

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-018

PROCEDURAL HISTORY

On February 17, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the **[REDACTED]** School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On February 18, 2021, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On March 8, 2021, the District requested an extension of time to respond to the complaint. OSPI granted the extension the same day.

On March 17, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on March 22, 2021. OSPI invited the Parent to reply.

On March 30, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On April 1, 2021, OSPI's investigator conducted a joint phone interview with the District's special education director (director) and the executive special education director (executive director).

On April 2, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on April 5, 2021. OSPI forwarded the information to the Parent the same day.

On April 2, 2021, OSPI requested that the Parent provide additional information, and the Parent provided the requested information on April 5, 2021. OSPI forwarded the information to the District on April 6, 2021.

On April 6, 2021, OSPI's investigator conducted a joint phone interview with both the director and executive director.

On April 9, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on April 12, 2021. OSPI forwarded the information to the Parent on April 12, 2021.

On April 12, 2021, OSPI requested that the District provide additional information, and the District provided the requested information the same day. OSPI forwarded the information to the Parent on April 13, 2021.

On April 12, 2021, the Parent provided OSPI with additional information. OSPI provided the District with that information on April 13, 2021.

On April 14, 2021, OSPI's investigator conducted an interview of the director and the executive director.

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

ISSUES

1. Did the District follow proper procedures for implementing the Student's individualized education program (IEP) from March 16, 2020 through June 19, 2020?
2. Did the District follow proper procedures for providing prior written notice on or about the following dates, in relation to any decisions made by the Student's IEP team on or about those dates:
 - a. May 20, 2020;
 - b. July 6, 2020; and,
 - c. September 3, 2020?

LEGAL STANDARDS

IEP Implementation during Spring 2020 School Facility Closures for COVID-19: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

During the spring 2020 COVID-19 school facility closures, as students received general education instruction and student support services, districts must provide students with disabilities with the special education services—related services and specially designed instruction—supporting a free appropriate public education (FAPE). The U.S. Department of Education Office for Civil Rights (OCR) and Office for Special Education and Rehabilitative Services (OSERS) indicated the "exceptional circumstances" presented during the school facility closures caused by COVID-19 "may affect how all educational and related services and supports are provided" to students with disabilities. There is not an expectation that IEP services would be delivered exactly as the IEP states. *Questions and Answers: Provision of Services to Students with Disabilities During School*

Facility Closures for COVID-19 (OSPI March 24, 2020); *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (OCR/OSERS March 21, 2020) (“It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities...during this national emergency, schools may not be able to provide all services in the same manner they are typically provided...The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency...FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students.”)

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

The individualized special education services being provided to a student during the school facility closures as part of continuous learning, were to be documented in writing using a student’s annual IEP, IEP amendment (particularly if services to be provided during the closure were significantly different from what the IEP indicated), prior written notice, or optional “Continuous Learning Plan” (CLP) or similar document. Districts had flexibility in how they chose to document decisions made in real-time. *Questions and Answers* (OSPI, April 13, 2020). Districts were encouraged to prioritize parent communication, including discussions of how special education services were to be provided during the closures. *Questions and Answers* (OSPI, May 5, 2020).

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

Recovery Services: Recovery services are intended to mitigate the impact of COVID-19 school facility closures and to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services during COVID-19 school closures. While the need for recovery services may not be able to be fully measured until in-person school

operations resume, districts are not prohibited from providing recovery services during the 2020-2021 school year and recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during school building closures on the student's overall progress and engagement, including progress toward their IEP goals. Recovery services are not generally provided in the same amount that was missed (i.e., minute for minute, hour for hour). *Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020* (OSPI, August 26, 2020).

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education citizen complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994); *see also In re: Mabton School District*, 2018-SE-0036.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010. The Office of Special Education Programs has stated that providing a parent with a prior written notice 10 calendar days prior to initiating a change *that the parent*

disagrees with would be consistent with the 'reasonable time' standard included in the relevant regulations. *Letter to Winston*, 213 IDELR 102 (OSEP 1987). (In *Letter to Winston*, OSEP did not state a conclusion as to "whether a...period of time [shorter than 10 days] would be acceptable in the presence of parental consent [with the proposed change]." *Letter to Winston*, 213 IDELR 102 (OSEP 1987)).

Decisions about Educational Methodology: Generally speaking, it is the role and responsibility of educators to exercise their professional judgment, expertise and observation to determine which methods or techniques address a student's needs. However, the district's discretion in selecting methodology does not relieve it of its obligation to at least consider the parents' recommended methodology. *In the Matter of Dieringer School District*, 114 LRP 17119, OSPI Cause No. 2014-SE-0005X (WA SEA March 14, 2014).

FINDINGS OF FACT

2019-2020 School Year

1. According to the District, at the start of the 2019-2020 school year, the Student attended a District elementary school, was in kindergarten, and was eligible for special education services under the category of developmental disabilities.
2. The Student's individualized education program (IEP) team created a new IEP for the Student on December 17, 2019. The Student's December 2019 IEP included the following annual goals:
 - **Social Skills 1:** Increasing the Student's ability to "show self-control of her body and voice level."
 - **Social Skills 2:** Increasing the Student's verbal expression skills when "frustrated, hurt, or a non-preferred activity."
 - **Behavior 1:** Increasing Student's ability to utilize self-regulation strategies.
 - **Behavior 2:** Increasing Student's ability to "transition with safety awareness."
 - **Behavior Support:** Increasing Student's ability to use a self-regulation tool to identify emotions.¹

The Student's December 2019 IEP provided the following non-concurrent specially designed instruction to the Student from December 17, 2019 through December 16, 2020 in a *special education setting*:

- **Social Skills:** 20 minutes, 4 times a week (to be provided by "educational staff/paraeducator")
- **Social Skills:** 20 minutes, 1 time a week (to be provided by "educational staff/paraeducator")
- **Behavior:** 20 minutes, 5 times a week (to be provided by "educational staff/paraeducator")

The Student's December 2019 IEP provided the following related service to the Student from December 17, 2019 through December 16, 2020 in a *general education setting*:

- **1 on 1 Paraeducator:** 356 minutes, 5 times a week (to be provided by a behavior technician).

The Student's December 2019 IEP provided the Student with numerous accommodations and modifications, as well as three other supports.

¹ This was a related service goal.

3. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis.
4. According to the District's response, from March 14 through April 3, 2020, all District schools were closed.
5. According to the Parent:

In the 13 weeks between March 16, 2020 and June 19, 2020 (not counting spring break), the Student received zero of the 23,140 Service Minutes for Related Services of her 1-to-1 behavior support para educator. The person assigned to this role was never seen or heard from after March 13, 2020.

...

[From March 2020 through June 2020] the special education teacher was the only District Staff other than the kindergarten general education teacher, who made contact with the Student.
6. On March 23, 2020, OSPI issued guidance, instructing districts that while school facilities are closed and not providing traditional in-person instruction, education must continue. OSPI's guidance outlined the expectation that "continuous learning" would begin for all students by Monday, March 30, 2020.
7. According to the District's response, the District was on spring break from April 6 through April 10, 2020.
8. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
9. The District's response included a progress report, dated March 20, 2020, that related to some of the goals in the Student's December 2019 IEP. That progress report read, in part:
 - **Social Skills 2:** Sufficient progress being made to achieve annual goal within duration of IEP.
 - **Behavior 1:** Sufficient progress being made to achieve annual goal within duration of IEP.²
 - **Behavior 2:** Sufficient progress being made to achieve annual goal within duration of IEP. "Student has made some real growth in areas of transitions with safety awareness."
 - **Behavior Support:** Sufficient progress being made to achieve annual goal within duration of IEP.³

² A later-in-time progress report (June 19, 2020) included more detailed information on the Student's progress on Behavior 1 as of March 20, 2020: "Data supports that Student could use strategies with support to bring herself back to baseline on 3 out of 5 opportunities."

³ A later-in-time progress report (June 19, 2020) included more detailed information on the Student's progress on Behavior Support as of March 20, 2020: "Emerging skill demonstrated but [Student] may not achieve annual goal within duration of IEP. Student has been working on Zones of Regulation in Small group and identifying her emotions during each lesson. She continues to need support and prompting to self-regulate when she is in yellow or red zone to take a break, and return to expected emotional state. She is able to self-regulate on 2 out of 5 opportunities."

10. Also, on April 6, 2020, OSPI issued guidance on Continuous Learning 2020, which included recommended guidelines for maximum student commitment each day, as follows: Grades K-1: 45 minutes.
11. According to the District's response, beginning April 13, 2020, District "staff [were] provided professional development [in regards to] online [learning] platforms."
12. The District's response included a data sheet created by the special education teacher that tracked the special education teacher's provision of specially designed instruction – both asynchronous (distance learning assignments) and synchronous (Zoom), to the Student from April 20 through June 19, 2020 (**SDI data sheet**).

The District's response also included an excel chart that appears to track the duration of Zoom sessions taught by the special education teacher in the spring of 2020 (**excel zoom tracker**). The excel zoom tracker also shows who attended the Zoom sessions.

The District's response also included a calendar with entries related to the amount and type of specially designed instruction the Student received in the spring of 2020 (**calendar SDI tracker**). According to the District, the calendar SDI tracker: was created by the director; it was created on or about June 9, 2020 – in anticipation of a meeting with the Parent to determine appropriate recovery services for the Student in the summer of 2020, as the District understood the Parent disagreed with the amount of specially designed instruction the District believed it had provided to the Student in the spring of 2020; and, importantly, the data in the calendar SDI tracker does not reflect any data in addition to what was already recorded in the SDI data sheet and excel zoom tracker – according to the District, functionally, the calendar SDI tracker should simply be an additional recording of the data that is already noted in the SDI data sheet and excel zoom tracker.

The documentation provided to OSPI during the course of this investigation also included an excel created by the Parent that recorded the Parent's understanding of the specially designed instruction provided to the Student from April 20 through June 19, 2020 (**Parent SDI tracker**).

