated the amount of compensatory education offered was insufficient. The Complainant alleged students likely missed more minutes than were documented as missed by the District and that the amount of compensatory education offered did not take into account the alleged impact of accommodations not being provided. To that extent, the Complainant requested OSPI appoint an independent auditor to recalculate the amount of compensatory minutes owed to each student. The Complainant also requested the compensatory instruction offered be recalculated for Student A, in response to the allegation raised that the District improperly amended the Student's IEP and determined compensatory instruction based on the minutes provided in the allegedly improper amended IEP.

In her reply, the Complainant also requested the District be required to send notice to students and families of students of the compensatory education the District was offering and of efforts to provide it. The Complainant alleged that no student or family had received any notice of the compensatory services offered or provided. The Complainant additionally requested students and families be included in future meetings regarding the provision of compensatory services owed. The Complainant stated that "[including students and parents in future meeting] increases transparency and accountability, as students are most attuned to their needs and their current education." At minimum, the Complainant requested the District submit a monthly report, detailing their progress on providing compensatory education owed.

116. On May 1, 2020, OSPI interviewed the District's director of special education. She acknowledged the District had denied students a FAPE from June to December 2019, but stated the District had been working with OSPI and had developed a plan to provide all of the students denied a FAPE with compensatory education. She stated the District had already begun providing some of those students with compensatory education and that it was building a plan to provide services during the school closure during COVID-19 and that the District was prepared to continue moving forward with providing compensatory education, including into the summer, for those it had identified as having been denied a FAPE. She maintained that beginning January 2020, all IEPs of currently enrolled students were being implemented regarding specially designed instruction. She noted that the online learning platform was still being used to deliver general education content, but that specially designed instruction was being offered in person twice a week. When asked about accommodations that could not be provided in an online format, including who was responsible for implementing those accommodations, how staff were made aware of them, and how they were implemented, she stated she was less sure and noted she would look into the issues.

The director also stated she believes the model currently being used to deliver specially designed instruction will be successful moving forward. The director acknowledged the current model could be further improved by adding separate special education classes for girls and boys—as female students have indicated this would greatly improve feelings of security and encourage participation in the receiving of their specially designed instruction. Currently, some female students with IEPs have chosen not to receive specially designed instruction because they have indicated they do not feel safe receiving instruction in a classroom with male students. The District indicated it does not currently have the staff available to provide separate male and female special education classes and asserted that while traditionally students receive their academic instruction in settings segregated by gender at the School, it believes it is currently making specially designed instruction available as necessary for students to have access to a FAPE. However, the director acknowledged during the interview that the District believes students need to feel safe in order to access their education and stated that it plans to segregate special education classes based on gender once additional funding for staff becomes available.<sup>32</sup>

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<sup>32</sup> In the complaint, Student A and Student B described the environment in which they were receiving services as "chaotic." In addition, the complaint noted that the students described services as being provided in a room with an adult instructor at the front of the classroom monitoring their activities on a computer screen while not providing any specially designed instruction or other services. During her interview with the OSPI investigator, the director validated Students A and B's experiences and perceptions and acknowledged that they were consistent with what was going on at the School during the fall of 2019. The director explained that the online learning provider was supposed to be delivering the specially designed instruction, not the monitor in the room, but noted it became clear to staff and administration by October that the model did not work and that the students who required specially designed instruction required more in-person adult support than they were able to receive from the online learning platform. The director further noted that the transition from the online learning platform back to in-person service delivery took time and included multiple changes to the students' schedules as they tried to find an alternative solution.

117. On May 4, 2020, the director emailed the OSPI investigator follow up thoughts regarding progress monitoring. She wrote:

On progress monitoring for students at [School] it is clear through my investigation that I need to strengthen the protocol and match more closely the needs of those students who move in and out throughout the year. My plan is [to] increase the progress monitoring for high school students to quarterly, and middle school students to trimester progress monitoring. This will match the protocols at comprehensive schools more closely. Additionally, we will create a process that updated progress monitoring will be advised for all students upon discharge, if at all possible.

