

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 16-49**

### **PROCEDURAL HISTORY**

On June 10, 2016, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Seattle 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 June 13, 2016, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. The District was asked to respond to the allegations made in the complaint.

On July 5, 2016, OSPI received the District's response to the complaint and forwarded it to the Parent on July 6, 2016. The Parent was invited to reply with any information she had that was inconsistent with the District's information.

On July 18, 2016, OSPI received additional information from the District. The information was forward to the Parent on July 28, 2016.

On July 25, 2016, OSPI received the Parent's reply. The information was forwarded to the District on the same day.

On August 8, 2016, OSPI received additional information from the District. The information was forward to the Parent the same day.

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

### **OVERVIEW**

During the 2015-2016 school year, the Student attended a District kindergarten program for students who were medically fragile. In October 2015, the Student's individualized education program (IEP) team met to discuss the Parent's concerns about the Student's educational program, including his need for a bus aide as described in his IEP, and his placement. The IEP team discussed moving the Student to a program at a different elementary school, but that elementary school did not have a full-time nurse to address the Student's medical needs. At the meeting, the IEP team also discussed conducting the Student's reevaluation early, but due to staffing issues, the reevaluation process did not begin until the end of November 2015. In February 2016, the Student's IEP team met to review the results of the Student's reevaluation, and the evaluation group agreed to make changes to the report. A second meeting was then held to finish developing the Student's IEP. After the meeting, the Parent asked for finalized copies of the evaluation report and IEP, but did not receive copies for several weeks. Also during the school year, the Parent and the District discussed changing the Student's placement to a third elementary school, and his level of nursing support. The Parent also requested a 1:1 aide for the Student.

The Parent alleged that the District failed to use a restraint device with the Student consistent with the requirements of WAC 392-172A-02110 during the time period between January 29, 2016 and June 10, 2016. The Parent also alleged that the District failed to provide the Student with a bus aide, specially designed instruction, related services, and accommodations consistent with his IEPs. Additionally, the Parent alleged that the District failed to provide her with progress reporting consistent with the Student's IEPs, and failed to implement the Student's IEPs in the least restrictive environment (LRE). The Parent also alleged that the District failed to follow procedures for conducting the Student's reevaluation and developing the Student's IEP, including considering the Parent's request for a 1:1 aide, and communication reports. The Parent further alleged that the District failed to follow procedures for determining the Student's placement. The District admitted that it failed to provide the Student with a bus aide consistent with his IEP, and denied the other allegations. The District has already agreed to reimburse the Parent for transporting the Student during the school year.

### **ISSUES**

1. Did the District use a restraint device with the Student consistent with the requirements of WAC 392-172A-02110 during the time period between January 29, 2016 through June 10, 2016?
2. Did the District provide the Student with a bus aide consistent with his individualized education programs (IEPs) in place during the 2015-2016 school year?
3. Did the District provide the Student specially designed instruction, related services, and accommodations consistent with his IEPs in place during the 2015-2016 school year?
4. Did the District provide the Parent with progress reporting consistent with the Student's IEPs in place during the 2015-2016 school year?
5. Did the District implement the Student's IEPs in place during the 2015-2016 school year in the least restrictive environment (LRE)?
6. Did the District follow procedures for conducting the Student's reevaluation?
7. Did the District follow procedures for developing the Student's IEPs in place during the 2015-2016 school year, including considering the Parent's requests for a 1:1 aide and communication reports?
8. Did the District follow procedures for determining the Student's placement?

### **LEGAL STANDARDS**

Restraint Device: Restraint device as defined in RCW 28A.600.485 means: A device used to assist in controlling a student including, but not limited to, metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons. This section shall not be construed as encouraging the use of these devices. A restraint device does not include a seat harness used to transport a student safely or other safety devices, including safety belts for wheelchairs, changing tables, booster seats, and other ambulatory or therapeutic devices when used for the purpose intended for the safety of a student. WAC 392-172A-01163 (effective January 29, 2016).

Restraint Device Conditions: A restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of a restraint device as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the restraint device must be discontinued as soon as the likelihood of serious harm has dissipated; b) the restraint device shall not interfere with the student's breathing; c) either the student shall be capable of releasing himself or herself from the restraint device or the student shall continuously remain within view of an adult responsible for supervising the student; d) any staff member or other adults using a restraint device must be trained and certified by a qualified provider in the use of such restraint devices, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of isolation, restraint, or restraint device consistent with RCW 28A.600.485. WAC 392-172A-02110 (effective January 29, 2016).

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments affect the student's need for transportation. Included in this consideration is whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or from getting to school in the same manner as nondisabled students. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. 64 Fed. Reg. 48, 12479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School District*, 36 IDELR 289 (WA SEA 2002). The term "transportation" is defined as: travel to and from school and between schools. 34 CFR §300.34(c)(16); WAC 392-172A-01155(3)(p).

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

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: to the maximum extent appropriate in the general education environment with students who are nondisabled; and special classes, separate schooling or other removal of students

eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303(b); WAC 392-172A-03015(2). When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days of receiving consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) ESY services, if necessary for the student to receive FAPE; (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; and (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modification. 34 CFR §300.320; WAC 392-172A-03090 (amended on January 29, 2016).

Related Services: Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early

identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 CFR §300.34(a); WAC 392-172A-01155.

School Health and Nurse Services: School health services and school nurse services means health services that are designed to enable a student eligible for special education to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. 34 CFR §300.34; WAC 392-172A-01155.

Parent Participation: The parent is an integral part of the IEP development process. The district must consider the parent's concerns and any information s/he provides. The district is not required, however, to adopt all recommendations proposed by a parent. The team must work toward consensus on IEP content, but if team members are unable to reach consensus it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program. 64 Fed. Reg. 48 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

Placements: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: (a) The student's IEP; (b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; (c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and (d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs. Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home. A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060.

Changes in Placement: The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title*

*II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. If a substantial or material change in the student's educational program has occurred, then the school district must provide prior written notice. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

### **FINDINGS OF FACT**

1. During the 2014-2015 school year, the Student attended a District preschool program located at a District elementary school (elementary school 1) and was eligible to receive special education and related services under the category of other health impairment. The Student's placement was a special education program for students who are categorized as medically fragile due to health issues related to their disabilities.
2. In March 2015, the Parent exchanged emails with the Student's preschool teacher and a District program specialist regarding a 1:1 aide for the Student. Based on the Parent's documentation in this complaint, the Parent wanted the Student to have a 1:1 aide so he could participate in the general education setting more often. In the email exchanges, the staff informed the Parent that they could not collect the data needed to determine whether the Student needed a 1:1 aide in kindergarten until the fall of 2015, as the data needed to be collected at the time of the decision. Given the staffing model adopted by the District, and additional staff that worked with the preschool program, the District determined the Student had not presented a need for a 1:1 aide in the preschool class. The Parent then asked if a "floater aide" would be available at the beginning of the 2015-2016 school year to give the Student access to the general education setting in order to take data, as the staff in the medically fragile program may not be able to do so without risking the safety of the other students. In response, the District program specialist stated that the decision to assign a "floater aide" would be made after teachers were able to assess student needs for support after students were in place, and schedules were determined. The program specialist stated that at that point, the District did not know how many students would be in the Student's class during the 2015-2016 school year or what type of extra supports may be needed. Additionally, the program specialist stated that when looking at student's access to general education, staff looked for independence on the student's part. If a student needed a great deal of support to be in a general education classroom, it generally meant that the student was not ready for increased access to general education. The specialist also noted it was important to make the decision as a team, looking closely at schedules and what could be provided.

3. In May 2015, the Student's February 3, 2015 IEP was amended. The amended IEP stated that the Student was eligible for special education under the category of other health impairment due to a diagnosis of "intractable focal seizures/epilepsy", and that the Student also had "hypertonia, global developmental delays, and ophthalmology concerns" which made it difficult for the Student to process information and apply it in a general education classroom. The IEP also stated that the Student was dependent on adults in all areas to meet his needs, including accessing the general education curriculum, school environment, and peers. The Student relied on adult support to protect him from harm, such as climbing, falling, traffic, sharp items, and digesting non-food items. Additionally, the Student had a cortical vision impairment (CVI) which affected his ability to visually process objects and surroundings, and made it difficult to see things below his knees. To address the CVI, the preschool classroom had been modified to remove visual clutter, include curtains, use screens when instruction was provided, adjust the lighting, and use flashlights to draw attention to materials.

In regard to the Student's communication, the IEP stated that the Student was non-verbal, but was able to communicate his wants and needs through pointing, reaching, and choosing between two choices presented through picture cards. The Student also expressed his needs by "hitting himself", but this was not reinforced and therapy was trying to decrease the behavior. The Student also used some signs while at home to indicate "all done", "more", and "potty".

The IEP also discussed that the Student was able to ambulate independently without any assistive device in the preschool classroom, and that when going to different locations in the school, he required the assistance of an adult to help direct him to the desired location and keep him on task, as he easily became distracted. The Student was able to climb steps, but had some difficulty doing so, and required adult assistance. Additionally, the Student's sitting balance was "excellent" and the Student was able to sit on a small kids' chair at circle time. The IEP stated that the Student had "graduated from a Rifton chair with lap belt support."

The amended IEP included annual goals in the areas of adaptive/life skills, pre-academics, social/behavior, communication, motor, and vision. The IEP stated that progress reporting toward the goals would be provided on a trimester basis. The IEP also stated that from August 31, 2015 through February 1, 2016, the Student would spend approximately 100 percent of his school day in a special education setting and would receive the following specially designed instruction:

- Communication – 30 minutes per week
- Vision – 30 minutes 3 times monthly
- Motor – 30 minutes per week
- Adaptive/life skills – 114 minutes 5 times weekly
- Pre-Academics – 110 minutes 5 times weekly
- Social/behavior – 113 minutes 5 times weekly

The amended IEP also provided for 30 minutes per week of physical therapy as a related service, and a vision services consultation 60 minutes per month as a

supplementary aid and service. Additionally, the IEP provided for the following accommodations:

- Access to sensory objects and activities – at all times
- Extra time for responses, visual modification, and hand-under-hand supports – during class activities
- Augmentative communication, specialized seating and PT/OT equipment, sensory integration – all day
- Special transportation with a 1:1 transportation aide 200 minutes per week

4. The District 2014-2015 school year ended in June 2015.
5. On September 2, 2015, the elementary school nurse spoke with the Parent about the Student's health plan. Later that day, the school nurse emailed the Parent and attached a copy of the Student's individual health plan and medication authorization form. The nurse asked that the Parent let her know if any changes or updates should be made to the health plan. The Parent later signed the medication authorization form on September 5, 2015.
6. The Student's individual health plan stated that the Student had a seizure disorder and had last had a seizure in February 2014. The health plan stated that the Student's seizures were triggered by pain, illness, and glucose. The Student was on a strict ketogenic diet to control his seizures and could not have glucose, carbohydrates, or sugar in food, lotion, medications, or IV fluids. The Student could only have food provided by the Parent. The plan then included information about what it looked like when the Student experienced a seizure, and the procedures to follow if a seizure occurred. The plan also described the Student's medications and stated that in April 2015, it was decided that a bus aide would accompany the Student on the school bus instead of a nurse. The aide would be responsible for identifying when a seizure occurred and notifying the bus driver to pull over and call paramedics.
7. The District's 2015-2016 school year began on September 17, 2015. At that time, the Student began attending a full-day kindergarten program located at elementary school 1. The Student's amended February 2015 IEP continued to be in place. The Student's placement at the beginning of the 2015-2016 school year was a full-time special education program for students who were considered medically fragile. However, based on the documentation in this complaint, the Student was scheduled to attend recess with general education peers. The special education program had a staffing ratio of one teacher, two paraeducators, and six students.
8. Also on September 17, 2015, the District's manager of student health services emailed the school nurse, asking the nurse to confirm that the Student no longer required a nurse to ride the school bus with him. The school nurse responded that the Student no longer required a nurse, but was supposed to have an aide accompany him on the bus. An aide had not been present to accompany the Student that day.