13. According to the SDI data sheet, on April 20, 2020, the Student completed an asynchronous assignment that related to Goal #2⁴ and the special education teacher estimated that it would have taken the Student 15 minutes to complete said assignment.

According to the calendar SDI tracker, on April 20, 2020, the Student received 30 minutes of specially designed instruction, at least a portion of which was devoted to asynchronous learning.

According to the Parent SDI tracker, the Student received 20 minutes of specially designed instruction.

⁴ Upon knowledge and belief, this refers to social skills 2, as the June 19, 2020 states behavior 2 was not worked on during the spring 2020 COVID disruption.

14. According to the District, starting April 23, 2020, the District provided the Student with both synchronous (small group Zoom) and asynchronous specially designed instruction that related to the goals in the Student's December 2019 IEP. The District stated the specially designed instruction provided to the Student during this time equated to "40 minutes 5 times a week."

During the course of this investigation, OSPI's investigator interviewed the special education executive director (executive director). During her interview, the executive director stated the synchronous specially designed instruction (Zoom sessions) was comprised of the following: the special education teacher; at least one paraeducator⁵; and, anywhere from two to three students.

15. According to the Parent, during the spring of 2020 (approximately April 20 through June 17, 2020), the Student participated in several general education Zoom sessions, on either a regular or semi-regular basis: 1) Mondays from 10:30 to 11:00 am; (2) reading group Wednesdays 10:30 am to 11:00 pm; and (3) reading group Fridays 10:30 – 11:00 am.⁶

Furthermore, according to the Parent, the Student was not provided with a 1:1 paraeducator during the above-stated, general education Zoom sessions.

According to the District:

- The Student's spring 2020 general education teacher no longer works for the District, and it is therefore difficult for the District to confirm the exact nature of the general education classes the Student participated in during the spring of 2020.
- Several of the times mentioned by the Parent as being those during which the Student participated in general education classes correspond to the general education teacher's break periods. According to the District, it is possible the Student participated in regular or semi-regular general education groups during these time periods. In fact, during their joint interview with OSPI's investigator, the executive director and director stated (paraphrased), 'We are not disagreeing that Student participated in zoom general education classes in the spring of 2020, we're just not positive on the details relating to those zoom general education classes.'

16. On April 23, 2020, the special education teacher emailed the Parent, stating, in part: "I was hoping to get this out to you sooner, but I would like to try and Zoom with Student and other students on Tuesdays every week."

⁵ During her interview, the executive director stated that no single paraeducator was assigned to fulfill the paraeducator role in the Student's spring 2020 Zoom specially designed instruction sessions; rather, at any particular time, one of five different District paraeducators fulfilled the paraeducator role in the Student's spring 2020 Zoom specially designed instruction sessions.

⁶ The Parent's initial complaint request included a 'behavior audit' completed by the Parent that purports to be a two-week survey of behaviors demonstrated by the Student from June 1 to June 12, 2020 during some of the Student's various Zoom classes. Some of the entries on the 'behavior audit' refer to general education Zoom sessions the Parent states the Student participated in during the spring of 2020.

17. According to the SDI data sheet, on April 23, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 15 minutes to complete said assignment.

According to the Parent SDI tracker, on April 23, 2020, the Student received 10 minutes of specially designed instruction.

18. According to the SDI data sheet, on April 27, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 15 minutes to complete said assignment.

According to the calendar SDI tracker, the Student received 50 minutes of specially designed instruction, at least a portion of which was devoted to asynchronous learning.

According to the Parent SDI tracker, the Student received 10 minutes of specially designed instruction.

19. According to the SDI data sheet, on April 28, 2020, the Student participated in a Zoom session with the special education teacher for 17 minutes.

According to the calendar SDI tracker, the Student received 25 minutes of specially designed instruction via Zoom.

According to the Parent SDI tracker, the Student received 25 minutes of specially designed instruction.

20. According to the SDI data sheet, on April 29, 2020, the Student completed an asynchronous assignment that related to Goal #1 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received 10 minutes of specially designed instruction.

21. According to the SDI data sheet, on May 1, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 15 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received 10 minutes of specially designed instruction.

22. The District's response included a Zoom meeting for a May 1, 2020 meeting between the special education teacher and the Parent. According to the District, the purpose of this meeting was "to support the provision of specially designed instruction in the spring. [District staff] met with Parent on several occasions for Zoom support, home token economy system, implementing visual schedule...use of break out rooms to implement Student's break plan...etc."

23. According to the SDI data sheet, on May 4, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.

According to the calendar SDI tracker, the Student received 40 minutes of specially designed instruction, at least a portion of which was devoted to asynchronous learning.

According to the Parent SDI tracker, on May 4, 2020, the Student received 25 minutes of specially designed instruction.

24. According to the SDI data sheet, on May 7, 2020, the Student completed an asynchronous assignment that related to Goal #1 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received 20 minutes of specially designed instruction.

25. The District's response included a Zoom meeting for a May 8, 2020 meeting between the special education teacher and the Parent. According to the District, like the May 1, 2020 meeting, the purpose of this meeting was "to support the provision of specially designed instruction in the spring."

26. On May 11, 2020, the special education teacher emailed the Parent, stating, in part: "Your child is invited to a social zoom with a select few kindergarteners on Tuesdays at 10:00 am. We will continue to have Zoom social groups, reading books and playing a game on Tuesdays at 10:00 am until the end of the school year."

27. According to the SDI data sheet, on May 11, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.

According to the calendar SDI tracker, the Student received 55 minutes of specially designed instruction, at least a portion of which was devoted to asynchronous learning.

According to the Parent SDI tracker, the Student received five minutes of specially designed instruction.

28. According to the excel zoom tracker and SDI data sheet, on May 12, 2020, an approximate 25-minute Zoom session took place and that session was comprised of: the special education teacher; three paraeducators; and two students, including the Student.⁷

⁷ According to the excel zoom tracker, while the special education teacher and paraeducators attended the Zoom session for approximately 28 minutes, the two students, including the Student, attended the Zoom session for approximately 25 minutes.

According to the calendar SDI tracker, the Student received 25 minutes of specially designed instruction via Zoom.

According to the Parent SDI tracker, the Student received 25 minutes of specially designed instruction.

29. On May 13, 2020, the Student's IEP team met to amend the Student's December 2019 IEP. The following portions of the Student's May 2020 Amended IEP appear to be the exact same as that found in the Student's December 2019 IEP:

- The measurable annual goals;
- The accommodations, modifications, and support;
- The placement option for least restrictive environment; and,
- The specially designed instruction portion of the service matrix.

It appears the only change in the May 2020 Amended IEP was as follows: rather than a "behavior technician" providing the Student with the related service of "1 on 1 para", an "educational staff/para" would provide the Student with the related service of "1 on 1 para." The monitor, frequency, and location for the related service of "1 on 1 para" did not change with the May 2020 Amended IEP.

30. According to the SDI data sheet, on May 13, 2020, the Student completed an asynchronous assignment that related to Goal #1 and the special education teacher estimated that it would have taken the Student 15 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received 10 minutes of specially designed instruction.

31. According to the SDI data sheet, on May 15, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received five minutes of specially designed instruction.

32. According to the SDI data sheet, on May 18, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.

According to the calendar SDI tracker, on May 18, 2020, the Student received 35 minutes of specially designed instruction, at least a portion of which was devoted to asynchronous learning.

According to the Parent SDI tracker, on May 18, 2020, the Student received 10 minutes of specially designed instruction.

33. According to the excel zoom tracker and SDI data sheet, on May 19, 2020, a 30-minute Zoom session took place and that session was comprised of: the special education teacher; three paraeducators; and two students, including the Student.⁸

According to the calendar SDI tracker, the Student received 31 minutes of specially designed instruction via Zoom.

According to the Parent SDI tracker, the Student received 25 minutes of specially designed instruction.

34. According to the calendar SDI tracker, on May 20, 2020, the Student could not access a video that was related to the Student's specially designed instruction.

35. According to the SDI data sheet, on May 21, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 15 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received five minutes of specially designed instruction.

36. According to the calendar SDI tracker, on May 25, 2020, the Student received 40 minutes of specially designed instruction, at least a portion of which was devoted to asynchronous learning.

37. The Parent's complaint included an email, dated May 26, 2020, from the special education teacher to the Parent, which included notes about a Zoom learning session that took place that same day.

The special education teacher also attached a prior written notice to her email to the Parent. That prior written notice was dated May 13, 2020, and proposed to change the Student's IEP to, in part, "update [the] accommodation[s] and service matrix." The notice read, in part:

Description of the proposed or refused action:

This IEP meeting was conducted following an assessment revision. The school psychologist presented a test populated list of suggestions, of which the team reviewed at this meeting and discovered that majority of the accommodations and modifications were being met through this IEP and Behavior Plan to date. This was a ZOOM video conference due to the COVID-19 Pandemic.

1. The team has proposed and agreed to update Student's service matrix to reflect that her 1 :1 Behavior Therapist is changed to 1 :1 District Para Educator.

2. The team reviewed accommodations and proposed to observe and consider an organizational goal when school is reopened.

⁸ According to the excel zoom tracker, the individuals in attendance (including staff and students) varied from 25 to 31 minutes; therefore, 30 minutes is a good approximation of the specially designed instruction made available to the Student on this date.

3. The team suggested adding a visual timer for transitions within the classroom.

The reason we are proposing or refusing to take action is:

1. Parents have requested a Para educator in place of an outside Behavior Therapist for the consistency and fluidity of teaching and learning Social and Behavior skills.

2. It was noted that organization may be a deficit in children with lower executive functioning skills, however the General Education Teacher...believed this not to be as true for Student. The team is proposing to look at this at a later date when school has reopened and Student is back into a general education classroom.