118. On May 7, 2020, the director emailed the OSPI investigator and confirmed that the District had begun providing compensatory education to students and that it had been prepared to deliver compensatory instruction "for weeks." She explained that "[District] provided the laptops and the hotspots. [It] has been within the last week that the DCYF staff was willing/able to let the kids on the computer to participate. [District] provided a laptop and a hotspot for each cottage (8) and to date, we've had one cottage participate." The director noted that a meeting is scheduled with the assistant superintendent and officials from the School on May 18, 2020, to discuss issues regarding access to compensatory education during the closure.

## CONCLUSIONS

**Issue 1: IEP Implementation** – The Complainant alleged the District failed to follow procedures to implement the individualized education programs (IEPs) of student attending the School during the 2019-2020 school year, including providing the students with their specially designed instruction, accommodations, and modifications as written in their IEPs.

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. 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. 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.

### September – December 2019—Specially Designed Instruction

Prior to the Complainant filing the complaint, the District had already acknowledged that from June to December 2019, it had not provided students with the specially designed instruction required in students' IEPs; thus, denying students a free appropriate public education (FAPE). This

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The director explained that the schedule had to take into account the need to minimize student on student violence and the need to keep the cottages together throughout the day as much as possible – as this had also been known to reduce violent incidents during the day and contributed to increased student engagement. Additionally, the School noted that difficulties with special education teacher 2 exacerbated the already present staffing problem, as did the District's inability to hire additional staff despite their efforts.

acknowledgement was confirmed in letters from OSPI to the District documenting the violation in December 2019. This information was provided to the Complainant with the District's response, who acknowledged and agreed with the finding in the reply. However, in her reply to the District's response, the Complainant took issue with the amount of compensatory education owed and asserted that the District continued to not implement students' IEPs even after January 2020.

Regarding the amount compensatory education being provided, by January 2020, the District had identified and located almost all students denied minutes of specially designed instruction during the fall of 2019 who were denied a FAPE and entitled to receive compensatory education, and had calculated how many minutes of compensatory instruction were owed to each student based on guidance it had received from OSPI. The guidance OSPI provided regarding the calculation of compensatory instruction was in line with how OSPI determines compensatory instruction in other administrative complaints—including citizen complaints—where students have been determined by OSPI to have been denied a FAPE. The Complainant asserted that this amount of compensatory education offered was insufficient because the number of minutes offered may not have equaled the number of minutes missed and because it was alleged the students may have also not been provided accommodations. Compensatory instruction is an equitable remedy designed to ensure a student receives a FAPE and there is no requirement that it be provided at a 1:1 ratio. When determining what is appropriate, a variety of factors may be considered, including that compensatory services are provided individually instead of in a group setting, wherein services can be delivered effectively in fewer minutes. OSPI finds the methods used by the District to be appropriate and in accordance with the guidance offered by OSPI.

The Complainant additionally stated the amount of compensatory education offered was an insufficient remedy because it did not consider any additional benefit in learning that was lost due to the District's alleged failure to implement accommodations on students' IEPs. The Complainant suggested in her reply to the District's response that had the District taken the District's failure to provide accommodations into consideration, the amount of compensatory education offered would have been higher. The District was required to make compensatory education available to students as an equitable remedy for its acknowledgement that it had denied students a FAPE. Under the IDEA, there is no additional loss in learning other than a denial of FAPE for which to provide a remedy. The amount of compensatory education offered to each student was the amount determined necessary to provide FAPE as determined by students' IEPs in response to the acknowledgment that special education services were not provided at all during that time. Thus, the amount of compensatory education offered would not have been greater if the reason specially designed instruction was not provided was because accommodations were not offered. However, the issue of failing to provide accommodations is address more appropriately with a different remedy below. Accordingly, OSPI finds the amount of compensatory education offered by the District for its failure to implement the IEPs of students enrolled in the School from September-December 2019 to be sufficient.

Thus, while OSPI finds the District to have been in violation from September<sup>33</sup>-December 2019 for not implementing students' IEPs regarding specially designed instruction, it finds the District to have already developed a plan to provide the students compensatory services as required by OSPI, that the District has identified and located the students entitled to receive compensatory education, that the District has started to provide compensatory education, and that it has secured the staff necessary to deliver compensatory education into the summer. OSPI will continue to monitor the implementation of the compensatory education ordered. No additional compensatory services are ordered for the violation that occurred from September-December 2019.