9. On September 18, 2015, the school nurse emailed the Parent, stating that the District still needed an authorization form for one of the Student's medications. In response, the Parent stated that she had requested the authorization from the Student's neurologist, and that the physician would mail the Parent the authorization form. The Parent would then provide the school nurse with the form when she received it. The Parent also stated that she had spoken with the regional special education program supervisor (regional program supervisor) about the Student needing an aide on the bus.
10. On September 24, 2015, the Parent met with the Student's speech language pathologist (SLP), special education teacher, and a District assistive technology specialist to discuss how the Student's communication could be supported by assistive technology.
11. On September 25, 2015, the Student's special education teacher emailed the Parent and other parents of students in her class, stating that it was the seventh day of school and the class was starting to get a schedule going. The school occupational therapist had spent time in the classroom that day, setting up equipment and working with the students. The teacher also attached a picture of the class in a circle time. The picture showed the Student sitting in a wheelchair.
12. On September 28, 2015, the Student's special education teacher emailed the Parent and other parents of students in her class. The special education teacher provided information about the students' day and included a picture. In the picture, the Student was sitting in a chair with a connected tray, drinking his bottle.
13. Also on September 28, 2015, the Parent emailed the elementary school principal and the special education teacher, stating that she had been speaking with the regional program supervisor about the Student's bussing situation, and also about the Student's placement. The Parent stated that the regional program supervisor had suggested that an IEP meeting be scheduled, and stated that either the regional program supervisor or the regional program specialist wanted to attend. The Parent asked that an IEP meeting be scheduled. In response, a meeting was later scheduled for October 8, 2015.
14. According to the District's service logs, the Student received the following services in September 2015:
  - Communication – 10 minutes of programming/observation, 60 minutes of programming, and 30 minutes of group therapy
  - Motor – 60 minutes
  - Physical therapy – 30 minutes
15. On October 1, 2015, the Student's special education teacher emailed the Parent, providing information about the Student's school day. The teacher stated that the Student had gone outside for recess in the morning, but had not wanted to do much walking or playing. The class then had a "dance party" with a preschool class, and by 11:00 am, the Student was tired and took a nap for forty-five minutes. The class

later participated in adapted PE and the Student had “perked up”. In response, the Parent stated that the Student became lethargic when he was hot or bored. The Parent thought that the Student had perked up for PE due to the “fun of the challenge.” The special education teacher later replied that she did not think the Student was bored or hot, but had been tired from the start of the school day. The teacher stated that the Student was also not hot or bored at recess, but just did not want to do much. The special education teacher thought the nap had helped the Student “perk up”.

16. On Sunday, October 4, 2015, the Student experienced a seizure. The Student was then absent on October 5 and 6, 2015.
17. On October 7, 2015, the Parent emailed the Student’s special education teacher, the SLP, and a District assistive technology specialist and provided a copy of the communication plan which was discussed at the September 24, 2015 meeting. The Parent asked that the staff make any needed corrections to the plan. The plan included reintroducing adapted picture cards into the classroom and at home, and the Student using a computer program that closely mirrored the picture cards. In response, the SLP stated that it looked “great”.
18. Also on October 7, 2015, the Student’s special education teacher emailed the Parent, stating that the Student had a pretty good day, but the staff could tell that he was tired coming back from his seizure. The Student had enjoyed working on an art project in the morning and then another art project in the afternoon.
19. On October 8, 2015, the Student’s IEP team, including the Parent, met to discuss the Student’s placement. Based on the documentation in this complaint, the Parent expressed concern that the Student was not spending more time in the general education setting due to the needs of the other more medically impacted students in the class. The Parent also expressed concern that the Student needed to be more active, and spent too much time in a Rifton chair.<sup>1</sup> The Parent also wanted the Student to have access to a variety of more complex toys. The team discussed that there was a new medication the Student could take that could be provided by a trained adult, but the school nurse stated that the Student still needed medically fragile support. The IEP team also discussed starting the Student’s triennial reevaluation early. The reevaluation was due by February 11, 2016. The District’s documentation in this complaint does not show that a prior written notice was completed after the October 8, 2015 meeting, documenting any decisions made by the IEP team.
20. On October 9, 2015, the Parent elected for the Student to begin attending school and on a reduced school day schedule, due to her concerns about the Student being placed in a Rifton chair during his school day. The Student’s new schedule was 8:40 am to 11:00 am.

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<sup>1</sup> According to notes taken by the Parent while observing the Student’s class during the first two weeks of school, the Student was spending 4-4.5 hours per school day in a Rifton chair.

21. On October 13, 2015, the Parent emailed the Student's special education teacher, stating that the Student was lethargic that day and asked if he had signed "eat" while he was at school. The Student's sign for eat was a "fist to chin tapping". The Parent stated that she had noticed that the Student had not eaten anything. The Student had been hungry when she picked him up, but after eating his energy was fine. The Parent stated that it was very important with the Student's diet that he have a steady calorie intake. In response, the special education teacher stated that the Student had not wanted any of the food offered that morning, but only wanted to drink milk. The special education teacher had not seen the Student making the sign for eating, and stated that the staff were watching to see if the Student made the sign. The special education teacher stated that she would now try to offer the Student food after recess as well. The next day, the Parent responded that she was confused, as the Student had not drunk any of his milk. The teacher then replied that she thought the Student had, as she had seen him drinking from the bottle. The Parent then responded that the bottle lid may have been too tight, which was an easy thing to miss.

22. On October 17, 2015, the Parent emailed the regional program supervisor, the District executive director of special education, and District school board member (school board member 1), listing her concerns that remained after the October 8 IEP meeting. The Parent's concerns were:

- An aide was not available to ride the bus with Student.
- The Student was being restrained in a chair because he might get into something and the classroom staff were too busy managing the other students' needs to teach him not too.
- The Student was not receiving a free and appropriate education (FAPE) because he was not able to have "true access" to education in a classroom where eighty percent of the staff's time was spent managing the other students' medical needs. Until the Parent had spoken up "none of the day's activities were directed toward his IEP goals."
- The Student did not have access to his non-disabled peers to the maximum extent possible. The Student had lost recess time with his non-disabled peers when the classroom paraeducators were sick or toileting time took too long.
- The Student had an IEP goal to reach seventy percent inclusion by the end of the school year<sup>2</sup>, but the elementary school did not have the resources to support this.

The Parent also stated that the use of restraint was against state law and that the District was required to document the use of the restraint and develop a plan to change the interventions. The Parent asked for a copy of the restraint reports from the last month. Additionally, the Parent stated that at the October 8 IEP meeting, the regional program supervisor had suggested the Student attend a program at another elementary school (elementary school 2), but when the topic of nursing care had

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<sup>2</sup> The Student's amended February 2015 IEP does not include an annual goal that the Student would spend seventy percent of his school day in a general education setting.

come up, the regional program manager had changed her mind.<sup>3</sup> The Parent stated that the District could not make placement decisions based on administrative convenience, and that the IEP team agreed the program at elementary school 2 was a “good educational and social fit” for the Student. The Parent wanted the Student to begin attending the program at elementary school 2 by the end of October 2015, and stated that in order for the Student to do so, the District would either need to hire a full-time nurse for the school, hire a 1:1 aide for the Student that was a nurse, or train staff at the school that were willing to administer the Student’s seizure medication. In addition, the Parent stated that because the Student’s IEP goals had not been a priority, she wanted a class schedule for the Student that broke “down every minute and who is working with him and on what goals.” The Parent stated that the Student had a large IEP and she wanted to be sure that the District was implementing it. In response, school board member 1 thanked the Parent for including her on the email and asked that the Parent let her know if the regional program supervisor or the executive director did not respond in the next few days.

23. On October 19, 2015, the Student’s special education teacher emailed the Parent and the other members of the Student’s IEP team regarding the Student’s new service schedule. The special education teacher stated that the physical therapist would work with the Student on either Monday or Thursday during recess time. The occupational therapist would now work with the Student on Thursdays before or after recess, and the SLP would work with the Student after recess on Thursdays or Fridays. The vision specialist would work with the Student on Tuesdays before or after recess.

24. On October 21, 2015, the Parent emailed the District members of the Student’s IEP team, stating that the reason she was taking the Student out of school early was that there was no solution at, or after, the October 8 IEP meeting regarding the length of time the Student was spending buckled into his chair. The only response the Parent had reportedly received was “it is not as much as it was.” The Parent stated that there were “very real health consequences” related to the Student being in his chair too much, and because this was not being addressed, she had decided to remove him from school early. The Parent also stated that if having the Student leave early was making it challenging for the Student to access his therapy services, she could bring the Student back to school during the therapy times. In response, the occupational therapist and the SLP stated that the new proposed times worked.

25. Also on October 21, 2015, the Parent again emailed school board member 1, stating that she had not yet heard back from the regional program supervisor or executive director. Later that day, school board member 1 emailed the staff members, asking for an update on “any progress” toward addressing the Parent’s concerns.

26. On October 22, 2015, the regional program supervisor responded to school board member 1’s email, stating that she had an option to discuss with the Student’s

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<sup>3</sup> According to the District’s documentation in this complaint, elementary school 2 only has nurse on site two days per week.