3. A visual timer has shown to be successful for Student during transitions, and believe it would benefit during class.

Description of any other options considered and rejected:

1. The team agrees that behavior therapists in the past have been inconsistent, therefore rejecting the option of [a] behavior therapist.

2. The team would like to consider looking at Student's organization skills when school is reopened.

3. No other options were considered or rejected.

The reasons we rejected those options were:

1. The Behavior Therapists that have worked with Student have been inconsistent, and not a reliable support for longevity. No other options were rejected.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Parent and teachers collaborative discussions, testing by [the] School Psychologist, and Learning Specialist collaboration and discussion.

Any other factors that are relevant to the action:

Because of the Distance learning and current school closure due to the COVID-19 pandemic, we are not able to observe and implement the proposed accommodations. The team agreed that when school re-opens, we would schedule an IEP meeting in September or October to discuss all Accommodations and Modification that would benefit Student in all areas of learning.

The family has been provided via email a behavior data tracking sheet for home use, and a visual chart that can be modified if they chose to use it at home.

The action will be initiated on: 5/20/2020

38. In her complaint, the Parent stated it was a violation of the IDEA for her to receive a prior written notice on May 26, 2020 that had an initiation date that had already passed – May 20, 2020.

According to the District:

The District agrees that the prior written notice was sent after the [changes mentioned in the prior written notice] were due [to be initiated], however, [in actuality, the prior written notice] was given to Parent prior to any new changes [being implemented in relation to] the [new] IEP....The first change was changing the 1:1 behavior therapist agency staff to a district paraeducator. Since the agency staff member quit abruptly [in March 2020]⁹, we needed to go through our hiring process and had substitutes in lieu. This change was not implemented prior to Parent receipt of the prior written notice. [Concerning the visual timer in the classroom], the District had no in-person learning in the classrooms at [the time the May 2020 prior written notice] was issued.

39. According to the SDI data sheet, on May 26, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.

According to the excel zoom tracker and SDI data sheet, on May 26, 2020, an approximate 20-minute Zoom session took place and that session was comprised of: two paraeducators¹⁰; and two students, including the Student.¹¹

According to the calendar SDI tracker, the Student received 27 minutes of specially designed instruction via Zoom.

According to the Parent SDI tracker, the Student received 30 minutes of specially designed instruction.

40. According to the SDI data sheet, on May 28, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received 15 minutes of specially designed instruction.

41. On May 31, 2020, the Parent emailed the director and the executive director, requesting recovery services be provided to the Student.

The director responded on June 2, 2020, stating, in part:

The state is still in the process of determining guidelines for discussion on any type of compensatory education. We anticipate this guidance to be shared by OSPI in the fall. At

⁹ According to the Parent's reply, the outside behavior technician that the District had contracted with to serve as the Student's behavior technician quit on or about March 12, 2020.

¹⁰ The special education teacher's May 26, 2020 email to the Parent also stated "2 adults...facilitated the Zoom [learning session]" on May 26, 2020.

¹¹ According to the excel zoom tracker, the two paraeducators were in attendance for approximately 25 minutes, but the two students, including the Student, were only in attendance for approximately 20 minutes.

that time, Districts will be able to open up these discussions and we will look at Student's actual IEP service minutes.

42. According to the SDI data sheet, on June 1, 2020, the Student completed an asynchronous assignment that related to Goal #1 and the special education teacher estimated that it would have taken the Student 15 minutes to complete said assignment.

According to the calendar SDI tracker, the Student received 55 minutes of specially designed instruction, at least a portion of which was devoted to asynchronous learning.

According to the Parent SDI tracker, the Student received 5 minutes of specially designed instruction.

43. According to the excel zoom tracker and SDI data sheet, on June 2, 2020, the Student received 32 minutes of specially designed instruction during a Zoom session that was comprised of: the special education teacher; one paraeducator; and three students, including the Student.

According to the Parent SDI tracker, the Student received 30 minutes of specially designed instruction.

44. According to the SDI data sheet, on June 3, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.

45. According to the SDI data sheet, on June 5, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received 15 minutes of specially designed instruction.

46. According to the SDI data sheet, on June 8, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 15 minutes to complete said assignment.

According to the calendar SDI tracker, on June 8, 2020, the Student received 35 minutes of specially designed instruction, at least a portion of which was devoted to asynchronous learning.

According to the Parent SDI tracker, the Student received 55 minutes of specially designed instruction.

The District's response included an email between the special education teacher and the Parent (dated June 10, 2020) that refers to an asynchronous assignment assigned and completed by the Student on or about June 8, 2020.

47. According to the excel zoom tracker and SDI data sheet, on June 9, 2020, Student received 23 minutes of specially designed instruction during a zoom session that was comprised of: the special education teacher; three paraeducators; and two students, including the Student.

According to the calendar SDI tracker, on June 9, 2020, the Student received 28 minutes of specially designed instruction via Zoom.

According to the Parent SDI tracker, the Student received 22 minutes of specially designed instruction.

48. On June 9, 2020, the director and the Parent exchanged a couple emails wherein they agreed to have a virtual meeting on June 10, 2020, to discuss the provision of "service minutes during COVID 19" and "updated guidance from the state" on the same.

49. According to the SDI data sheet, on June 10, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 15 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received 10 minutes of specially designed instruction.

50. The District's response included a Zoom meeting invite for a meeting scheduled for June 10, 2020, to have a "service minutes conversation." Invited attendees included: Parent, director, and executive director. According to the District's response, this meeting was to discuss summer support services for the Student.

51. According to the SDI data sheet, on June 12, 2020, the Student completed an asynchronous assignment that related to Goal #1 and the special education teacher estimated that it would have taken the Student 25 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received 40 minutes of specially designed instruction.

52. On June 12, 2020, the Parent emailed the behavior specialist, stating, in part:

You will find a Behavior Audit spreadsheet attached on which I collected data on Student's behavior while observing her during all her Zoom meetings over the last two weeks. Because we are near the end of school, the number of meetings dropped from four a week to three, which means I was able to observe her in a virtual classroom environment a total of seven times over two weeks: June 1-12, 2020.

53. According to the SDI data sheet, on June 13, 2020, the Student participated in a Zoom session with the special education teacher for 18 minutes.

54. According to the Parent SDI tracker, on June 14, 2020, the Student received 20 minutes of specially designed instruction.

55. According to the SDI data sheet, on June 15, 2020, the Student completed an asynchronous assignment that related to Goal #1 and the special education teacher estimated that it would have taken the Student 20 minutes to complete said assignment.
56. According to the Parent SDI tracker, on June 16, 2020, the Student received 30 minutes of specially designed instruction.
57. According to the SDI data sheet, on June 17, 2020, the Student completed an asynchronous assignment that related to Goal #2 and the special education teacher estimated that it would have taken the Student 25 minutes to complete said assignment.

According to the Parent SDI tracker, the Student received 50 minutes of specially designed instruction.

58. According to the District's 2019-2020 calendar, June 17, 2020 was the last day of the 2019-2020 school year for the District.

Summer 2020

59. According to the SDI data sheet, on June 19, 2020, the special education teacher assigned the Student an asynchronous assignment that related to Goal 2 and which the special education teacher estimated would have taken the Student 20 minutes to complete. According to the SDI data sheet though, it is unclear if the Student completed the June 19, 2020 asynchronous assignment.
60. The District's response included a progress report, dated June 19, 2020, that related to the goals in the Student's May 13, 2020 IEP. That progress report read, in part:
- **Social Skills 1:** Sufficient progress being made to achieve annual goal within duration of IEP.
 - "Student's self-control over Social Zoom showed improvements. Eight out of ten Zoom meetings she was successful with self-control. (80%) Many contributing factors should be considered: Parent guidance, group size, preferred to not preferred activities."
 - **Social Skills 2:** Sufficient progress being made to achieve annual goal within duration of IEP.
 - "Through Distance Learning during Social Zoom meetings, Student did not show verbal outburst. She raised her hand when prompted to participate, and talked through frustrations 80% of the time. This data reflects the activity and participation during Specially designed instruction over eight weeks in small group. Larger groups, such as general education Zoom and non preferred activities, are reporting a higher number of verbal outburst according to parent input."
 - "Data during this last trimester/quarter is a collaboration with parent and the teacher and was taken in the home setting, due to COVID-19."
 - **Behavior 1:** Sufficient progress being made to achieve annual goal within duration of IEP.
 - "At times during Social Zoom, Student would get distracted occasionally. This would look like, pushing buttons or taking over screens. This occurred 2 times over the extend of Social Zooms, however it appears that it required parent's prompting to support this goal as parent data supports additional prompting was required that was not visible to the host. Therefore, the data collection during this last trimester/quarter is a collaboration with parent and the teacher and was taken in the home setting, due to COVID-19."

- **Behavior 2:** [Not Applicable.]
 - “The instruction on this goal was not possible due to the school buildings being closed. The teacher and parent will collaborate on skills that support this goal when the student returns to the physical school building.”
- **Behavior Support:** [Progress Report does not include a standard, summary-type entry.]
 - “Student can identify visually over Zoom what her feelings are, what Zone she is in, and what she can do to regulate back to green zone. This looks different than face to face school environment. Data during this last trimester/quarter is a collaboration with parent and the teacher and was taken in the home setting, due to COVID-19.”

61. On June 19, 2020, the director emailed the Parent, stating, in part: “Will Monday at 2:00 work for a follow-up conversation/meeting [regarding your requested plan to rectify the alleged IEP service minute deficit]?”

62. The District’s response included a Zoom invite sent to the Parent for a June 22, 2020 “summer support” meeting. According to the District’s response, a meeting between certain District staff and the Parent did take place on June 22, 2020, to discuss summer support services for the Student.

63. The District’s response included an email thread, dated June 22 through June 24, 2020, between the director and the Parent, wherein the schedule for summer support services was finalized. The schedule discussed was for July 6 through July 31, 2020, and was as follows: Monday, Tuesdays, and Fridays – 45 minutes of Zoom each day; and Wednesdays and Thursdays – 20 minutes of asynchronous work each day.