OSPI agrees with the Complainant's recommendation that the District should provide notice to the students and families of the students who have been determined entitled to receive compensatory education. Accordingly, the District will be required to develop and send a letter providing this notice.

The District will also provide monthly progress reports to OSPI and the Complainant of its progress in providing compensatory education to the identified students, which will be maintained as part of this complaint file.

#### January 2020 – Present—Specially Designed Instruction

The District and Complainant dispute that the School has been providing specially designed instruction since January 2020. The District has maintained that since January 2020, it has made specially designed instruction available to all students with an IEP and has provided evidence that it has enough qualified full-time staff to be able to implement IEPs. To provide specially designed instruction, the School offers two one-hour specially designed instruction classes during the week where special education teachers and paraeducators are available to provide individualized instruction to students with IEPs. The District maintains additional instruction time can be made available if required by a student's IEP. Student A was no longer a student at the School in January 2020. Student B reported that she stopped going to her special education classes because it was "chaotic." Although OSPI acknowledges the environment may not have been ideal for Student B and other students who may find the environment less desirable due to the class being "blended" by cottages and gender, which is different from the other academic settings at the School, the Complainant did not provide evidence that the students were not being offered specially designed instruction during that time. Unlike during the fall 2019 where the District did not make adequate qualified staff available, the District has made qualified staff available in person to students, including three special education teachers and full time paraeducators, and has provided a special education setting to students whose IEPs require it. Further, while students may have expressed a desire to not have classes blended by gender for safety reasons, it is not clear that any students have an IEP that expressly states they must have instruction provided in a gender segregated setting in order to receive FAPE.

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<sup>33</sup> The time period for this complaint began in September 2019 based on the allegations made in the complaint.

While OSPI agrees with the District that continuing to seek additional staffing support to try and provide separate special education classes for boys and girls should be a priority to meet the needs expressed by the students to support greater attendance, these needs, at this time, appear to be separate from those related to their disability and identified on their IEPs. This is not a special education issue. Thus, while some students may currently be choosing not to accept the specially designed instruction provided to them even after January 2020, OSPI finds the District to have made specially designed instruction available to students as required in their IEPs beginning in January 2020.

### Accommodations

Accommodations are what IEP teams have determined a student with a disability requires in order to have equal access to their learning environment or to have an equal opportunity to demonstrate what they have learned. The Complainant alleged the District did not implement the accommodations on student's IEPs during the fall of 2019 and that the District has not demonstrated that it is implementing accommodations currently. The District stated it utilized an online learning platform to implement accommodations during the fall 2019, and that it continues to utilize an online platform to implement accommodations to students in the general education classroom. While it appears some accommodations may have been provided when students utilized the online learning platform, when OSPI interviewed the director, the director acknowledged that she was not sure how accommodations were delivered, aside from accommodations built into the platform related to delivery or modification of content using the online learning platform itself.

Students A, who had a specific learning disability, and B, who had an intellectual disability, both had multiple accommodations and modifications included in their IEPs. The Complainant alleged Students A and B as well as other students interviewed alleged their accommodations had not been provided and continued to not be provided. While the online learning platform may be able to deliver some standard accommodations, including chunking of material, additional time, masking, etc., both Students A and B had several accommodations across the general education and special education settings that they reported were not being implemented. These included frequent movement breaks, being allowed to listen to headphones during non-instructional time, being allowed to provide an oral response in lieu of a written response, being provided checks for understanding, being provided a location to take tests with limited distractions, and being provided class notes or outlines ahead of time. Other accommodations may have been inconsistently implemented, including text-to-speech technology.

Many accommodations cannot be replicated with an online learning platform but rather require teachers and staff to be made aware of a student's IEP and a student's needs for accommodations in order to be implemented properly. OSPI finds the District in violation for not implementing students' accommodations and for demonstrating that it continues not to implement the accommodations in students' IEPs.