IEP team and was asking the IEP team to schedule a meeting to discuss a possible change in services. The regional program supervisor also stated that the team should be able to move forward with the meeting in the next week or so. In response, the Parent asked that she be informed what the "option" was so that she could come to the meeting prepared to discuss it. The Parent also stated that the regional program supervisor had previously mentioned needing to complete the Student's triennial evaluation early, but the paperwork to start the reevaluation process has not yet been completed. The Parent stated that it was her understanding that elementary school 1 did not currently have an assigned school psychologist. As such, the Parent wanted to know who was responsible for overseeing the Student's reevaluation. The Parent then expressed concern that by not starting the reevaluation process at the October 8 IEP meeting, there had already been a two-week delay in the process, and also stated that if a reevaluation was needed to change the Student's educational program, then the paperwork should be completed that day. The Parent stated she was willing to drive to the District office to complete the paperwork.

27. Later that same day, the regional program supervisor replied that she had been informed by the school nurse that a program at a school with a full-time nurse could be an appropriate placement, instead of a medically fragile classroom. The program supervisor stated that based on the Student's needs as stated in his IEP, it seemed that a placement in a special education classroom with very few students and several adults would provide the appropriate level of support. The regional program supervisor had found a program at another elementary school (elementary school 3) that had such a program and a full-time nurse. The IEP team would need to change the Student's program and the regional program supervisor was looking in to whether an assessment revision was also needed.

28. Also on October 22, 2015, the school nurse emailed the Parent, asking if the Parent had met with the Student's medical provider to complete the nursing support form. The school nurse also asked if the Parent had an additional discussion with the District special education department.

29. Based on the District's documentation in this complaint, the District has a nursing staff model that is predicated on four levels of student need. The levels are as follows:

- Level A: Nursing Dependent – without 1:1 skilled nursing care 24 hours a day, the student will experience irreversible damage or death. The student needs immediate availability (audible and visual range) of a registered nurse (RN) or licensed practical nurse (LPN). Requires nursing support during transportation.
- Level B: Medically Fragile – student daily faces the possibility of life-threatening emergency requiring the skill and judgment of a professional nurse. Students need a full-time nurse in the building.
  - B1 – student requires nursing transportation support.
  - B2 – student requires nursing support for field trips; short transportation without nurse acceptable with nurse check in before release to bus.
  - B3 – Accommodations allow placement at non-level B site (parent designated adult (PDA); 911; parent provided care).

- Level C: Medically Complex – student has complex and/or unstable physical and/or social-emotional condition that requires daily treatment and close monitoring by an RN. RN a least one day per week with a face to face assessment.
  - Level D: Health Concerns – physical and social-emotional condition is uncomplicated and predictable. Assessment at least annual by RN.
30. On October 23, 2015, the Parent emailed the regional program specialist regarding the proposed IEP meeting and the program at elementary school 3. The Parent stated that she had not yet been contacted about the meeting, and asked that she be allowed to tour the program prior to the meeting. The Parent also asked if there was a “plan B” if the IEP team did not agree on the program at elementary school 3, and for more details about why the program would be a better fit for the Student. In response, the regional program supervisor stated that according to the Student’s evaluation and IEP, he needed “intensive special education services and supports” which were only located at certain elementary schools in the District. When the regional program supervisor had also looked at schools in the region which also had a full-time nurse, elementary school 3 came up. The regional program supervisor stated that she had not looked at schools in other regions of the District because she was trying to limit the length of the Student’s bus ride.
31. On October 27, 2015, the Parent emailed the Student’s special education teacher, expressing concern about the “frequency and amount of high sugar/carb items” that were within the Student’s reach in the classroom. The Parent stated that she had asked about this at the beginning of the school year, and was told the Student would not be able to access these items. However, the Parent now believed the staff could not guarantee this without using inappropriate restraints with the Student. The Parent asked that staff place any “high sugar/carb items” in a childproof container or keep them out of reach of the Student. The Parent stated that the Student had previously spent two weeks in the hospital when he had accidentally ingested sugar. In response, the special education teacher stated that any food would be placed out of the Student’s reach.
32. On October 30, 2015, the Student’s IEP team, including the Parent, met to discuss moving the Student to elementary school 3. The Parent expressed concerns about the proposed program, and the location of elementary school 3. Based on the District’s documentation in this complaint, the District did not complete a prior written notice regarding the October 30, 2015 meeting.
33. According to the District’s service logs, the Student received the following services in October 2015:
- Communication – 60 minutes of programming, and 90 minutes of group therapy. (Student not present for 2 sessions).
  - Motor – 90 minutes
  - Physical therapy – 130 minutes
34. On November 4, 2015, the school nurse at elementary school 1 emailed the Parent to see if the nursing support documentation had been completed by the Student’s

health care provider. In response, the Parent stated that she would sent out an email about her status later that afternoon.

35. Also on November 4, 2015, the Parent emailed the regional program supervisor and several other District staff members, recapping the October 30, 2015 IEP meeting. The Parent stated that at the meeting, the team had discussed the Student attending a program at elementary school 3 which had higher functioning students and opportunities for more participation in general education. The Parent also stated that she had toured elementary school 3 earlier that week, and had the following concerns:

- Elementary school 3 was located far from the family's home and would be a very long bus ride for the Student. While the regional program supervisor had offered car service for the Student, the Parent was not clear if this included an aide to ride with the Student.
- The Parent had spoken with the nurse at elementary school 3 and the nurse had reportedly never seen a seizure. The Parent was concerned about the nurse's lack of experience and thought it was odd to move the Student to a school across town that had a nurse without experience. If the Student was going to be moved to a school where the nurse was inexperienced, the Parent preferred the Student attend a school located closer to the regional children's hospital.
- The Parent had spoken with other parents and learned that a student at elementary school 3 had recently gone missing for 15 minutes. The lack of supervision, and the fact that elementary school 3 was located next to a lake, made the Parent fearful for the Student's safety, as the Student was drawn to water.
- The special education program had a new teacher and several parents reportedly were on the verge of filing complaints about the program.

Due to the Parent's concerns, she was proposing the Student attend elementary school 2 which was a local school that was "good fit" for the Student's educationally and met his special needs requirements, but lacked a school nurse. The Parent had discussed the lack of a nurse with the Student's neurologist, who reportedly agreed that the Student could attend a school with a part-time nurse if the Student had a 1:1 aide to ensure he was not left alone and paramedics could be called if needed. The Parent stated that a 1:1 aide could also be responsible for monitoring the Student's special diet, feeding, and toileting. The Parent believed this would allow the teachers to focus on teaching. The 1:1 aide could also be responsible for taking the Student to the general education setting when it fit the Student's needs, instead of staffing needs. The Parent also stated that the 1:1 aide could be trained, if he/she were willing, to give the Student seizure medicine. If the aide was not willing, there were two fire stations, the Parent, and the regional children's hospital located within in a five-minute drive. Additionally, the Parent stated that she had heard several reasons against having a 1:1 aide, but the Parent disagreed with the reasons, and provided her rationale. The Parent also stated that at the last two IEP meetings, the regional program supervisor had stated that elementary school 2 was a good fit for the Student, but had not problem solved the nursing issue "other than to tell me to sign away his right to necessary medical supports at school." The Parent stated that she should not have to choose between the Student's safety and his least restrictive environment and appropriate placement close to home, because of staffing

shortages. The Parent also stated that she was not asking for the ideal, which would be a full-time school nurse and a 1:1 aide, but was asking for a 1:1 aide so the Student could attend elementary school 2.

36. On November 6, 2015, the regional program supervisor responded to the Parent's email, stating that at the last two IEP meetings, she had not asked the Parent to sign away the Student's necessary medical supports, but had stated that if the Student's medical team felt that a full-time nurse was no longer medically necessary, the IEP team had more placement options. The regional program supervisor then stated that based on the Parent's statement that full-time nursing services were medically necessary, it seemed that options remained limited, as the Student needed to be assigned to a school that allowed him to access his special education services safely. Therefore, there were two available options: continue his enrollment at elementary school 1 and "problem solve" around the general education component, or move the Student to elementary school 3. The regional program supervisor stated that at the October 30 IEP meeting, the IEP team had "indicated a willingness to change" the Student's placement from "medically fragile to what is now called distinct" so that another meeting would not be necessary. Additionally, there was a bus route for elementary school 3 that could accommodate the Student. The only remaining issue would be to find a monitor for the bus. The regional program supervisor asked that the Parent let her know how she wished to proceed.

37. The Student was absent on November 6, 9, 10, and 12, 2015.

38. On November 10, 2015, the Parent emailed the District regional executive director of schools and the District special education ombudsperson, asking for information to help resolve the issues with the Student's placement. The Parent stated that she wanted to avoid going to mediation or filing a due process request to resolve the issues, and provided information from the Department of Justice the Parent believed was relevant. The Parent also stated that it was agreed that the Student's current placement was inappropriate, and that the program at elementary school 2 would be a good fit. However, the Parent stated that she had been repeatedly told that she needed to sign a form stating that the Student did not need nursing care in order to go to elementary school 2, and that if she did not sign the form, the Student would be sent to elementary school 3. The Parent expressed concern about the length of the bus ride to elementary school 3, and stated that the Student had a right to attend school in his least restrictive environment, which included attending a school close to his home. The Parent also stated that the Student's neurologist felt that the Student's needs could be met with a 1:1 aide managing the Student's diet, and by staying close to call paramedics in case of a seizure. The Parent stated that she had been told during the prior school year that data needed to be gathered to "prove" the need for a 1:1 aide. The Parent also stated that she thought "the fact that the teacher restrained [the Student] in a chair 4 out of 6 hours for the first two weeks of school, [was] pretty good data that he needs extra assistance." The Parent asked that the director and the ombudsperson let her know if there was anything they could do. On November 13, 2015, the District regional executive director of



schools responded to the Parent, stating that she had been out of the office, but could speak to the Parent when she returned the following week.