In the emails, the Parent requested that the summer support classroom time take place in a remote format – as opposed to in-person.

64. On June 23, 2020, the Parent, director, and executive director exchanged a couple emails. Those emails show:

- The Parent believed the related service of “1 on 1 para[educator]” should be separately counted – in addition to the minutes of specially designed instruction included in the Student’s IEP, in determining the total amount of specially designed instruction that was owed to the Student under the December 2019 and May 2020 Amended IEPs.
- The Parent stated her belief was supported by the following: “page 14 of the IEP states, “the 1:1 support personnel is considered part of Student’s service matrix.”
- The District, though, stated: “The...service minutes for the 1:1...staff listed on the IEP service matrix does not count towards total service minutes.”

65. On June 26, 2020, the director emailed the Parent, stating, in part: “Please look for a zoom invite from the behavior specialist before July 6, 2020 for the zoom sessions [for the summer support services].”

66. On July 4, 2020, the behavior specialist emailed the Parent, stating: “I’m looking forward to working with Student! I have sent out recurring Zoom invites to both you and Student for our time together. A co-instructor...will be joining us as well.” In this same email thread, a zoom

link for the following appears: "weekly from 9 am to 9:45 am on Monday from Monday, July 6, 2020 through Monday, July 27, 2020."

67. On July 5, 2020, the director emailed the Parent, providing the Parent with a prior written notice. The attached prior written notice was dated July 7, 2020, and proposed to initiate "summer support services" for the Student. That prior written notice read, in part:

Description of the proposed or refused action:

Summer support services are proposed during the summer of 2020 to support Student due to COVID-19 school closure and move to virtual school/special education services.

Parent; Executive Director; and Director Special met via Zoom on June 10 and June 22 to discuss Parent request for discussion and plan to address the platform change from March to June 2020.

The reason we are proposing or refusing to take action is:

The District is proposing to provide Summer Support for Student. Due to COVID 19 and the change in educational platform (from in school to virtual) during the global pandemic, service minutes in social and behavior and goal implementation were impacted.

Description of any other options considered and rejected:

Parent requested over 25,000 services minutes be provided to Student based on their service minute calculation/perception (including the 1:1 para support student receives during a regular in person school day). According to the IEP, Student receives 40 minutes per day of special education services for social and behavior specially designed instruction.

The district offered to provide in person summer support in the home.

The reasons we rejected those options were:

Specially designed instruction is related to eligible service areas not 1:1 para. Including para time was rejected for summer support.

In person (in home) support was rejected by parents due to COVID 19 and potential safety issues.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Most current IEP, parent and staff data and input, progress reporting/data.

Any other factors that are relevant to the action:

Summer support was offered June 29-July 24st. The dates were adjusted to July 6-July 31 to accommodate family vacation.

Parent and [District] agree that summer support will provide any missed service time/goal implementation during COVID 19 from March to June 2020.

The action will be initiated on: 07/06/2020.

68. In her complaint, the Parent alleged it was a violation of the IDEA for her to receive a prior written notice on July 5, 2020 that described an action that was to be taken in "less than 24 hours" – on July 6, 2020.

69. According to the Parent, in the summer of 2020, "the Student received 0% of the...minutes for related services of her 1-to-1 behavior support paraeducator."

70. According to the District, from July 6 through July 31, 2020, the District provided the Student with certain "Summer Support Services":

On Monday, Tuesday, and Friday for 45 minutes providing specially designed instruction via zoom [and] on Wednesdays and Thursdays the District provided 30 minutes of asynchronous learning regarding the Student's specially designed instruction in social and behavior¹²...Lessons provided during Summer Support [Services] included the use of Centervention (Zoo Academy), and supplemental assignments provided by Centervention.

According to the District's response, the sessions were comprised of: a special education teacher; one to two paraeducators; and the Student – according to the District, the Student was the only student on the "summer support" Zoom sessions.¹³

71. The District's response included several documents that relate to the "Summer Support Services" provided to the Student from July 6 through July 31, 2020, including, in part:

- A "Lesson Planning Summer Support" document, which listed the IEP goals that would be addressed during the "Summer Support Services," including: social skills; behavior; self-regulation; and, "transition with safety awareness."
- A "Daily Lesson Plans" document, which included: (1) detailed lesson plans for every Monday, Tuesday, and Friday between July 6, 2020 and July 31, 2020; and (2) detailed "distance learning assignments" for every Wednesday and Thursday between July 6, 2020 and July 24, 2020.
- A "Data Summary Presentation," which stated: (1) every Monday, Tuesday, and Wednesday between July 6, 2020 and July 31, 2020 was a "direct summer support date"; and (2) every Wednesday and Thursday between July 6, 2020 and July 31, 2020 was an "indirect summer support date."
- A "Break Time Procedures at Home" document.
- A "Reflection Procedures in Zoom" document.
- Approximately 22 pages of various classroom assignments, some of which are blank, some of which are completed, and some of which appear to have been completed but the written responses are difficult to read. Some of the titles of the foregoing assignments are as follows: "Emotional Spectrums," "Keeping Calm," "Feelings Scavenger Hunt," "Kindness Choice Board," "Nonverbal on the Playground."

¹² OSPI notes, though, that during the course of this investigation, the District confirmed that a certain calendar was an accurate recording of the schedule for specially designed instruction from July 6 through July 31, 2020. While that schedule did have 45-minute Zoom sessions on Mondays, Tuesdays, and Fridays, it only had 20 minutes allotted for asynchronous specially designed instruction on Wednesdays and Thursdays – as opposed to 30 minutes.

¹³ In its response, the District also stated it also provided training for the Parent, [including] the Student's behavior plan implementation, use of de-escalation strategies, and use of a positive reinforcement system at home (a "visual created for home use").

The District's response also included an additional, approximate 233 pages of academic worksheets that the District asserted were related to "SDI/Lessons (Summer Support)." Most of the 233 pages were blank/not filled out, but a couple were completed.

72. During the course of this investigation, the District provided OSPI with an excel sheet entitled, "summer support minutes" (**summer support tracker**). According to the District, this document: was created by the behavior specialist – the District staff member most involved in providing the Student with specially designed instruction in summer 2020; it was created on or about the date the Parent filed the instant special education citizen complaint; and it represents a compilation of data from daily Zoom reports.

73. According to the summer support tracker, on July 6, 2020, the Student participated in a 45-minute Zoom session and completed 17 minutes of asynchronous work.¹⁴

The District's response included an email thread between the behavior specialist and the Parent that refers to a Zoom session that took place on July 6, 2020.

74. On July 6, 2020, the director emailed the Parent, stating, "Paraeducator 1 is the second staff member that will be supporting Student's zoom meetings." (Earlier in that same email thread, the Parent noted paraeducator #'s presence some of the previous zoom meetings.)

75. According to the summer support tracker, on July 7, 2020, the Student participated in a 43-minute Zoom session and completed 23 minutes of asynchronous work.

The District's response included a 'pink sheet' dated July 7, 2020. The pink sheet: appears to relate to a Zoom session that took place on or about July 7, 2020; and, does relate to instruction being provided to the Student for distance learning assignments for July 8 and 9, 2020.

The District's response included an email thread between the behavior specialist and the Parent that refers to a Zoom session that took place on July 7, 2020.

76. According to the summer support tracker, on July 10, 2020, the Student participated in a 17-minute Zoom session.

The District's response included a 'pink sheet' dated July 10, 2020. The pink sheet: appears to relate to a Zoom session that took place on or about July 10, 2020; and, does relate to "review[ing] distance learning assignments."

The District's response included an email thread between the behavior specialist and the Parent that refers to a Zoom session that took place on July 10, 2020.

¹⁴ According to the District, despite the fact that the plan was for Wednesdays and Thursdays in July 2020 to be devoted to asynchronous or "distance learning": the Student enjoyed engaging with her asynchronous work in summer 2020; and the Student occasionally completed more asynchronous work in July 2020 than was set forth in the original schedule.

77. According to the summer support tracker, on July 13, 2020, the Student participated in a 47-minute zoom session and completed 14 minutes of asynchronous work.

The District's response included a 'pink sheet', dated July 13, 2020, and related to a Zoom session that took place on or about July 13, 2020.

The District's response included an email thread between the behavior specialist and the Parent that refers to a Zoom session that took place on July 13, 2020.

78. According to the summer support tracker, on July 14, 2020, the Student participated in a 45-minute Zoom session and completed 17 minutes of asynchronous work.

The District's response included a 'pink sheet' dated July 14, 2020. The pink sheet: appears to relate to a Zoom session that took place on or about July 14, 2020. The July 14, 2020 also refers to certain "distance learning assignments," but the July 14, 2020 pink sheet does not include dates for said "distance learning assignments."

The District's response included an email thread between the behavior specialist and the Parent that refers to a Zoom session that took place on July 14, 2020.

79. According to the summer support tracker, on July 17, 2020, the Student participated in a 47-minute Zoom session and completed 20 minutes of asynchronous work.

The District's response included a 'pink sheet' dated July 17, 2020. The pink sheet: appears to relate to a Zoom session that took place on or about July 17, 2020; and, does relate to "review[ing] distance learning assignments."

The District's response included an email thread between the behavior specialist and the Parent that refers to a Zoom session that took place on July 17, 2020.

80. According to the summer support tracker, on July 20, 2020, the Student participated in a 53-minute Zoom session and completed 19 minutes of asynchronous work.

The District's response included a 'pink sheet' dated July 20, 2020. The pink sheet appears to relate to a Zoom session that took place on or about July 20, 2020.

81. According to the summer support tracker, on July 21, 2020, the Student participated in a 48-minute Zoom session and completed 16 minutes of asynchronous work.

The District's response included a 'pink sheet' dated July 21, 2020. The pink sheet: appears to relate to a zoom session that took place on or about July 21, 2020; and, does relate to "discuss[ing] distance learning assignments."