The District will be required to work with its educational service district (ESD) to develop a plan for ensuring general education and special education staff are aware of and providing



accommodations and modifications as required on IEPs. OSPI will also conduct spot-checks of the School following completion of the training to monitor for compliance on the issue of implementation of accommodations. The District will further be required to develop its own monitoring program for the School to monitor the provision of FAPE, implementation of IEP timelines, progress reporting, and accommodations.

**Issue 2: Progress Monitoring** – The Complainant alleged the District failed to follow procedures to conduct progress monitoring on all students attending the School during the 2019-2020 school year. 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. 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.

The District acknowledged it failed to complete progress monitoring and OSPI accordingly finds the District to be in violation. The District proposed developing a new progress monitoring system that it believes will more appropriately meet the needs of its students, who often enter and leave the School before progress monitoring can be completed according to the terms of a student’s incoming IEP, which may require yearly or semester progress reporting. OSPI accepts the District’s proposal. In addition, the District will be required to provide OSPI with samples of its progress reporting periodically to demonstrate its compliance.

**Issue 3: IEP Amendments** – The Complainant alleged the District failed to follow procedures to amend the IEPs of students attending the School during the 2019-2020 school year, including Student A in October 2019. After the annual IEP team meeting for a school year, the parent of a student eligible for special education (or adult student) and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student’s current IEP. If changes are made to the student’s IEP, the school district must ensure that the student’s IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent or adult student must be provided with a revised copy of the IEP with the amendments incorporated.

In October 2019, Student A’s IEP team decreased the amount of specially designed instruction the Student received in math, writing, and reading to 100 minutes each weekly (from 270, 135, and 135 minutes respectively), and indicated Student A would have his specially designed instruction delivered by a paraeducator instead of a special education teacher. The prior written notice (PWN) indicated the reason for the change was a “court-ordered change in placement.” Documents show the parent was contacted and provided notice of the meeting and amendment, but did not

respond. The Complainant alleged this was a denial of FAPE because the amendment did not appear to be based off of a reevaluation and accordingly, was not based on the Student's needs.

OSPI has reminded and continues to remind the District that IEPs must be developed to meet a student's current needs. Accordingly, IEPs should not be amended only to fit a particular schedule or staffing needs. However, OSPI notes that when students transfer into a school operated from within a correctional facility, it is possible the needs of that student may change and that change may require a change in minutes of specially designed instruction.<sup>34</sup> For example, students may require fewer minutes due to the fact that they may be receiving instruction in smaller class sizes or receiving instruction in a more individualized setting. Or, a student's current circumstances may require the student to spend more minutes receiving therapeutic services in order to be able to access his or her education, which may require less academic instruction per week. However, these determinations must be made by an IEP team and any decisions made regarding a student's changed needs should be reflected in the IEP and prior written notice (PWN). Further, if any changed needs may significantly impact the amount of time the student is spending in the general education or special education setting—thus changing the student's placement under the IDEA and not just the student's least restrictive environment code—the IEP team must also consider whether the student requires a reevaluation.

It is also noted that many institutional education programs have a longer school year calendar and therefore, have fewer instructional minutes per week (it is worth noting that the School in this complaint has a 220-day school year instead of the standard 180). Thus, when a student transfers into a district where the number of weekly instructional minutes available to all students, including students in the general education setting decreases, or where additional therapeutic services or individual study programs<sup>35</sup> decrease the amount of minutes of instruction available to all students, a district may amend the IEP to reflect what is available to all students, so long as the services being provided continues to meet the student's needs and provide FAPE.<sup>36</sup>

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<sup>34</sup> When a student enters a correctional facility, the student's IEP and supporting documents should also be reviewed to determine if the documents are current and/or if they contain sufficient information and data to provide the IEP team with enough information of the student's needs in order to develop an appropriate IEP in the student's current setting. If the evaluations and/or IEP are not current or are incomplete, the IEP team should do a reevaluation.