39. On November 17, 2015, the Parent emailed the principal and the part-time nurse at elementary school 2, stating that she had been speaking to the principal about the possibility of the Student attending elementary school 2. The Parent also stated that she had a series of meetings with the District to find a way to change the Student's placement. However, the "hold up" was the Student's seizure rescue plan, which currently required a specific medication that required a nurse to administer it. The Parent stated that the Student's doctors had offered to change the medication to a different medication that could be administered by anyone who was willing to be trained. The trained person would act as parent designated adult (PDA). The Parent stated that the local epilepsy society was willing to train anyone who was interested. The Parent asked how the part-time school nurse felt about the proposed situation, and if the staff at elementary school 2 could be asked if they would volunteer to be trained. The Parent also stated that the Student's seizures were currently controlled by his diet, but she thought there may be an "uptick" when he began attending school full time and staff managed his diet. In response, the part-time school nurse forwarded the Parent's email to the District manager of student health services, asking for the manger's input.
40. On November 18, 2015, the part-time school nurse from elementary school 2 emailed the Parent, stating that she had briefly communicated with the manager of student health services and the manager wanted to meet with the staff and the Parent to discuss the Student's health needs. The nurse also stated that since it was a new law that allowed PDA's to administer seizure medication, it was being "processed by medical, legal, and OSPI experts", and the epilepsy society and regional children's hospital were also providing input. Additionally, the nurse stated that the school principal was out that week and she would need to check with him when he returned. The nurse suggested continuing the conversation and agreed to provide the Parent with any new information. In response, the Parent agreed to continue the conversation. The Parent also stated that she did not expect the District to move forward "before then" as she had been informed that the District legal department would need to approve the paperwork, because this had not yet been approved by the District. Later that day, the nurse sent a second email, stating that she had also asked the regional program supervisor for input, and the program supervisor had relayed that she had presented the Parent with the option of the Student attending elementary school 3 and was waiting to hear back.
41. On November 18, 2015, the new school psychologist at elementary school 1 emailed the Student's special education teacher and attached a reevaluation notification/consent form for the Student's reevaluation. The consent form stated that the evaluation would include assessments in the areas of: general background, cognitive – pre-academics, medical-physical, social/behavior, vision, adaptive/life skills, communication, and motor. The consent form also contained a section for parent input, which allowed parents to suggest additional areas of need to be considered in assessing the student.

42. The Parent signed consent for the Student's reevaluation on November 20, 2015, and returned the form to the District on November 24, 2015. In the parent input section, the Parent wrote that the Student should also be assessed in the areas of fine and gross motor, orientation and mobility, general education, and a review of existing data to include parent and medical information related to the Student's placement. The Parent also wrote that the general education teacher had a goal of seventy percent inclusion for the Student by the end of the school year. The Parent wanted to know how this was going, and what the general education teacher's thoughts and plans were. The Parent also wrote on the consent form that the notice included inaccurate information, and did not reflect that she had requested the reevaluation at the October 8, 2015 IEP meeting due to the Student's improper placement.
43. Also on November 23, 2015, the Parent emailed the part-time nurse and the principal at elementary school 2, the District manager of student health services, and the regional program supervisor. The Parent stated that she wanted to clarify her statement and thoughts about the Student's placement. The Parent stated that she too wanted a safe placement for the Student that met the educational and social goals in his IEP. The Parent understood that there was only a part-time nurse at elementary school 2, but that the Student's neurologist had suggested a couple of ways to resolve this. Additionally, the Parent stated that wherever the Student attended, he needed a 1:1 aide to manage his dietary needs, track diet details, and communicate with the Parent. The Parent felt that a teacher was too busy to handle this and it was vital for the Student's safety. The Parent stated that the 1:1 aide would also be responsible for identifying the Student's seizure the moment it started, calling paramedics, and having the rescue medication at hand. The Parent also stated that she had already identified a PDA for the Student and was confident more could be found. In addition, the Parent said that she had never stated that the Student did not need a nurse, but had stated that a nurse was one way to keep the Student safe. In response, the District manager of student health services emailed the Parent, stating that she had attached "extraordinary nursing support" forms that needed to be completed by the Student's neurologist in order to help the District "sort out" the recommended level of nursing services the Student required. There was also a form for the Parent to complete. The manager stated that the "complication" at elementary school 2 was that there was the limited availability of the school nurse. Due to the limited nursing services, "a student with the level of nursing oversight required by [the Student] strain[ed] resources for safe care of all students." The manager further stated that she had concerns about how the situation would be managed if the nurse were not available and the Student experienced the respiratory issues described in his care plan. As an unlicensed person would not be able to direct the coordinated response that would be needed and could be provided in a building with a full-time nurse. The manager stated that this was the reason that the District highly recommended that students with complex medical needs attend a school with a full-time nurse. The manager also asked if there was a backup plan if the identified PDA was absent.
44. The District was on break November 25-26, 2015.

45. On November 30, 2015, the Parent responded to the regional program supervisor's November 6, 2015 email (see finding of fact no. 36). The Parent stated that she did not think the program supervisor's version of events accurately captured their conversations to date, and wanted to clarify several things. The Parent believed the Student could be safely served at school with a safety plan, a part-time school nurse, and a 1:1 aide to manage his dietary and medical needs. The Parent also stated that she believed the Student could be safely and properly educated at elementary school 2 with adequate accommodations and programming. In the alternative, the Parent wanted the District to pay for a private school. The Parent further stated that she had not demanded a full-time nurse, but had simply refused to sign a form "forfeiting" the Student's right to medical support. Additionally, the Parent stated that the Student's current program at elementary school 1 was "completely untenable and was harming [the Student] physically, emotionally, and educationally." The Parent also stated that elementary school 3 was too far away for the Student to safely and effectively commute to school, and that she had already provided a list of additional concerns about the safety and appropriateness of the program. The Parent stated that her trust and communication with the District had broken down, and she was tremendously frustrated. The Parent also stated that if the District was not able to secure a 1:1 paraeducator, approve the use of a PDA to administer the seizure medication, and update the Student's IEP by the following day, she would obtain legal counsel.
46. In response, the regional program supervisor stated that the Student's IEP team had decided that a change of placement was warranted, but the discussion had centered on the support of a full-time nurse. The program supervisor also stated that the Parent had stated in her email that the Student continued to need full-time nursing support, and that the District had medical documentation to support that assertion. As a result of the Student's need for full-time nursing support, the District was only able to offer a placement at elementary school 1 or elementary school 3. The program supervisor stated that she was happy to facilitate a move to elementary school 3 at any time, or work with the Student's IEP team to provide support for the Student to have access to more time in the general education setting at elementary school 1. Additionally, the program supervisor stated that based on the Parent's email statements, the medical documentation, and conversations with nursing staff at elementary school 1 and 3, a school without a full time nurse would not meet the Student's medical needs. The Parent then replied that the program supervisor was not considering the current information from the Student's neurologist. A few days later, the program supervisor responded that the only information she had was that the regional children's hospital had recommended a 1:1 aide. The program supervisor stated that if there was medical documentation stating that the Student no longer needed a full-time nurse at school, she would be happy to discuss it with the Student's IEP team.
47. Also that day, board member 1, who had been copied on the email chain, asked if the Parent wanted her to forward the email to another school board member (school

board member 2).<sup>4</sup> The Parent agreed, and the email was forwarded to school board member 2.

48. According to the District's service logs, the Student received the following services in November 2015:

- Communication –30 minutes of group therapy, 30 minutes of individual therapy. Student absent for 2 sessions.
- Motor – 60 minutes. Student absent for 2 sessions.
- Physical therapy – 90 minutes. Student absent on 1 therapy day.

49. On December 1, 2015, the Parent and school board member 2 exchanged emails regarding the Parent's concerns. The next day, school board member 2 emailed the regional program supervisor, asking that she be included on further email communications with the Parent.

50. On December 2, 2015, school board member 2 forwarded the Parent's November 30, 2015 email to the District executive director of special education and the District assistant superintendent of teaching and learning, asking for their assistance in resolving the Parent's concerns.

51. Also on December 2, 2015, the school nurse at elementary school 1 emailed the Parent, stating that she was completing the health section of the Student's reevaluation, and asked that the Parent answer several questions about the Student's current health. The Parent provided answers to the questions the next day.

52. On December 3, 2015, the school principal at elementary school 1 emailed the Parent and copied school board member 2 and the regional program supervisor on the email. The principal stated that as the staff began to write the Student's evaluation report and new IEP for a full-day program, the principal wanted to know if the Parent was ready for the Student to attend school later than 11 am each day. The principal also asked if the Parent wanted to continue driving the Student to school or if she would like for him to have bus service. If the Parent wanted the Student to ride the bus, the District would begin looking for a bus aide. In response, the Parent stated that because the issues still had not been resolved, she did not feel safe sending the Student to school for a full-day. The Parent was working with the District to resolve the issues. The Parent also stated that if a staff member ever needed to meet with the Student after 11 am, she would bring the Student back to school. Additionally, the Parent stated that in regard to bussing, she was only driving the Student because services had not been made available. The Parent asked that the District please start looking for a bus aide. The principal later replied that they would begin looking for a bus aide, and that she would inform the school psychologist the Student was available for observation outside the hours he attended school.

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<sup>4</sup> According to the District's documentation in this complaint, school board member 1's term ended in January 2016.

53. Also on December 3, 2015, the regional program supervisor emailed the District transportation coordinator and the District special education transportation supervisor, stating that the Student needed a bus aide per his IEP. The program supervisor stated that they had held off providing the Student an aide because the IEP team was thinking about moving the Student to a different school, but now it did not look like that would happen right away. The program supervisor also stated that she had asked all of the teachers and paraeducators at elementary school 1 about serving as the Student's bus aide, but no one was available. The program supervisor asked what steps were involved in finding a bus aide for the Student. In response, the transportation coordinator asked another transportation staff member to find a bus aide for the Student, and that the program supervisor provide the staff member with a copy of the Student's IEP. The following day, the special education transportation supervisor stated there was a shortage of bus aides, and would contact the program supervisor the following week to discuss the situation.

54. The elementary school's first trimester ended on December 4, 2015.

55. On December 8, 2015, the school psychologist at elementary school 1 emailed the Parent, asking that she complete three rating scales to be used as part of the Student's reevaluation. The psychologist would give the ratings scales to the Student's special education teacher to provide to the Parent. The Parent later returned completed rating scales on December 16, 2015.

56. On December 11, 2015, the District completed progress reporting regarding the Student's amended February 2015 IEP, which the Parent received on December 11, 2015. The progress reporting for seven of the Student's eighteen goals included information regarding the Student's progress as of October 12, 2015 and as of December 10, 2015. The October 12 reporting for the Student's goal of independently remaining in a chair stated that the Student "sits in a rifton chair w/ arm rests/side supports for snack, morning greeting and certain days for art class. He gets 3 re-directs to sit up tall (not slump down in chair) and stay in his chair (not get up and leave group) before a lap belt is used for structured activities. Currently he stays in his chair for apx. 3 minutes at a time." The December 10 progress reporting stated that the Student "sits in a rifton chair w/arm rests/side supports for snack and morning greeting. He is getting to know his school routine and will sit in his chair for music with occasional verbal cures to remind him to stay seated. A lap belt is no longer used."

Additionally, progress reporting was dated November 18 for seven other goals, November 20 for two more goals, and December 11, 2015 for the remaining two goals. The progress reporting for the Student's goal of labeling shapes and corresponding color stated that the goal was not applicable during the grading period, and did not provide additional information. The progress reporting for the Student's goal of using an iPad and stylus stated that the iPad had not been a focus during that reporting period, and did not provide additional information.