82. The District's response included an email thread between the behavior specialist and the Parent, dated July 21 through July 24, 2020, referring to: Zoom sessions on July 21 and July 24, 2020, and asynchronous assignments on July 22 and July 23, 2020.

83. The District's response included a "Kindness Choice Board" worksheet that the District stated relates to asynchronous learning provided to the Student on July 22, 2020.

84. The District's response included a "Managing Emotions Choice Board" worksheet that the District stated relates to asynchronous learning provided to the Student on July 23, 2020.

85. According to the summer support tracker, on July 24, 2020, the Student participated in a 49-minute Zoom session and completed 11 minutes of asynchronous work.

The District's response included a 'pink sheet' dated July 24, 2020. The pink sheet: appears to relate to a Zoom session that took place on or about July 24, 2020; and, does relate to "review[ing] distance learning assignments."

86. According to the summer support tracker, on July 27, 2020, the Student participated in a 30-minute Zoom session.

The District's response included a 'pink sheet' dated July 27, 2020. The pink sheet appears to relate to a Zoom session that took place on or about July 27, 2020.

87. According to the summer support tracker, on July 28, 2020, the Student participated in a 51-minute Zoom session.

The District's response included a 'pink sheet' dated July 28, 2020. The pink sheet: appears to relate to a Zoom session that took place on or about July 28, 2020; and, does relate to "discuss[ing] distance learning assignments."

88. On July 28, 2020, the behavior specialist emailed the Parent, stating, in part: "I also attached the two distance learning assignments. I modified them both to make them less confusing for her, but if she struggles send me an email. I will post them in Google Classroom as well." Attached to the behavior specialist's July 28, 2020 email were two worksheets: Big Emotions v. Small Emotions; and, Emotion Spectrums.

89. According to the summer support tracker, on July 31, 2020, the Student participated in a 48-minute Zoom session and completed 60 minutes of asynchronous work.

The District's response included a 'pink sheet' dated July 31, 2020. The pink sheet: appears to relate to a Zoom session that took place on or about July 31, 2020; and, does relate to "review[ing] distance learning assignments."

90. According to the summer support tracker, on August 4, 2020, the Student completed 34 minutes of asynchronous work.

91. On August 6, 2020, the Parent emailed the director, stating, in part:

I'm sorry that I missed the last sentence of the [prior written notice dated July 7, 2020]. To be clear, we did not agree that the summer support services will make up for ALL missed Services Minutes. It certainly did make up for SOME of those missed Service Minutes. Our

concern is the word 'any' may be construed as 'all'...I also look forward to learning what the school district may provide throughout the 2020-2021 school year (and possibly beyond) to more fully rectify the missing minutes from the 2019-2020 school year in addition to [the plan for the regularly-scheduled] services for the current school year.

[Concerning the summer support services], the game-based specially designed instruction was a winner!

[The behavior specialist] stated we will go over the data and results of the summer support services at the Transition Meeting, so that the parents, principal, case manager, new 1:1 paraeducator, and new general education teacher can be informed at the same time of where Student stands.

Some interesting real time feedback [in relation to summer 2020] was that Student had definitely regressed on the mastered Behavior goal, Identify Own Emotions, as she was having a considerably difficult time with it on the Zoo Academy game. I am very interested in learning more about the information gathered.

I also anticipate this meeting could be when we might be informed of the solutions the school district will provide throughout the 2020-2021 school year (and possibly beyond) to more fully rectify the missing minutes from the 2019-2020 school year in addition to providing services for the current school year.

92. On August 6, 2020, the Parent emailed the Student's "IEP team," stating, in part:
I was just wondering when the Transition Meeting might be scheduled so that I can put it on my calendar. Not only do I look forward to meeting Student's first grade teacher and new 1:1 paraeducator, but also learning about all the data and results from the summer support services that Student received in July. I'm also interested in learning how the 1:1 para educator will support Student in the distance learning environment.

On August 7, 2020, the principal responded, stating, in part: "Yes, as soon as our team comes back from break we will be scheduling a meeting prior to school starting."

93. On August 13, 2020, the director emailed the Parent, stating, in part: "We can schedule two meetings, one with the staff for the upcoming school year to prepare for the fall (either late August or early September)...and a separate meeting to further discuss services from last school year."

94. On August 25, 2020, the director emailed the principal, stating, in part: "Everyone can meet...September 3, 2020 [concerning Student]...We will need to have a quick conversation about what information should be covered."

The subject line of the director's August 25, 2020 email read, "IEP Transition Meeting."

95. On August 26, 2020, the special education teacher sent the Parent a Zoom invite for a meeting on September 3, 2020. The title for the scheduled Zoom meeting was "Student Intro." The following individuals were listed as attendees for the scheduled September 3, 2020 meeting:

behavior specialist, special education teacher, director, Parent, the principal, the assistant principal, and the general education teacher.

96. On August 26, 2020, the Parent emailed the special education teacher, stating, in part: Is this considered an IEP meeting? I know I requested to cover a couple of topics: (1) receive data and results from the summer support services that Student received in July from the behavior [specialist] and paraeducator; and, (2) learn how the 1:1 paraeducator will support Student in the distance learning environment [in 2020-2021].

The special education teacher responded¹⁵, stating, in part:

I am never sure how to title meetings, and at the time I saw it as an introduction, however since then I understand that [the behavior specialist] will be reviewing data with us at this meeting and her teacher will be in touch.

This meeting will be to look at the summer data and discuss what the fall will look like as we cover the topics that you requested.

97. The District's response included a 'data summary presentation' dated September 1, 2020. The 'data summary presentation' was prepared by the Student's primary summer 2020 specially designed instruction provider. It read, in part:

Summary of Observations

- The data established non-compliance, disruptive classroom behavior, and elopement remain target behaviors for the student.
- There was a notable spike in demonstrated behavior on 7/15 and 7/20. Per parent report (7/17/2020 & 7/20/2020) the Student was struggling with the side effects of a new medication that was discontinued at this time.
- The data also established the function of the Student's behavior remained an effort to escape/avoid a non-preferred activity or work demand and to seek adult attention consistent with previous data.
- Observations by team members indicated the target behaviors most often occurred during activities where the student was required to discuss her emotions, or identify the emotions of others. Target behaviors were also frequent when the student did not have control over the pace or selection of activities.
- The data indicated that when the Student was provided a consistent visual schedule (Pink Sheet), transition warnings (using an audible timer), and consistent rules and expectations using scripted language her behavior improved and she was better able to engage in her learning.
- Observations also indicated she was most successful in an environment where the teaching pace supported her need for movement and shorter attention span.
- Observations also indicated student engagement increased when the Student was permitted to share her Zoom screen and was provided opportunities to lead the lesson.
- This observer recommends a structured break plan in the home environment to provide access to calming strategies (Sensory sack), and continued use of positive reinforcement of to increase desired behaviors.

¹⁵ The special education teacher responded on September 2, 2020.

98. According to the District's response, a meeting occurred on September 3, 2020 (primarily, to discuss data from the provision of specially designed instruction over the summer of 2020) and September 4, 2020 (primarily, for Student to meet her general education teacher for the 2020-2021 school year).

2020 – 2021 School Year

99. The District's first day of the 2020-2021 school year was September 8, 2020.

According to the District, from September 8 through November 2, 2020, "the Student was provided 1:1 support in Zoom specially designed instruction two times a day" and the 1:1 paraeducator was trained in "behavior visuals" and "data collection."

100. On September 15, 2020, the special education teacher emailed the Parent, stating, in part: "You and I can talk next week after Student gets time with classmates, and the routine of a schedule. I should have more information about our para[educator] by then."

101. According to the District, none of services provided to the Student from the start of the 2020-2021 school year through early April 2021 were intended, as determined by the Student's IEP team, to serve as recovery services¹⁶ for the Student.

102. On September 21, 2020, the Parent emailed the special education teacher, stating, in part: Last week Student saw the behavior specialist in her classroom zooms and you in her Specialist zooms; however, Student was not able to reach out to either of you in a private chat when she needed to and neither were you able to reach out to her privately. Or, if you did reach out to her, then she never received those messages. So, it seems that function of zoom is still not working.

Also, the function of zoom for a breakout room is not working. It is not clear that any teacher has been coached on how to use this function...I thought I would inform you of how zoom is working from our end on these functionalities that were described to us as how Student would access her 1:1 behavior support. In short, it is not currently working.

Later that same day, the special education teacher responded, stating, in part:

Thank you for keeping me up to date of the IT problems. The behavior specialist and I are currently working with Tech, and she is sending emails as I write this informing me that we may have a fix. Let me know how this hour goes. I know that Student desperately needs a break out room, and coaching. Thank you for being there for Student.

103. On September 28, 2020, the Parent emailed the special education teacher, requesting a copy of the prior written notice for the September 3, 2020 meeting.

The special education teacher responded that same day, stating, in part: "Typically if we aren't chang[ing] or updat[ing] anything, I wouldn't typically write a prior written notice but I will

¹⁶ To account for any COVID-related disruptions in schooling during the relevant time period.

confirm with [the director]. This [meeting pertained to] reviewing data collection from the summer.”