<sup>35</sup> When determining whether to include this time, or other time "carved out of the student's day" on the service matrix, the District should consider whether District staff or JR/DCYF staff are providing the service. If District staff are providing the service and more than 50% of the students in the setting have disabilities, or if it is independent study time and the only student participating has an IEP, the District should be considering that time as time spent in the special education setting. If JR/DCYF staff are providing the service, it should not be included on the IEP and this would decrease the amount of instructional minutes available per day because it is not under the District's jurisdiction.

<sup>36</sup> The District is reminded that for purpose of determining a student's least restrictive environment (LRE), a corrective facility is its own LRE code. For IDEA purposes, the District should still be considering how much time the Student is spending with students with disabilities.

While some of these changes may be more clerical in nature and may not be in response to changed needs but rather to a change in program schedule, the District still should hold an IEP meeting and provide notice of the proposed amendment and seek approval. Here, for Student A, the District provided notice of an IEP meeting, held a meeting, and provided PWN.

While the District did not document a reason for decreasing Student A's minutes of specially designed instruction other than the Student's changed schedule, it is noted that Student A is also one of the students the District found entitled to compensatory education for services not provided during summer 2019. Student A does not have extended year services on his IEP. Thus, it is likely that a decrease in weekly minutes was to compensate for the change in program schedule to a longer school year program and less weekly instructional time. This is reflected in the change to the weekly minutes. While the changes in minutes appeared to be clerical in nature to reflect the change in program schedule at the School, there is no indication that the Student's needs were not still being met. Further, the change was made at an IEP meeting for which notice was provided and PWN notice was provided after. Attempts to engage the parent were also documented. Accordingly, no additional compensatory instruction is ordered.

OSPI agrees the District did not provide documentation for why it amended Student A's IEP to have services delivered by a paraeducator instead of a special education teacher. However, Student A left the School in January 2020, the District has offered compensatory education for services not provided to the Student during June -December 2019. Accordingly, while the District may have been in violation for not following procedures when changing the delivery method on the Student's IEP, it has already offered a remedy with the compensatory education offered.

However, the District has acknowledged it previously may have been in violation for amending other students' IEPs to match schedules when it lacked adequate qualified staff, but stated it believes it has ceased that practice. Nevertheless, the District has stated that there remains confusion regarding how to document amendments properly in IEPs. The District will accordingly be required to complete training on IEP amendments, including when they should occur and how documentation should be provided.

**Issue 4: Maintenance of Special Education Records** – The Complainant alleged the District failed to follow procedures regarding the maintenance of special education records for Student B, resulting in a denial of a free appropriate public education (FAPE).

A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters.

The District has not updated Student B's IEP since May 2018. Although they received the Student past its due date, they still should have prioritized it once it became past due. The District accordingly is in violation. The District will be required to hold an IEP meeting for the Student to review the Student's IEP and to determine if the Student requires a reevaluation and any other updated assessments.

## CORRECTIVE ACTIONS

By or before **June 1, 2020, June 12, 2020, June 26, 2020, July 6, 2020, July 10, 2020, July 17, 2020, August 3, 2020, August 7, 2020, August 14, 2020, August 21, 2020, August 28, 2020, September 7, 2020, September 15, 2020, September 25, 2020, October 5, 2020,** and **January 29, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

### STUDENT SPECIFIC:

#### Notice of Compensatory Services

By **June 5, 2020**, the District will develop a draft letter notifying students who the District has determined are owed compensatory education, and the parents of those students, of the District's intention to provide compensatory education and timeline for the compensatory education. The letter should include a request for parents to request an IEP team meeting to discuss any further concerns and include details of the amount and topics for the compensatory education.

By **June 12, 2020**, the District will submit the draft letter to OSPI to review. By June 19, 2020, OSPI will provide any comments or revisions, if appropriate.

By **July 1, 2020**, the District will provide the notice to all students and parents who are required to receive notice. The notice will be sent by mail, unless the student's file indicates another method of communication is required. If other documents sent to the students or parents require translation, the notice should also be translated.

By **July 10, 2020**, the District will provide documentation that it has sent notice to every student and parent who is required to receive notice.

#### Progress Updates on Provision of Compensatory Education

By the first Monday of every month, on **June 1, 2020, July 6, 2020, August 3, 2020, September 7, 2020,** and **October 5, 2020**, the District will send an update on its progress in the provision of compensatory education to OSPI and to the Complainant. The update will be maintained as part of this complaint file.