57. On December 17, 2015, the Parent filed a due process hearing request.

58. On December 18, 2015, the school nurse at elementary school 1 emailed the District transportation coordinator, asking if a bus aide had been located for the Student. The transportation coordinator then exchanged additional emails with another transportation staff member about the bus aide.
59. The District was on break December 21, 2015 through January 1, 2016.
60. According to the District's service logs, the Student received the following services in December 2015:
- Communication – 30 minutes of group therapy, 60 minutes of individual therapy.
  - Motor – 60 minutes.
  - Physical therapy – 60 minutes.
61. On January 4, 2016, the Parent emailed the principal at elementary school 1, asking that a bus aide be found to ride the bus with the Student. The Parent stated that she wanted to make it clear that a bus aide, as written in the Student's IEP, was and had always been wanted. In response, the principal stated that she had forwarded the Parent's email to the regional program supervisor to get a bus aide as soon as possible. The principal also asked if the Parent had reviewed the food input/output check sheet that the school nurse had developed for the Student. The Parent replied that she had reviewed the check sheet and was working out the details with the school nurse.
62. On January 4 and 5, 2016, the Parent and the school nurse exchanged emails about monitoring the Student's food input/output.
63. On January 8, 2016, the school nurse emailed the District transportation department staff to follow up on the request for a bus aide. The school nurse and the staff then exchanged additional emails.
64. On January 12, 2016, the school nurse emailed the Parent, stating that she was working with the transportation department to find a bus aide for the Student. The nurse asked that the Parent clarify if the Student would begin staying for the full school day once the bus aide was found. In response, the Parent stated that the Student was on a shortened day schedule from 8:40 am to 11:00 am.
65. On January 13, 2016, the Student's special education teacher emailed the Parent and the other members of the Student's IEP team, asking to schedule a meeting to review results of the Student's reevaluation and develop the Student's IEP. The teacher proposed meeting on February 1, 2016.
66. On January 13-15, 2016, the Parent and the school psychologist exchanged emails about setting up a time for the psychologist to observe the Student at home. An observation was scheduled for January 20, 2016.
67. On January 14, 2016, the Student's special education teacher sent the Parent a follow-up email regarding the proposed February 1, 2016 meeting. The teacher asked if the Parent was able to attend a meeting that day.

68. On January 15, 2016, the Parent emailed the Student's IEP team regarding the February 1, 2016 meeting. The Parent stated that at the meeting, she first wanted to address the Student's evaluation, and that if she found that the evaluation group was in disagreement about the evaluation and felt that the Student needed an independent educational evaluation (IEE), she would end the meeting, and another meeting would be scheduled. The Parent also stated that if the team finished discussing the evaluation report and there was not enough time to "fairly" review the IEP goals, she would end the meeting, and ask that another meeting be scheduled. Additionally, the Parent stated that because the meeting time would be "tight" she would like a draft copy of the evaluation report and the IEP by January 25, 2016 so she could read everything beforehand, and be prepared to move through the documentation at the meeting.
69. Also on January 15, 2016, the school nurse emailed the Parent, asking if the District transportation department had contacted her. The nurse stated that it was her understanding that a bus aide was scheduled to begin picking up and dropping the Student off on January 19, 2016. The pick up time would be 8:05 am. The Parent responded that she had not been contacted by the transportation department and asked what the drop off time would be. The nurse then replied that the return time was at the end of the school day. The Parent and the nurse then exchanged additional emails and it was discussed that the Student would be picked up by the bus on January 19, but that a bus aide was not available at 11:00 am when the Student left school. The Parent asked that the District make it a priority to find a bus aide to ride the bus at 11:00 am.
70. On January 15 and 19, 2016, the school psychologist and the Parent exchanged emails regarding information needed for the Student's reevaluation. Based on the content of the emails, it appears the school psychologist mistakenly thought he was emailing the Student's special education teacher and not the Parent.<sup>5</sup> The Parent expressed confusion in the email exchanges, but offered to provide videos and other information to try to address the psychologist's requests. On January 20, 2016, the Parent provided a written narrative about the Student.

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<sup>5</sup> On January 15, 2016, the school psychologist sent the Parent an email, stating that "[the school principal] and I are going for the home visit this Wed. Also, don't forget to send me some functional data (behavior) that will illustrate how he functions in the cognitive, adaptive, and social emotional areas. I need more than just the numbers I have in order to make the numbers make sense." The Parent responded, "Are you talking about the last doc? If so, I sent that. If not, I am not sure what you are asking. I have loads of video of him in outside therapy and at playdates. Is that what you need?"

On January 19, 2016, the school psychologist responded to the Parent's email, stating "No, just trying to get the best data for good decisions." The Parent responded, "I still don't know what you mean. I want to support you in any way I can. Is there something you need from me? I have a tons of video. If you need something specific, I can look through it and find it for you." The school psychologist replied, "I will come by Wed and we can talk...It is not a big deal." The Parent then stated "So, by functional data do you mean of list of how he gets through his day? What he [does] for himself, and what he needs help with?" The school psychologist responded, "Yes, in the adaptive areas, cognitive areas, and social/emotional area. I want to attach some behaviors, in these areas, that functionally reflect the numbers from the ratings scale...just a view [of] behaviors that reflect the numbers on the report. BTW, your ratings were identical to mom's rating."

71. On January 19, 2016, the Student's special education teacher emailed the Parent, stating that she was working on the Student's IEP. The teacher asked if the Parent wanted the Student to continue to work on certain objectives as well as create new ones. The teacher asked what the Parent wanted the IEP to focus on that school year.
72. On January 21, 2016, the Student's special education teacher emailed the Parent in response to the Parent's January 15, 2016 email regarding the IEP meeting. The special education teacher stated that the IEP was a legal document, and that the District had to comply with the law. As such, the Student's IEP was due in early February, so the IEP team must hold the IEP meeting on February 1, 2016, along with the reevaluation meeting. The teacher stated that she would send home a draft of the IEP on January 26, 2016. The teacher and the Parent then exchanged additional emails and the teacher proposed holding the meeting a half hour earlier to allow for more time. The IEP team later agreed to hold the meeting earlier.
73. On January 22, 2016, the school nurse emailed the Parent regarding the Student's absence that day. The nurse asked if the Student was ill. In response, the Parent stated that the Student was not ill, but there were transportation issues.
74. Also on January 22, 2016, the school nurse emailed the District transportation coordinator, stating that the Student's bus aide was no longer available and the nurse had not been able to secure another staff person to ride the bus with the Student. The nurse asked if there was another mode of transportation that could be used that had a second staff person available. The transportation coordinator replied that he did not have any information at that time, but had emailed the District special education transportation supervisor about the situation. The nurse responded that if there was not another option, she would need to let the Parent know to transport the Student the following week. The nurse asked if she should cancel the Student's current bus.
75. Later on January 22, 2016, the school nurse emailed the Parent, apologizing that the bus aide was no longer available to ride with the Student, due to a schedule conflict. The nurse stated that she was continuing to look for another bus aide. In response, the Parent stated that she had been informed, and asked that the current bus be canceled as it was difficult for the Student to see the bus come and then not be able to board it. The nurse replied that she had canceled the bus.
76. On January 24, 2016, the school nurse emailed the District transportation coordinator to confirm that the Student's bus had been canceled. In response, the coordinator stated that the bus carrier had been notified.
77. On January 25, 2016, the Parent sent the school psychologist several emails with videos of the Student attached.
78. Also on January 25, 2016, the Parent responded to the special education teacher's January 21, 2016 email regarding the Student's IEP. The Parent stated that she



would like the Student to work on socialization with typically developing peers and anything that was an obstacle to his access to education, such as: learning to sit independently, learning to hold a pen, make marks, and learn letters, numbers, and colors. The Parent stated that socialization was most important, and many opportunities to be with a group of typically developing peers so the Student could see what the expectations and goals were.

79. Also on January 25, 2016, the regional program supervisor emailed the school psychologist and included the adapted PE teacher. The program supervisor asked the psychologist if the consent form for the Student's reevaluation indicated assessments would be done in the area of adapted PE. The program supervisor stated that the adapted PE teacher was willing to do an assessment. In response, the psychologist stated that he had misplaced the consent form, but was sure the Parent had checked the adapted PE section. The program supervisor then replied, stating that the adapted PE teacher should do an assessment.

80. Later on January 25, 2016, the adapted PE teacher emailed the Parent, stating that she would be collaborating and supporting the adapted PE portion of the Student's reevaluation. The teacher asked that the Parent complete the parent input form which the teacher had attached. In response, the Parent returned the completed form later that day, and provided information about how the Student's CVI affected his ability. The Parent also stated that the Student had only been walking for a year and was still building strength, coordination, and learning about interacting with others.

81. On January 26, 2016, the Parent emailed the school nurse, stating that she was still getting updates about the bus. The Parent also stated that the bus continued to come to the family's home which disappointed the Student who was excited to ride the bus. The Parent asked that the nurse make sure the bus was canceled. In response, the nurse thanked the Parent for letting her know, and stated that she had received confirmation the bus had been canceled, but would forward the Parent's message.

82. According to the District's service logs, the Student received the following services in January 2016:

- Communication – 90 minutes of individual therapy. Student absent for 1 session.
- Motor – 90 minutes
- Physical therapy – 80 minutes

83. On February 1, 2016, the Student's IEP team met to review the results of the Student's reevaluation. Based on the documentation in this complaint, the IEP team discussed the Parent's concerns with the evaluation report, and agreed to make changes to the report. The Parent's concerns included an incomplete vision assessment, the inclusion of information from the prior school year that was outdated, inconsistencies in the information, and the inclusion of other information she disagreed with. The Parent also expressed concern that the Student was regressing. The Student's special education teacher disagreed. Also at the

meeting, the IEP team began discussing the Student's IEP, including IEP goals. The IEP team also discussed that the Parent did not want the Student to use a Rifton chair.

84. Later on February 1, 2016, the school psychologist emailed the Parent and attached the information from the general background section of the Student's evaluation report. The psychologist asked that the Parent make the changes she wanted and return it. The psychologist also included text he planned to add regarding the Student's cognitive abilities. The psychologist also asked that the Parent send him a copy of the consent form that the Parent completed on November 20, 2015.
85. Later on February 1, 2016, the regional program supervisor emailed the Parent and the other members of the Student's IEP team and attached a copy of a prior written notice dated February 1, 2016. The program supervisor asked that the team let her know if there were any "huge" errors, and also asked that they provide information about their availability in regard to scheduling the next IEP meeting.
86. The February 1, 2016 prior written notice stated the Student's "evaluation/IEP team met today to discuss a draft of his most recent reevaluation and draft of an IEP review. [The Parent] had received both documents prior to the meeting, and provided the team with written and verbal feedback, most of which was incorporated into the documents discussed. The team made numerous revisions to the reevaluation." The notice stated that the revisions included:
- Changed references to bus nurse to bus monitor
  - Changed references to focal seizures to generalized seizures
  - Added statements including reports from the last IEP reviews that such statements were from the last IEP, and continued to be accurate
  - In the physical/medical section, added a statement the Student had been successful on bus rides as long as 30 minutes
  - Changed the list of the Student's medications
  - Added that the diagnosis of epilepsy is the cause of all other conditions

The notice also stated that the team made numerous changes to the present levels section of the IEP, which included changing references to focal seizures to generalized seizures, and stating that the Student had five signs and the potential to learn more, as well as several initial sounds of words that aid in communication.