104. On October 2, 2020, the Parent emailed the special education teacher, stating, in part: The topics we covered [at the September 3, 2020 meeting] are listed below. Summer or her data could probably help you add more detail to what she covered if you need it. My takeaways from the second topic were:
1. Director confirmed there is a 1:1 hired and will be trained and ready to go on the first day of school on Sept 8th.
 2. Director confirmed the 1:1 will be accessed in the distance learning model through
 - 2.a. the chat feature of zoom - the 1:1 will be able to privately chat with Student and Student will be able to privately chat with the 1:1 – and
 - 2.b. the breakout room feature of zoom – the 1:1 will be able to pull Student out to a breakout room to de-escalate and take her back to rejoin the class when she is ready.
 3. The general education teacher asked if we can practice these zoom features before school starts and Director said no.
105. On September 30, 2020, the Parent emailed the special education teacher, stating, in part: I thought I'd let you know that Student did see the temporary paraeducator in her Music class, but was unable to send her a message. This very likely means that the temporary paraeducator was also unable to send Student a message. To me, this means the temporary paraeducator was unable to fulfill the role of 1:1 Behavior Support because Student was unable to reach out to her if needed and the temporary paraeducator was unable to redirect Student if needed.
106. On October 2, 2020, the Parent emailed the special education teacher, stating, in part: “It is my understanding that when the IEP team meets, then I should expect a prior written notice.”
107. The District’s response included a November 2020 progress report that notes the following in regards to the Student’s related service goal (behavior support): “Student has struggled with frustrating, stimulating or stressful circumstances to improve her self-regulation. Over Zoom she continues to stay on self-regulating 2 out of 5 opportunities.”
108. On March 17, 2021, OSPI received the District’s response to the Parent’s complaint. It read, in part:
The September 3, 2020 zoom meeting was not an IEP meeting and therefore a [prior written notice] was not required...no changes to the IEP were made. [Two areas were addressed at the September 3, 2020 meeting]: 1) the Parent [was given an opportunity] to meet Student’s 1st grade general education teacher for the 20/21 school year; and 2) our district behavior specialist, who worked with Student in the 2020 summer, suggested we could review the summer support behavioral data.
109. On April 1, 2020, OSPI’s investigator conducted a phone interview with the director and the executive director. OSPI’s investigator’s notes from that interview are as follows:
Concerning Provision of Specially Designed Instruction in Spring 2020

There was also at least one paraeducator on the specially designed zoom meetings; the zoom meetings consisted of the special education teacher and at least 1 of 5 different paraeducators.

The paraeducator role in the spring zoom sessions was to manage breakout sessions, ensure accommodations were being provided; and, reminding students of tasks and behaviors and resources, etc.

Concerning Difference Between Behavior Technician and Paraeducator

The Student's December 2019 IEP did not say registered behavior technician, so this individual was essentially a paraeducator; there is no qualification difference between a regular 'behavior technician' and a paraeducator.

Purpose of Paraeducator Provision in Student's IEP

Initially, the behavior technician/paraeducator was included to address safety and elopement concerns – there were some aggression concerns in preschool. But sometime in kindergarten, when these specific concerns were not as prevalent, the paraeducator's role switched to working with Student on IEP goals.

September 3, 2020 Meeting

This was more of a 'verbal progress report' meeting concerning the behavior specialist's data from having provided the Student with services over summer 2020.

The group of people in attendance at the September 3, 2020 meeting made no determinations in relation to the data discussed and/or shared at said meeting.

110. During the course of this investigation, OSPI's investigator emailed the District several questions concerning the provision of paraeducator support to the Student at the start of the 2020-2021 school year. Specifically, OSPI's investigator asked: (1) was any decision made at an early September 2020 meeting concerning what the Student's paraeducator support would look like at the start of the 2020-2021 school year?; (2) if not, when was the arrangement that was ultimately implemented (1:1 support in zoom specially designed instruction twice a day) decided?; and (3) and how made the foregoing decision – and how?

On April 12, 2021, OSPI received the District's responses to the foregoing questions. They read, in part:

No changes were made to the IEP as [concerned] the paraeducator support...in Sept as [had been] done in spring and summer [of 2020]. [The arrangement that was implemented at the start of the 2020-2021 school year] was decided last year between the special education teacher and Parent. The amount of service time remained the same, but a scheduled time (for student specially designed instruction) is not an IEP decision (i.e.: 9:00 vs 10:00 for example).

111. During the course of this investigation, OSPI's investigator asked the Parent: "did the individuals present at the [September 3, 2020] meeting reach any decision in regard to the data from the summer of 2020 that was shared during the meeting?"

In response, the Parent stated, in part:

[Yes], the director described how the Student would access her 1:1 Behavior Support Para Educator in Distance Learning through Zoom features, [and] the General Education Teacher requested to practice using this new technology before school started with adults only and then also introduce and prepare the Student to use it, and the director decided No.

112. On April 13, 2021, the District provided OSPI's investigator with a statement from the special education teacher that read, in part: "[I was] not aware of [visual] timers [being available] on Zoom."

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged the District did not properly implement the Student's individualized education program (IEP) from March 16 through June 19, 2020.

During the COVID-19 closure, school districts were responsible for providing a free appropriate public education (FAPE) to students with IEPs. FAPE includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability. Due to the exceptional nature of the COVID-19 closure, though, districts were not expected to deliver IEP services exactly as stated in students' IEPs.

OSPI described the nature of instruction that students were to receive during the COVID-19 closure as follows: "[School districts] should avoid assuming that continuity of education outside of a typical school building can only occur through online means. Districts will provide instruction using printed online learning materials, phone contact, email, technology-based virtual instruction, or a combination to meet student needs."

All schools were expected to have begun providing educational services for all students by March 30, 2020, which OSPI termed "Continuous Learning 2020." And OSPI guidance stated districts were to provide students with IEPs student-specific continuous learning opportunities beginning March 30, 2020. Thus, beginning March 30, 2020, the District should have begun providing the Student with opportunities to access individualized instruction.

Specially Designed Instruction

Here, according to the District's 2019-2020 calendar, March 30 through June 17, 2020 represents approximately 10.5 weeks of school. Therefore, if the Student's December 2019 and May 2020 Amended IEPs had been implemented as written during this time, the Student would have received approximately: 17.5 hours of specially designed instruction in social skills; and, 17.5 hours of specially designed instruction in behavior.¹⁷ And, during the foregoing 35 hours of specially

¹⁷ According to both the December 2019 and May 2020 Amended IEPs, the Student received 100 minutes of specially designed instruction in social skills and 100 minutes of specially designed instruction in behavior, each week.

designed instruction (both social skills and behavior), the Student would have had the assistance of a 1:1 paraeducator.¹⁸

In regard to what specially designed instruction was actually provided to the Student from March 30 through June 17, 2020, OSPI notes the following:

No less than four documents purport to record the specially designed instruction the Student received from March 30 through June 17, 2020—for example, the SDI data sheet, the excel zoom tracker, the calendar SDI tracker, and the Parent SDI tracker. On certain days, the figures included in the foregoing documents were in rough conformity with one another. On other days, the figures included in the foregoing documents have significant discrepancies. Therefore, for the purposes of the instant decision, OSPI took the following, three-part approach:

For days where the foregoing documents were in rough conformity with one another, OSPI determined the Student received specially designed instruction in the amount recorded by either the SDI data sheet or excel zoom tracker. These two documents were filled out by District staff with direct knowledge of the amount of specially designed instruction provided to the Student on a particular day, in response to guidance from District administration that such data be accurately recorded. So, for example, on April 23, 2020, the SDI data sheet said the Student received 15 minutes of specially designed instruction. But the Parent SDI tracker stated the Student received 10 minutes of specially designed instruction. It is reasonable that the Parent calculated differently, without having the information and training that the District staff had. For this date, for the purposes of this complaint, OSPI determined: Student received approximately 15 minutes of specially designed instruction.

For days where the foregoing documents had a more significant discrepancy between them, OSPI decided to count both the low and high end – so OSPI can calculate a range representing the approximate amount of specially designed instruction provided to the Student in the spring of 2020. So, for example, on April 27, 2020, the Parent SDI tracker said the Student received 10 minutes of specially designed instruction and the calendar SDI tracker noted the Student received 50 minutes of specially designed instruction. (And the SDI data sheet recorded that the Student received 15 minutes of specially designed instruction.) So, for April 27, 2020, OSPI will count 10 minutes of specially designed instruction for the low range and 50 minutes of specially designed instruction for the high range.

¹⁸ According to both the December 2019 and May 2020 Amended IEPs, the Student was also supposed to receive the support of a 1:1 paraeducator during periods of general instruction, as well as during transitions, during the school day. During their interview with OSPI's investigator, the director and executive director explained: the full-day 1:1 paraeducator was initially provided to address safety and elopement concerns which were first witnessed in preschool; sometime in kindergarten, though, these concerns became less prevalent, and so some of the full-day 1:1 paraeducator's time was thenceforth devoted to working with the Student on the Student's IEP goals, as well as ensuring some of the Student's accommodations and modifications were provided.

For days where two or more of the foregoing documents were in conformity with one another, OSPI chose that figure as best representing the specially designed instruction provided to the Student on that day. So, for example, on April 28, 2020, the SDI data sheet said the Student received 17 minutes of specially designed instruction, but both the calendar SDI tracker and Parent SDI tracker stated the Student received 25 minutes of specially designed instruction. So, for April 28, 2020, OSPI determined the best estimate of specially designed instruction the Student received on that day was: 25 minutes of specially designed instruction.

Using the above method of calculation and analysis, OSPI determines, from March 30 through June 17, 2020, the Student received approximately 10 to 15 hours of specially designed instruction.

And, according to the June 19, 2020 progress report, these hours of specially designed instruction were devoted to the following goals in the Student's IEP: social skills 1-2; behavior 1; and, behavior support. According to the June 19, 2020 progress report, behavior goal 2 was not addressed in the spring of 2020.

In relation to the provision of specially designed instruction to the Student from March 30 through June 17, 2020, OSP can further conclude: more often than not, at least one paraeducator was present on the spring 2020 specially designed instruction Zoom sessions. This conclusion is supported, in part, by the following: for every entry on the excel zoom tracker between May 12, 2020 and June 9, 2020, there is at least one paraeducator in attendance at the Zoom sessions; and, during the executive director's interview with OSPI's investigator, the executive director stated there was always at least one paraeducator in attendance during the spring 2020 Zoom sessions.