#### Student B: IEP Meeting

By or before **June 5, 2020**, Student B's IEP team will meet. At the meeting, the IEP team must address the Student's present levels of performance, the Student's transition goals and needs for transition services, the Student's current need for specially designed instruction and any accommodations, modification, and related services she requires, and whether the Student requires an updated evaluation or any other updated assessments. The IEP meeting may be held virtually.

By **June 12, 2020**, the District will provide OSPI with: i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's amended IEP; iii) any relevant meeting invitations and prior written notices; iv) a list of people, including their roles, who attended the meeting; and, v) any other relevant documentation.

## **DISTRICT SPECIFIC:**

### **Training**

The District will complete training on: Implementing IEP accommodations and IEP amendments. By **July 3, 2020**, the District will provide to PSESD the following information:

1. A list of the different accommodations listed on students' IEPs. The list will include information on the number of students receiving the accommodation and the setting in which the accommodation is provided; and,
2. A list of questions the District or staff would like answered regarding amending IEPs.

By **July 10 2020**, the District will provide documentation to OSPI that the above items were provided to PSESD.

By **August 14, 2020**, the District will work with the PSESD and OSPI dispute resolution team to develop a training or trainings on: Implementing accommodations and IEP amendments. The training on implementing IEP accommodations must be for both general education and special education staff. The training on IEP amendments may be for special education staff responsible for developing and writing IEPs.

By **August 21, 2020**, District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by August 28, 2020 and additional dates for review, if needed.

By **September 7, 2020**, the District, in conjunction with PSESD and OSPI dispute resolution team, will provide the training on the above topics. By **September 15, 2020**, the District will provide documentation to OSPI that required staff participated in the training. This documentation will include: 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

### **Monitoring of Implementation of Accommodations**

By the end of the Fall 2020 semester, and no later than **December 23, 2020**, OSPI will complete at least two spot-check visits at the School to monitor the implementation of accommodations for students with IEPs according to the list of accommodations previously provided by the District. The spot-check monitoring visits should build on the training offered in the fall 2020.

These visits will occur during academic instruction. The District will provide OSPI with the IEPs of students in the classes they will be visiting prior to their visit. The OSPI member doing the spot check will be permitted to view at least one general education and one special education setting, and should be given an opportunity to speak with students who have accommodations included on their IEPs. OSPI will provide the District with their findings and their recommendations. OSPI will use the information to determine if additional monitoring is required.

The District will also develop and implement a monitoring system which monitors for the provision of FAPE, IEP timelines, progress reports, and the provision of accommodations.

By **June 26, 2020**, the District will provide a draft of the monitoring plan to OSPI to review. OSPI will provide feedback and comments by July 3, 2020.

By **July 17, 2020**, the District will provide OSPI with a final draft of its monitoring plan.

### **Progress Monitoring & Reporting**

By **July 24, 2020**, as proposed by the District, the District will develop a draft written process to address the following: 1) providing progress reporting; and 2) a process for teachers to collect progress data and provide that data to the case manager to be included in progress reporting.

By **August 7, 2020**, the District will provide OSPI with the draft written process. OSPI will approve the draft process or provide comments by August 14, 2020, and additional dates for review, if needed.

By **August 21, 2020**, the District will review the new process with staff (special education teachers, general education teachers, principal, and dean of students) at a staff meeting, and by **August 28, 2020**, will provide OSPI with documentation that this occurred. This documentation will include: 1) an agenda or meeting notes from the staff meeting; 2) a sign-in sheet from the staff meeting; and, 3) an official District roster of all the staff required to attend the meeting, so OSPI can verify that all required staff participated in the meeting.

By or before **September 25, 2020** and **January 29, 2021**, the District will submit a sampling of progress reports for twenty (20) randomly selected students attending the School. The progress reports should include sufficient information to determine whether or not the student is making progress, and the amount of progress towards the annual goal. This should also include documentation that confirms the progress report was also provided to the adult student or mailed to the minor student's parents.

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 May, 2020

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

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

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