In addition, the notice stated that the Parent had expressed concern that the Student was being judged by statements in the reevaluation that referred to his lack of inferential skills. The Parent stated that the Student was non-verbal and may well be making inferences, but was not able to communicate yet. The Parent asked that the statements be removed from the document. The District rejected the request because the only data available was that the Student did not make inferences.

Additionally, the notice stated that the team had a "brief discussed about the Rifton chair in particular, and the use of adaptive seating in general. [The Parent] does not want [the Student] in a Rifton chair or any other chair with a seatbelt or other restraint. [The Parent] stated that she wants [the Student] to sit in a chair at a table,

or work toward doing so. The physical therapist agreed to draft a goal and [specially designed instruction] plan for the next part of the IEP meeting that would allow [the Student] to sit in a standard chair at a standard table.” The notice further stated that the District agreed with the Parent that the vision assessment needs to be completed. The vision teacher would work with a colleague to complete the vision assessment and amend the reevaluation by February 8, at which time the Parent could sign the signature page, and indicate her agreement or disagreement with the reevaluation as amended, “including all other changes agreed to by the team today.” The notice also stated that the IEP team would reconvene within the next 10 days “to complete its consideration of the services and accommodations in the proposed IEP”.

87. On February 2, 2016, the Student was assessed by the District orientation and mobility special education teacher and a teacher for students with visual impairments. After the meeting, the teacher for the visually impaired emailed the Parent, asking for a copy of the Student’s most current eye report. In response, the Parent agreed to provide a copy of the report.

88. Also on February 2, 2016, the Parent responded to the school psychologist’s February 1 email, stating that she was reaching out to the Student’s medical team to make sure she had all of the correct information. The Parent agreed to send a copy of her consent form. The Parent also stated that she had met with the vision and mobility teacher and teacher for the visually impaired that morning, and had discussed services for the Student. The staff members wanted to make sure they had the correct consent to continue the reevaluation. The Parent asked that the psychologist let her know if she needed to sign additional consent forms. The Parent then sent a second email, attaching a copy of her November 2015 consent form.

89. Also on February 2, 2016, the school nurse emailed the Parent and the other members of the Student’s IEP team and attached an updated copy of the health information section of the Student’s reevaluation report. The school nurse stated that she had included changes in the section that were “within reason”. In response, the Parent stated that she thought they were going to meet to go over the section, but thanked the nurse for making the changes. The Parent stated that in reading the updated information, she had found more things that needed to be changed, and would be happy to meet with the nurse to discuss the changes. The Parent and the nurse then continued to exchange additional emails about the Student’s health plan.

90. On February 4, 2016, the regional program supervisor emailed the Parent and the other members of the IEP team, stating that a meeting had been scheduled for February 11, 2016, as that was the only day and time all the members could attend.

91. On February 8, 2016, the teacher of students with visual impairments emailed the Parent, stating that the functional vision assessment report would be finished later that day, and she would send the Parent a copy. The teacher also asked the Parent for information regarding the Student’s ability to track and fixate on items while at

home. In response, the Parent stated that the Student used sound as a way to hone in on location, and was then usually able to fixate on an object.

92. On February 10, 2016, the Parent exchanged emails with the orientation and mobility teacher about the Student using a mobility device and/or a cane. The teacher stated that she was recommending the Student receive orientation and mobility services. Also that day, the Parent exchanged emails with the teacher for students with visual impairments regarding the functional vision assessment report.

93. On February 11, 2016, the Student's IEP team met to review the updated reevaluation report and finish developing the Student's IEP.

94. The District's documentation includes an evaluation report dated January 11, 2016. It is assumed the date is incorrect, and should reflect a date of February 11, 2016 or later. The evaluation report recommended that the Student receive specially designed instruction in the areas of communication, adapted PE, social/behavior, cognitive – pre-academics, adaptive/life skills, and vision. The evaluation report also recommended that the Student receive occupational therapy, physical therapy, and orientation and mobility services as a related service. Additionally, the report recommended the Student receive vision services consultation as a supplementary aide and service.

95. The District's documentation also includes an IEP with a start date of February 2, 2016. It is assumed the date is incorrect and should reflect a start date of February 11, 2016 or later. The February 2, 2016 IEP includes annual goals in the areas of social/behavior, communication, motor, vision, adaptive/life skills, cognitive – pre-academics, adapted PE, "visual complexity", and orientation and mobility. The IEP stated that the progress reporting toward the IEP goals would be provided on a trimester basis. The IEP also stated that the Student would spend 100 percent of his school day in a special education setting, and receive the following specially designed instruction:

- Adapted PE – 40 minutes weekly
- Adaptive/life skills – 110 minutes 5 times weekly
- Cognitive - Pre-Academics – 110 minutes 5 times weekly
- Social/behavior – 106 minutes 5 times weekly
- Communication – 30 minutes per week
- Vision – 30 minutes 2 times monthly

The February IEP also provided for the following related services in a special education setting:

- Physical therapy – 30 minutes 2 times monthly
- Occupational therapy – 30 minutes weekly
- Orientation and Mobility – 20 minutes 3 times monthly

Additionally, the IEP provided for a vision services consultation 60 minutes per month as supplementary aids and services. The IEP also provided for the following accommodations:

- Access to sensory objects and activities – at all times

- Extra time for responses, visual modification, and hand-under-hand supports – during class activities
- Augmentative communication, specialized seating and PT/OT equipment, sensory integration – all day
- Special transportation with a 1:1 transportation aide 200 minutes per week

96. Later on February 11, 2016, the Parent emailed the District members of the Student's IEP team, stating that she had forgotten to provide them with her letter requesting a 1:1 aide for the Student. The Parent stated that she thought an aide was important, especially considering the strains the Student's needs put on the classroom. The Parent stated that due to computer issues, she would need to email the letter the following day. In response, the Student's special education teacher stated that she would attach the letter to the Student's IEP.

97. The District's documentation in this complaint includes a prior written notice dated February 11, 2016, proposing to initiate the Student's evaluation. The notice stated that the Student's evaluation team met on February 1 and 11, 2016 to revise and finalize the Student's reevaluation report. The notice stated that the "team made numerous revisions" to the evaluation report, including corrections and revisions from the Parent. The notice also stated that the Parent was "involved in and agreed with the final reevaluation report."

98. The District's documentation in this complaint also includes a prior written notice dated February 1, 2016, regarding the February 1 and February 11 meetings. It is assumed that the prior written notice is misdated and should reflect a date of February 11, 2016, or later. The notice stated that the Student's IEP team met on February 1 and February 11 to consider a draft of his annual IEP, based on a recent reevaluation. The team made numerous changes to the draft in all areas of the IEP document based on input from the team, including the Parent. The team agreed on wording for the present levels of performance, adjusted some of the goals, considered and added accommodations, and adjusted the services offered.

The notice also stated that based on the reevaluation that had just been completed, and a request by the Parent to place the Student in a less restrictive environment, the team wanted to look at data and all areas of disability to make sure all of the Student's needs were being addressed. The team also wanted to address the Parent's concern that the Student's achievement was limited due to his placement in the special education setting all day. Additionally, the notice stated that the team considered a request that the Student receive more direct services from the speech language pathologist. The team rejected that option because the speech language pathologist did not believe the Student would benefit from additional direct services, as she was already breaking down his 30 minutes per week into two shorter sessions to maximize his attention. The notice further stated that the team agreed to try serving the Student in a special education preschool setting to see if he could attend the small group instruction in a more typical environment than the classroom for medically fragile students. The team also agreed to discontinue use of the Rifton chair, or any other chairs that had seatbelts or would otherwise restrain the Student.

“The team had discontinued use of the seat belts already”, and would instead use chairs that were well suited to the Student's size and physical needs. The notice also stated that the team did not discuss assigning a 1:1 to the Student, as this was not brought up in either of the IEP meetings. The Parent sent a letter via email, stating that she meant to bring up the matter, but had forgotten to do so. The notice stated, “At this time, no aide will be assigned until the team decides to meet to consider the matter.”

99. On February 12, 2016, the Parent sent the regional program supervisor and the other District members of the Student's IEP team a letter requesting that the Student receive support from a 1:1 aide. In the Parent's letter, she described multiple reasons she believed the Student needed 1:1 aide. The reasons included supporting the Student's academic learning, monitoring the Student's diet, assisting the Student with toileting, helping the Student to use his communication device and sign language to communicate, assisting the Student in navigating the school, providing accommodations to help the Student access materials due to his CVI, supporting interaction with peers, and supporting the Student in learning new adaptive skills.
100. Also on February 12, 2016, the Parent sent the Student's special education teacher a statement to be attached to the IEP.
101. Also on February 12, 2016, the Parent emailed the school psychologist in response to his February 1 email, asking for the Parent's feedback on the background section of the Student's evaluation report. The Parent stated that she had made her corrections to the section, and attached the corrected information. The Parent also asked questions about some of the information in the background section.
102. On February 19, 2016, the Parent emailed the District admissions office and attached a completed school choice form. The Parent indicated on the form that she wanted the Student to attend elementary school 2.
103. On February 29, 2016, the Parent emailed the District members of the Student's IEP team to check on the status of the Student's IEP and evaluation report. The Parent stated that she had been too ill after the last meeting to follow up. The Parent also stated that she was going to work on creating a communication form. Additionally, the Parent stated that the IEP team had discussed finding ways for the Student to attend a preschool circle time at elementary school 1 and bringing an activity to the playground to help the Student connect with other kids. The Parent asked if there had been any movement on those items. The Parent also asked if there was anything else holding up the completion of the IEP and evaluation report, as she had not seen a final version of either of them to sign off on.
104. In response, the Student's special education teacher stated that the Student had attended the preschool circle time a few times, and that he was supposed to that morning, but she had forgotten. The teacher stated that the Student would go the

next day. The special education teacher also stated that the preschool teacher had relayed that the Student had done well while attending the circle time. The special education teacher also said that the Student was also sitting nicely in the kindergarten circle time and that if he became fidgety, staff offered him a toy to hold until it was his turn. Additionally, the teacher stated that she would have a copy of the IEP for the Parent the next day.