Next, the Parent and District agreed to certain "summer support services," which were to be provided to the Student from July 6 through July 31, 2020.¹⁹ According to the July 5, 2020 prior written notice, the purpose of the "summer support services" was to address the impact the pandemic had on the provision of the Student's "service minutes in social and behavior."²⁰

In regard to what specially designed instruction was provided to the Student from July 6 through July 31, 2020, OSPI notes the following:

¹⁹ This agreement was reached through two meetings – one of which occurred on June 12, 2020 between the Parent and the director and executive director, and one of which occurred on June 22, 2020, as well as an email thread, dated June 22 through June 24, 2020, between the director and the Parent, wherein they finalized the schedule for the "summer support services."

²⁰ The July 5, 2020 prior written notice read, in part, "Parent and [District] agree that summer support will provide any missed service time/goal implementation during COVID-19 from March to June 2020." On August 6, 2020, the Parent emailed the director, expressing her disagreement with the aforementioned sentence – the Parent believed the Student may require additional recovery services beyond those provided in July 2020. In its response, the District acknowledges that it did not intend to represent that the "summer support services" provided to the Student in July 2020 were to, necessarily, be the only recovery services provided to the Student.

- Several different types of documentation exist showing the Student did receive specially designed instruction during from July 6, 2020 through July 31, 2020, including, in part: emails; the summer support tracker; numerous "pink sheets" (visual schedules); the 'Lesson Planning Summer Support' document; the 'Daily Lesson Plans' document; the 'Data Summary Presentation'; the 'Break Time Procedures at Home' document; and, the 'Reflection procedures in Zoom' document.
- The Student's schedule was: approximately 45 minutes of zoom specially designed instruction on Mondays, Tuesdays, and Fridays, and approximately 20 minutes of asynchronous specially designed instruction on Wednesdays and Thursdays.²¹
- According to the behavior technician's summer support tracker, occasionally the zoom sessions on Monday, Tuesday, and Friday were for lengths other than 45 minutes.
- According to the executive director, during the 'summer support services,' the Student enjoyed engaging with the asynchronous specially designed instruction, and occasionally did more than the 40 minutes a week (20 minutes each Wednesday and Thursday).
- A paraeducator was present during the specially designed instruction zoom sessions in July 2020. See Parent's August 26, 2020 email to special education teacher, which read, in part: "Receive data and results from the summer support services that Student received in July from the behavior specialist and [a] paraeducator."

Those notes having been made, a review of the documentation provided to OSPI shows that, from July 6 through July 31, 2020, the Student received approximately 17 hours of specially designed instruction (or 1,040 minutes).

Finally, according to the summer support tracker, the Student completed 34 minutes of asynchronous specially designed instruction on August 4, 2020.

In total then, from March 30 through August 4, 2020, the Student received approximately 27 hours 30 minutes to 32 hours 30 minutes of specially designed instruction. And, during this same time period, the Student should have received approximately 35 hours of specially designed instruction (17.5 hours in social skills and 17.5 hours in behavior). Therefore, the Student experienced a deficit of approximately 2 hours 30 minutes to 7 hours 30 minutes of specially designed instruction.

This does not represent a violation of the IDEA or the guidance applicable to the period of time during which COVID-19 disrupted the provision of services to students with IEPs in the spring of 2020, nor does this represent a material failure to implement the Student's IEP. During this time, there was not an expectation that districts implement a student's IEP as written. Still, the District provided the Student with specially designed instruction beginning in mid-to-late April of 2020.

²¹ The District's responses stated the Student received 30 minutes of asynchronous specially designed instruction on Wednesdays and Thursdays. But at a separate point during the investigation, the District stated a certain calendar was an accurate depiction of the specially designed instruction provided to the Student during July 2020, and that schedule had 20 minutes allotted for asynchronous specially designed instruction on Wednesday and Thursdays. And, in an email thread, dated June 22 through June 24, 2020, the director and the Parent appear to agree to a schedule, whereby 20 minutes of asynchronous specially designed instruction is to be provided to the Student on Wednesdays and Thursdays. For the purposes of this investigation, it is very clear the Student received some asynchronous instruction on Wednesdays and Thursdays, and OSPI finds it most persuasive that this was generally about 20 minutes a day.

Then, the District proactively worked with the Parent to provide some of recovery services to the Student in July 2020.²²

Furthermore, OSPI determines: no additional recovery services are warranted to account for spring 2020 COVID disruptions. Recovery services are not generally provided in the same amount that was missed (i.e., minute for minute, hour for hour). Furthermore, the June 2019 progress report and the September 1, 2020 'data summary presentation' – while showing the Student still demonstrated a need in the areas of social skills and behavior (as of September 1, 2020), did both show the Student was able to make progress on the following measurable annual goals in the Student's IEP: social skills 1; social skills 2; and, behavior 1. Therefore, again, no additional recovery services are needed to account for any COVID disruptions in the spring of 2020.

Paraeducator Support in General Education Setting

According to both the December 2019 and May 2020 Amended IEPs, the Student was also supposed to receive the support of a 1:1 paraeducator during periods of general instruction – this was a related service, which is, by IDEA definition a service that is required to allow the student to benefit from their special education services.²³ During their interview with OSPI's investigator, the director and executive director explained: the full-day 1:1 paraeducator was initially provided to address safety and elopement concerns which were first witnessed in preschool; sometime in kindergarten, though, these concerns became less prevalent, and so some of the full-day 1:1 paraeducator's time was thenceforth devoted to working with the Student on the Student's IEP goals, as well as ensuring some of the Student's accommodations and modifications were provided.

According to the Parent, during the spring of 2020 (approximately April 20 through June 17, 2020), the Student participated in several general education Zoom sessions, on either a regular or semi-regular basis: 1) Mondays from 10:30 to 11:00 am; (2) reading group Wednesdays 10:30 to 11:00 pm; and (3) reading group Fridays 10:30 – 11:00 am. And, the Parent's initial complaint request included a 'behavior audit' completed by the Parent that purports to be a two-week survey of behaviors demonstrated by the Student from June 1 to June 12, 2020, during some of the Student's various Zoom classes. Some of the entries on the 'behavior audit' refer to general education Zoom sessions the Parent states the Student participated in during the spring of 2020. There is an additional email that also supports a finding that the Student participated in some general education Zoom classes in the spring of 2020: on June 12, 2020, the Parent emailed the

²² Recovery services are intended to mitigate the impact of COVID-19 school facility closures and to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services during COVID-19 disruptions. While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services during the 2020-2021 school year and recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during school building closures on the student's overall progress and engagement, including progress toward their IEP goals.

²³Access to a '1 on 1 para' 356 minutes five times a week.

behavior specialist, stating, in part: "Because we are near the end of school, the number of [zoom] meetings [Student has been participating in] dropped from four a week to three." And the various documents recording the specially designed instruction provided to the Student in the spring of 2020 show the Zoom class during which the Student received synchronous specially designed instruction occurred on Tuesdays – in other words, that there was only one regularly-occurring synchronous zoom class during which Student received specially designed instruction.

Furthermore, according to the Parent, the Student was not provided with a 1:1 paraeducator during the above-stated, general education zoom sessions.

According to the District:

- The Student's spring 2020 general education teacher no longer works for the District, and it is therefore difficult for the District to confirm the exact nature of the general education classes the Student participated in during the spring of 2020.
- Several of the times mentioned by the Parent as being those during which the Student participated in general education classes correspond to the general education teacher's break periods. According to the District, it is possible the Student participated in regular or semi-regular general education groups during these time periods. In fact, during their joint interview with OSPI's investigator, the executive director and director stated (paraphrased), 'We are not disagreeing that Student participated in zoom general education classes in the spring of 2020, we're just not positive on the details relating to those zoom general education classes.'

The foregoing represents a violation of the IDEA. Under both the December 2019 and May 2020 Amended IEPs, the Student was also supposed to receive the support of a 1:1 paraeducator during periods of general instruction. And the documentation provided to OSPI during the course of this investigation shows: the Student did participate in certain general education Zoom classes during the spring 2020; and, there was no evidence a 1:1 remote paraeducator was provided during said general education Zoom classes.

If the Student participated in 1 hour 30 minutes of general education time a week, then, between April 20 and June 17, 2020 the Student would have participated in approximately 13 hours and 30 minutes of general education. And, again, there was no evidence a 1:1 remote paraeducator was provided during this general education time.

Therefore, some compensatory education may be warranted: in determining appropriate compensatory education, it is important to look at progress reporting.

Here, OSPI notes: the Student's progress on the related service goal (**behavior support**) appears to have been mixed. In June 2020, it was noted:

Student can identify visually over Zoom what her feelings are, what Zone she is in, and what she can do to regulate back to green zone. This looks different than face to face school environment. Data during this last trimester/quarter is a collaboration with parent and the teacher and was taken in the home setting, due to COVID-19.

In November 2020, it was noted: "Student has struggled with frustrating, stimulating or stressful circumstances to improve her self-regulation. Over Zoom she continues to stay on self-regulating 2 out of 5 opportunities."

Therefore, some compensatory education is warranted. Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. There is no requirement to provide day-for-day compensation for time missed.

Therefore, the following represents an equitable amount of compensatory education to account for the approximate 13 hours and 30 minutes of general education the Student received in the spring of 2020 without having access to the related service of a 1:1 paraeducator: four additional hours of general instruction time – in addition to whatever general instruction time the Student is currently receiving. These four hours could be provided during the summer of 2021. If there are other students present during these four additional hours of general instruction time, then the Student will be provided with either a remote 1:1 paraeducator or an in-person 1:1 paraeducator, whichever option is best suited to the local public health situation. If the Student is the only student present during these four additional hours of general instruction time, then only one staff member needs to be present – the teacher.

Issue Two: Prior Written Notice – The Parent alleged the District did not follow proper prior written notice procedures in regard to prior written notices related to the following dates: May 20, 2020; July 6, 2020; and, September 3, 2020.

Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The Department of Education, Office of Special Education Programs (OSEP) has stated that providing a parent with a prior written notice 10 calendar days prior to initiating a change *that the parent disagrees with* would be consistent with the 'reasonable time' standard included in the relevant regulations. OSEP has not stated a conclusion as to "whether a...period of time [shorter than 10 days] would be acceptable in the presence of parental consent [with a proposed change]."

May 20, 2020

On May 26, 2020, the Parent received – for the first time, a prior written notice related to an IEP meeting that had taken place on May 13, 2020. The initiation date for the prior written notice that the Parent received on May 26, 2020 was listed as May 20, 2020 – a date that had already elapsed.

While the timing would initially seem to suggest that a violation of the IDEA occurred—in that a prior written notice was provided to the Parent after the initiation date had already passed—an examination of the May 13, 2020 IEP meeting and the decisions made at that meeting, show that

no such violation occurred. Principally, this is because no change to the services provided to the Student had yet been enacted on May 26, 2020.

For example, on May 13, 2020, the IEP team made three principal determinations: provide the Student with “a visual timer for transitions within the classroom”; “observe and consider an organizational goal when school is reopened”; and remove the ‘behavior technician’ language listed as the service provider for the related service of 1:1 paraeducator in the Student’s IEP with the following language: ‘educational staff/paraeducator.’

In relation to the visual timer, the District stated it understood the referenced visual timer as an aide that would be provided to the Student in the physical classroom once in-person services resumed. And, as of May 26, 2020, the Student continued to receive services in a fully remote setting. Furthermore, during the course of this investigation, the special education teacher stated she was “not aware of [visual] timers [being available] on Zoom.” Therefore, as best OSPI can determine, no change in the provision of FAPE to the Student – in the form of a visual timer, had been made as of May 26, 2020.

In relation to the organization goal, as of May 26, 2020, the District was still in a fully remote setting – and so the IEP team had not yet had a follow-up meeting to determine whether adding an organizational goal to the Student’s IEP was needed. And this factual reality was permitted by language of the May 2020 prior written notice. In other words, to the extent the District was proposing to initiate a change in relation to the provision of FAPE to the Student (the addition of an organizational goal to the Student’s IEP), as of May 26, 2020, this potential change was not to be implemented until sometime in the future.

In relation to changing the service provider for the Student’s related service from ‘behavior technician’ to ‘District paraeducator’, it appears this was: one, a linguistic change that did not reflect a functional change in the provision of FAPE to the Student; and, two, a change that had already been implemented – prior to both May 26, 2020 (the date the Parent received the prior written notice), and even May 13, 2020 (the date of the IEP meeting).

For example, the Student’s December 2019 IEP did not state a ‘registered behavior technician’ would be the Student’s related service provider; the December 2019 IEP said a ‘behavior technician’ would be the Student’s related service provider. According to both the director and the executive director: (1) there is no qualification difference between a non-registered ‘behavior technician’ and a ‘District paraeducator’; and (2), prior to the May 2020 Amended IEP, the individual who served as the Student’s ‘behavior technician’ essentially functioned as a paraeducator. And, here, the documentation provided to OSPI during this investigation supports the conclusion that, more often than not, at least one paraeducator was present on the spring 2020 specially designed instruction zoom sessions. Therefore, again, this appears to have represented: a linguistic change that did not reflect a functional change in the provision of FAPE to the Student; and a change that had already been implemented – prior to both May 26, 2020 (the date the Parent received the prior written notice), and even May 13, 2020 (the date of the IEP meeting).

In sum, OSPI finds: the District followed proper prior written notice procedures in relation to the May 2020 prior written notice. Although, OSPI reminds the District that best practice would be to ensure a parent receives a prior written notice before the initiation date listed or ensure the prior written notice has an accurate initiation date for proposed changes.

July 6, 2020

On July 5, 2020, the District provided the Parent with a prior written notice related to summer support services that were to be provided to the Student beginning July 6, 2020. The Parent alleges it was a violation of the IDEA for her to receive a prior written notice that described an action that was to be initiated in "less than 24 hours."

In this specific instance, though, OSPI finds; the July 5, 2020 prior written notice was provided to the Parent within a reasonable time before initiation of the summer support services given the Parent's prior meetings and discussions with the District about these services. For example: on both June 10 and 22, 2020, the Parent met with the executive director and director to discuss summer support services for the Student. Furthermore, in an email thread dated June 22, 2020 through June 24, 2020, the director and the Parent collaborated on, and came to mutual agreement on, the specific schedule for summer support services for the Student. In other words, as of June 24, 2020, the Parent was already aware of, and in agreement with, what would eventually be the principal components of the July 5, 2020 prior written notice. Therefore, in this specific instance, OSPI finds the July 5, 2020 prior written notice to have been issued within a reasonable time period before initiation on July 6, 2020.

September 3, 2020

On September 3, 2020, the Parent met with certain District staff.²⁴ According to the District: (1) the purpose of this meeting was: (a) to discuss the data gathered from the provision of specially designed instruction to the Student in July 2020; and (b) for the Parent to meet the Student's general education teacher for the 2020 – 2021 school year; and (2) that "no changes were made to the Student's IEP [as a result of the September 3, 2020 meeting because there was no change in regards to] the Student's paraeducator support."

The District's response did not include a prior written notice related to the September 3, 2020 meeting.

According to the Parent, though, two specific determinations were made at the September 3, 2020 meeting concerning the provision of paraeducator support to the Student during the 2020-2021 school year: 1) the paraeducator would be able to privately chat with the Student in Zoom; and 2) the paraeducator would be "able to pull Student out to a breakout room to de-escalate and take her back to rejoin the class when Student is ready." See email from Parent to special education teacher (Oct. 2, 2020).

²⁴ According to the zoom invite, likely attendees were: behavior specialist; special education teacher; director; Parent; the principal; the assistant principal; and the general education teacher.

During the course of this investigation, limited documentation was provided to OSPI that spoke to this issue. However, the documentation that did speak to this issue tended to support the Parent's position that a decision was made concerning the Student's paraeducator support. For example, on September 21, 2020, the Parent emailed the special education teacher, stating: 1) the Student had not been able to privately chat with her paraeducator during the previous week's zoom classes; and 2) "the function of zoom for a breakout room [with Student's paraeducator] is [also] not working."²⁵ And, later that same day, the Student's special education teacher responded, stating, in part:

Thank you for keeping me up to date of the IT problems. The behavior specialist and I are currently working with Tech, and she is sending emails as I write this informing me that we may have a fix. Let me know how this hour goes. I know that Student desperately needs a break out room, and coaching. Thank you for being there for Student.

There is evidence, then, to support the conclusion that one of the Student's principal service providers – the special education teacher, understood that, as of early in the 2020-2021 school year, the Student needed to be able to privately chat on Zoom with her paraeducator, and that the paraeducator needed to be able to pull the Student into a breakout room, when needed, to help deescalate the Student. (In reaching this conclusion, it is also significant that, on two separate occasions prior to the September 3, 2020 meeting, the Parent explicitly requested that the Student's paraeducator support for the 2020-2021 school year be discussed at the meeting. See Email from Parent to Student's IEP Team (Aug. 6, 2020); see also Email from the Parent to the special education teacher (Aug. 26, 2020)). In other words, it does appear a specific determination was made concerning the provision of paraeducator support for the Student during the 2020-2021 school year in early September 2020 – very likely, as a result of the September 3, 2020 meeting.

Importantly, though, the two decisions reached at the September 3, 2020 meeting concerning the nature of the Student's paraeducator support appear to be principally related to the methodology by which the Student's related service would be implemented. In other words, it does not appear that FAPE for the Student was altered as a result of the September 3, 2020 meeting. For example, the Student's IEP continued to include the related service of '1 on 1 para' for 356 minutes 5 times a week. Generally speaking, it is the role and responsibility of educators to exercise their professional judgment, expertise and observation to determine which methods or techniques address a student's needs. However, the district's discretion in selecting methodology does not relieve it of its obligation to at least consider the parents' recommended methodology. And, here, as demonstrated above, the District did collaborate with the Parent at the September 3, 2020 meeting in regards to the nature of the Student's existing related service. Therefore, no prior written notice was required and there has been no violation of the IDEA.

²⁵ In her September 21, 2020 email, the Parent also states: "[The foregoing zoom] functionalities were described to us as how Student would access her 1:1 behavior support [in the 2020-2021 school year]."

CORRECTIVE ACTIONS

By or before **April 30, 2021** and **September 3, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **April 30, 2021**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: four hours – total, of additional general instruction time.

These four hours must be in addition to whatever general instruction time the Student is currently receiving. These four hours could be provided during the summer of 2021. If there are other students present during these four additional hours of general instruction time, then the Student will be provided with either a remote 1:1 paraeducator or an in-person 1:1 paraeducator, whichever option is best suited to the local public health situation. If the Student is the only student present during these four additional hours of general instruction time, then only one staff member needs to be present – the teacher.

The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. Because of the COVID-19 pandemic, the compensatory education may be provided remotely, depending on the local public health situation.

The District will provide OSPI with documentation of the schedule for services by or before **April 30, 2021**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **September 3, 2021**, including those needing to be rescheduled.*

No later than **September 3, 2021**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. This documentation must also clearly document how many other students, if any, were in attendance at the sessions, as well as which staff member (or staff members) were present.

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

DISTRICT SPECIFIC:

None.

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

REMINDER

Best practice would be to ensure a parent receives a prior written notice before the initiation date listed or ensure the prior written notice has an accurate initiation date for proposed changes.

RECOOMENDATION

OSPI recommends that progress report entries be written using the same unit of measurement as the goal is written. So, for example, if the hypothetical goal is 'Student will improve use calming strategies, increasing ability to use calming strategies during a stressful occurrence from 55% of the time to 85% of the time,' then OSPI recommends progress be reported using a 'percentage of the time' measurement – say, for example, '65% of the time.'

Dated this ____ day of April, 2021

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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