105. Also on February 29, 2016, the Parent emailed the school nurse and attached copies of the Student's medical records and a copy of the Student's health plan with suggested changes. The Parent stated that she would sign the health plan once the changes were made. In response, the nurse recapped how student health plans were created and updated, and agreed to send home a health plan for the Parent's signature.

106. According to the District's service logs, the Student received the following services in February 2016:

- Communication – 60 minutes individual therapy, 60 minutes programming. (The Student was absent for 1 session).
- Motor/Occupational therapy – 50 minutes
- Physical therapy – 45 minutes. (The Student was absent for 1 therapy session).

107. On March 3, 2016, the Parent emailed the Student's special education teacher and copied the other members of the IEP team. The Parent stated that she wanted to hold another IEP meeting to discuss the Student's need for a 1:1 aide. The Parent also stated that she did not see her parent statement included in the Student's IEP, and had not yet received a final version of the Student's evaluation report. In response, the special education teacher stated that she would coordinate with the staff members and schedule a meeting. The teacher stated that the next two weeks were "booked," and that she was looking at the week of March 21, 2016 to hold the meeting. The teacher also stated that the Parent's statement and her letter were attached to the Student's IEP that was sent to the District special education office, but the computer system did not allow the teacher to attach the letters directly to the IEP document. An IEP meeting was later scheduled for March 24, 2016.

108. On March 14, 2016, the Parent emailed the regional program supervisor, the school nurse, and the school principal, stating that a District bus was again trying to pick up the Student for school. The Parent stated that while she would welcome the Student riding the bus and that the Student would be very excited to do so, there still was not a bus aide available. The Parent also stated that it was hard to start the day with the Student being excited to ride the bus, and then having to tell the Student he could not ride the bus. The Parent asked that the District either find the Student a bus aide, or stop sending the bus. In response, the program supervisor stated that she would speak to the transportation department. The program supervisor then sent the Parent a second email, offering to reimburse the Parent for transporting the Student. The Parent later replied that she would review the form with her attorney and thanked the program manager for the prompt response.

109. On March 16, 2016, the school nurse emailed the Parent and attached a copy of the Student's health plan. The nurse asked that the Parent sign the plan and return it as soon as possible. The Parent responded on March 18, stating that there were errors in the document. The Parent attached a copy of the plan with corrections made and stated that if the nurse was fine with the edits, the Parent would sign the plan and return it. The Parent then sent a second email and attached a medical report. However, the nurse was unable to view the attachment, and the Parent then agreed to provide a hard copy.
110. On March 21, 2016, the school nurse sent the Parent and updated version of the Student's health plan for the Parent to sign. The Parent later signed the health plan on March 22, 2016.
111. The elementary school's second trimester ended on March 18, 2016.
112. The District documentation in this complaint shows that progress reporting toward some of the Student's February 2016 IEP goals was completed on March 8, 2016. Progress reporting for other goals was completed on March 29, 2016 or April 1, 2016. No progress reporting was completed for the Student's two motor goals or his adapted PE goal. The progress reporting for the Student's "visual complexity" goal of locating and pointing to pictures stated that as of March 29, 2016, the goal had not yet been introduced.
113. On March 24, 2016, the Student's IEP team, including the Parent, met to discuss the Parent's request for a 1:1 aide. According to the meeting notes, the Parent stated that she had still not received a finalized copy of the Student's reevaluation report. The team then reviewed the Parent's letter, requesting a 1:1 aide and discussed the Student's schedule, and access to non-disabled peers. The IEP team also discussed the Student's communication and the Parent stated that she wanted to know what the Student did and that his communication was being registered. The IEP team agreed that data could be taken for 4-6 weeks regarding the Student's use of hitting his chin and other behaviors. The team then discussed whether the Student needed a 1:1 aide. It is unclear from the meeting notes if any decisions were made regarding the 1:1 aide. The Parent also expressed concerns that the Student's IEP did not include a communication or medical log. In response, the regional program supervisor asked that the Parent send her an email listing the things she wanted. Based on the District's documentation in this complaint, the District did not complete prior written notice after the March 24, 2016 meeting.
114. Also on March 24, 2016, the Student's physical therapist sent the Parent a copy of the Student's evaluation report for the Parent to review.
115. On March 25, 2016, the school nurse emailed the Parent, stating that she had received the signed copy of the Student's health plan. The nurse stated that the biggest change the Parent wanted to make was around the Student's need for oxygen, which was a factor in the level of nursing support the Student needed. The nurse also stated that she knew the Parent was interested in having the Student



attend a non-level B school site. The nurse had spoken with the District manager of student health services about this, and the manager had relayed that the Parent still needed to provide a completed "extraordinary nursing support document" in order to change the Student's nursing support level from a B2 to a B3. The nurse stated that the Parent could contact the manager of student health services and provided the contact information.

116. According to the District's service logs, the Student received the following services in March 2016:

- Communication – 90 minutes individual therapy. (The Student was absent for 1 session).
- Occupational therapy – 60 minutes
- Physical therapy – 60 minutes. (The Student was absent for 1 therapy session).

117. The District was on break April 11-15, 2016.

118. On April 20, 2016, the Parent emailed the regional program supervisor with a list of corrections for the Student's IEP and evaluation report. The Parent stated that corrections were mostly things they had previously discussed and agreed to, but were not included in the final versions. In regard to the evaluation report, the Parent stated that the report did not include her comments about the Student's placement, inaccurately stated that she had elected to transport the Student, did not include corrected health information, and contained repeated pages. In regard to the Student's IEP, the Parent wanted the following changes made:

- Add information to reflect the Student needed roundtrip transportation
- Add information to reflect that the Student communicated at home using sign, direction, and a computer program.
- Add the previously provided parent letter
- Remove the reference to the "Rifton" chair
- Remove interaction with adults from the Student's social/behavior goal, so the goal only focused on peer interaction.
- Add the following accommodations: no food within reach, no restraint, and daily communication regarding toileting, feeding, behaviors, and what was being worked on.

119. On April 27, 2016, the Parent withdrew her due process hearing request.

120. According to the District's service logs, the Student received the following services in April 2016:

- Communication – 30 minutes individual therapy, 30 minutes group therapy. (The Student was absent for 2 sessions).
- Occupational therapy – 30 minutes
- Physical therapy – 90 minutes or 50 minutes (documentation unclear). (The Student was absent for 1 therapy session).

121. On May 2, 2016, the Parent emailed the regional program supervisor, asking for an update on the Student's IEP and evaluation report, as the Parent still had not received final copies with the agreed upon edits. The Parent had also not received

daily communication “as promised”, and had been told earlier that day that she would not receive daily communication. The Parent stated that she needed to know what the non-verbal Student was doing at school, and that providing daily communication was a common practice. The Parent was unsure why it was an issue to provide the daily communication.

122. Also on May 2, 2016, the school principal at elementary school 1 emailed the Parent and attached data regarding the Student’s behavior of “knuckles tapping chin and fingers tapping teeth”. The principal apologized for not providing the data earlier, and stated that the special education teacher had relayed that it was difficult to take data and work on the skill. However, a classroom paraeducator had observed the Student in the preschool classroom and taken data, and when possible a paraeducator would take data in the kindergarten class when another paraeducator or the teacher worked on the skill. The principal stated that in quickly reviewing the data, she did not see any “outstanding patterns”, but the team was looking at the data and making adjustments where needed.

123. The District’s data was taken on April 8, 18, 19, 20, 26, and 29, 2016. The April 8 data showed that during a morning assembly (8:50 am – 9:08 am), the Student had “hit” his mouth 79 times. During a later one-minute interval of independent play on a swing, the Student had “hit” himself 8 times. Then, during another independent play time (11:00 am – 11:07 am), the Student had hit himself 43 times. On April 18, the Student hit himself with his fist 8 times and with his fingers 53 times during a twenty-minute preschool circle time. On April 19, during a twenty-minute session, the Student hit himself with his fist 19 times, 68 times with his fingers, and 7 times with a toy. On April 20, the Student was observed for ten minutes while outside and did not hit himself. On April 26, the Student hit himself with his fist or fingers 9 times during a twenty-five-minute time period. On April 29, the Student hit himself 32 times during a fifteen-minute assembly.

124. On May 3, 2016, the Parent responded to the principal’s email, questioning if school staff members were asking the Student what was wrong, or if he needed something when he was tapping his chin or teeth, as it was the Parent’s experience that the Student made those motions when there was something he needed or wanted, such as food, using the bathroom, or a change in activity. The Parent would then offer choices and wait for the Student to respond. When the Student heard a choice he wanted, he would smile and stop “hitting” himself. The Parent was concerned that the data showed a “very high” number of hits. Later, the Student’s special education teacher who had been included on the email, responded that she would discuss the Parent’s email with the Student’s other providers so they were aware of how to respond to the Student, if they had not already been doing so. The teacher stated that the classroom paraeducators were already aware of and followed the procedures the Parent had stated. The teacher later sent an email to the Student’s service providers and they agreed to meet to discuss the Student’s communication, as well as other students’ communication.

125. The Student was absent on May 4 and 5, 2016.

126. On May 6, 2016, the Parent removed the Student from school.

127. Also on May 6, 2016, the Parent emailed school board member 2, stating that she was withdrawing the Student for his safety. The Parent stated that she had made no “inroads with 97%” of her issues that school year, as she was still transporting the Student due to a lack of bus aide. The Parent also stated that earlier that week, she had received data showing school staff were not “listening” to the Student’s non-verbal communication when he was telling them he was hungry. The Parent stated the Student was on a special diet, and that not feeding him was a major safety concern in addition to making it “impossible” for the Student to focus on learning. The Parent then included a draft letter she planned to send to elementary school 1, informing them that she was withdrawing the Student. The Parent stated that she no longer believed the District intended to problem solve her concerns.

128. Later that same day, the Parent emailed the school principal at elementary school 1, stating that she thought the reason the principal did not see a pattern in the data was because the principal had an incomplete data set. The Parent stated that when she compared the data to the daily communication book regarding when the Student ate, a clear pattern emerged - the Student was trying to indicate that he was hungry, but was being ignored. The Parent also stated that the Student had come home with his knuckle split open and bleeding. Additionally, the Parent stated that this was not how the Student behaved when he was happy and his needs were being met. The Parent then provided a breakdown of the Student’s schedule and feeding times on April 8, 18, 19, 20, 26, and 29, 2016. The Parent also stated that on April 29, 2016, the Student’s father had brought the Student to school and informed a paraeducator that the Student was hungry. The paraeducator had then reportedly asked if the Student would wait 30 minutes while the class went to an assembly. The father replied that the Student may not be able to wait that long and asked if the bottle could be brought to the assembly. The paraeducator then reportedly stated that it was “too messy” to bring the bottle. The Parent then referred to the data from April 29, which showed the Student hit himself 32 times during the assembly.

Additionally, the Parent stated that she and the Student’s medical team had explained the importance of feeding the Student at regular intervals, and that his liquid diet required frequent feeds. The Parent did not understand why the Student could not have a bottle at an assembly. The Parent also stated that the Student had been placed in school so his medical needs could be met, and that she had asked for communication about this all year. The Parent had now received data that only accounted for 327 minutes of 900 minutes that the Student was at school. The Parent stated that both the Student and her communication needs were not being honored, and put the Student’s well-being at risk. As a result, the Parent was removing the Student from school. Later that day, the Parent sent the principal a second email outlining additional concerns she had with the special education program at elementary school 1. The Parent also forwarded a copy of her email to school board member 2, who agreed to look into the situation.

129. On May 8, 2016, the Parent emailed the District special education ombudsperson, outlining her concerns with the Student's educational program. In response, the ombudsperson set up a time to speak to the Parent.
130. On May 10, 2016, the Parent emailed the District assistant superintendent of teaching and learning, the executive director of special education, the director of special education, and the office of the school board, expressing her concerns about the Student's educational program and the issues which had occurred during the school year. The concerns included the use of the Rifton chair, communication about the Student's daily program, feeding the Student, and changing the Student's placement. In response, the administrator at the office of the school board stated that the Parent's concerns had been forwarded to the school board members.
131. On May 17, 2016, the Parent emailed the regional program supervisor, asking when she would receive final copies of the Student's IEP and evaluation report. The Parent stated that she had sent the program supervisor corrections on April 20 and a follow-up email on May 2, but had still not received a final copy. The Parent also stated that she was waiting for the program supervisor to contact her and schedule a meeting to discuss the Student's placement. In response, the program supervisor stated that she would check on the status of the Student's evaluation report and IEP, and that she would call the Parent the next day to give her an update on placement options.
132. On May 19, 2016, the regional program supervisor emailed the Parent and stated the District was still working on the placement and nursing issues.
133. Also on May 19, 2016, the Parent contacted the school nurse corps administrator at the regional educational service district and the health services program administrator at OSPI, asking for assistance in addressing the Student's nursing care needs so he could attend elementary school 2. The Parent also stated that a meeting with the District to discuss nursing services and placement had been proposed, but it had not yet been scheduled. In response, the administrators contacted the District manager of student health services and asked that she respond to the Parent's email.
134. On May 22, 2016, the District manager of student health services emailed the Parent, proposing several dates to meet with the Parent.
135. On May 24, 2016, the Parent emailed the regional program supervisor, stating that she had still not received final copies of the Student's IEP and evaluation report. The Parent also stated that she had not heard back from the program supervisor about scheduling a meeting with the District manager of student health services. However, the Parent stated that she had heard from the manager of student health services about the proposed meeting. The Parent then listed the proposed meeting dates, and stated that she had contacted the Student's neurologist to see if the physician could attend a meeting. The Parent asked that the program supervisor let her know what date she could attend. The Parent also stated that she had been

informed about “itinerant” teachers who provided students with services when they could not attend school, and asked why the Student had not been offered this option. In response, the program supervisor stated that she had been working on finding a placement for the Student to meet his needs. The program supervisor proposed having the meeting on June 13, 2016, and stated that she would have “corrected copies” of the Student’s evaluation report and IEP at that time. The Parent replied that she would check with the Student’s neurologist about the date.

136. On May 26, 2016, the Parent emailed the regional program supervisor, proposing a time to hold the meeting on June 13, 2016. The Parent also stated that waiting another month to get copies of the IEP and evaluation report was not acceptable, and asked that she receive a copy that week. The Parent and the program supervisor then exchanged additional emails and agreed to the meeting time.

137. On May 27, 2016, the regional program supervisor emailed the Parent and attached an updated copy of the Student’s IEP and evaluation report. The program supervisor stated that the Parent’s “parent letter” for the IEP and parent input for the evaluation were included in the Student’s compliance file and were included with the email attachment.

138. According to the District’s service logs, the Student did not receive communication, occupational therapy, or physical therapy services in May 2016.

139. On June 10, 2016, the Parent filed this citizen complaint.

140. On June 13, 2016, the Parent met with the regional program supervisor, the District executive director of special education, and the District manager of student health services. At the meeting, the executive director agreed to reimburse the Parent for transporting the Student. The group also discussed potential elementary schools the Student could attend, and agreed to hold an IEP meeting the following week.

141. On June 20, 2016, the Parent and the regional program supervisor visited a program at elementary school 4.

142. On June 23, 2016, the Student’s IEP team met to discuss changing the Student’s placement. Based on the District’s June 24, 2016 prior written notice, the team decided to move the Student from medically fragile services to self-contained services for students with moderate to severe disabilities. The Student would attend a program at elementary school 4. The team also added a 1:1 aide as an accommodation, and would ensure that the Student’s new school had a full-time nurse to meet his medical needs. The notice stated that the reason for the change was that an attempt to scale up services in the medical fragile program did not work for the Student, as the other students were non-verbal and not mobile. Therefore, the Student did not really have a cohort of students he could engage with as much as his IEP team wanted. The notice also stated that in order for the Student to navigate to the school building safely and have his health monitored in a setting with

more students, he would require 1:1 assistance throughout his school day. The Student also continued to require a full-time nurse at school in case he had a seizure. The notice further stated that the 1:1 aide, when hired, could ride the bus to and from school with the Student. Until the aide was hired, the District would work with the transportation services department to assign a bus monitor to ensure that if the Student had a seizure on the bus, paramedics could be called as soon as possible.

143. The District's school year ended on June 24, 2016. The elementary school's third trimester also ended that day.

## CONCLUSIONS

**Issue 1: Use of restraint device between January 29, 2016 and June 10, 2016** – On January 29, 2016, new rules for the provision of special education became effective. The new rules for the provision of special education prohibited the use of restraint devices except in situations where there was likelihood of serious harm, and also required that school districts document the use of a restraint device consistent with the requirements of RCW 28A.600.485. The new rules defined a restraint device as a device used to assist in controlling a student, but stated that a restraint device did not include a seat harness used to transport a student safely or other safety devices, including safety belts for wheelchairs, changing tables, booster seats, and other ambulatory or therapeutic devices when used for the purpose intended for the safety of a student.

The documentation in this complaint shows that at the February 1, 2016 IEP meeting, the IEP team discussed the use of a Rifton chair, and agreed to no longer use the chair or other chairs that had seatbelts or would otherwise restrain the Student. There is also no documentation to show that staff used a chair that restrained the Student after February 1, 2016. Considering the January 29, 2016 effective date and the District's February 1 agreement to no longer use chairs that restrained the Student, OSPI finds that there is no violation during the limited time period for this issue.

**Issue 2: Bus Aide** – The District admitted in its response to this complaint that it failed to provide the Student with a bus aide consistent with his IEP, and has offered to reimburse the Parent for transporting the Student to and from school. However, in the Parent's reply to this complaint, the Parent stated that she has not yet received reimbursement. The District will provide OSPI with documentation that the Parent has been reimbursed for transporting the Student to and from school during the 2015-2016 school year.

### **Issue 3: Specially Designed Instruction, Related Services, and Accommodations**

**Specially Designed Instruction** – The Student's amended February 2015 IEP, which was in place from September 17, 2015 through approximately February 11, 2016, provided for a total of 1,767.5 minutes per week of specially designed instruction in the following areas: communication, vision, motor, adaptive/life skills, pre-academics, and

social/behavior. However, on October 9, 2015, the Parent elected to shorten the Student's school day so that he would only attend school for 700 minutes per week. Given the reduction in the Student's school day, it was impossible for the District to provide the Student with the specially designed instruction stated in his IEP, and the District was not required to modify the Student's shortened schedule to ensure he received all of his services during the limited hours he attended school. However, despite being under no obligation to do so, several of the Student's service providers arranged their schedules to provide the Student services during his shortened school day. While there may have been times when the Student missed some of those services, the District's documentation shows the Student regularly received the services along with other areas of specially designed instruction. Based on the District's documentation in this complaint, the District has substantiated that it provided the Student specially designed instruction in the areas stated in his amended February 2015 IEP during the limited hours he attended school, and it is acknowledged that the Student may have received more services in some areas than others given the shortened classroom schedule.

Likewise, the Student's February 2016 IEP, which was in place from approximately February 12, 2016 through May 6, 2016 when the Parent removed the Student from school, provided for a total of 1,715 minutes per week of specially designed instruction in the areas of adapted PE, adaptive/life skills, cognitive-pre-academics, social/behavior, communication, and vision. However, due to the Student's shortened schedule, the District could not provide all of the services stated in his IEP. Based on the District's documentation in this complaint, the District has substantiated that it provided the Student specially designed instruction in the areas stated in his February 2016 IEP during the limited hours he attended school.

#### **Related Services –**

**Amended February 2015 IEP** – The Student's amended February 2015 IEP, which was in place from September 17, 2016 through approximately February 11, 2016, provided for 30 minutes per week of physical therapy. Additionally, the Student's February 2016 IEP, which was in place from approximately February 12, 2016 through May 6, 2016 when the Parent removed the Student from school, provided for 60 minutes per month of physical therapy, 30 minutes per week of occupational therapy, and 60 minutes per month of orientation and mobility services. As discussed above, on October 9, 2015, the Parent elected to shorten the Student's school day so that he would attend school 700 minutes per week, and District staff were not required to change their service schedules to accommodate the shortened school day. Nevertheless, the service providers agreed to provide the Student services during times he was at school. The District's documentation shows that the Student regularly received physical therapy services during the 2015-2016 school year. However, the Student did not regularly receive occupational therapy services in the spring of 2015, as he only received 90 minutes of service during the 11 weeks of school his February 11, 2016 IEP was in place. Given the Parent's offer to bring the Student to school at additional times to receive these services, the District should have worked with the Parent to schedule a time the Student could receive the services. The District will

provide the Student with 240 minutes (4 hours) of compensatory services to make up for the services he missed.

**Accommodations** – Both the Student’s amended February 2015 IEP and February 2016 IEP provided for the same accommodations. Based on the documentation in this complaint, the District has substantiated that it provided the accommodations, with the exception of the bus aide which is discussed above.

**Issue 4: Progress Reporting** – The District failed to provide progress reporting consistent with the Student’s IEP. The Student’s February 2016 IEP stated that progress reporting would be provided on a trimester basis. The District’s second trimester ended on March 18, 2016; however, the District did not provide the Parent with progress reporting toward all of the Student’s IEP goals at that time. It is also noted that in both the District’s December 2015 and March 2016 progress reporting toward the Student’s IEP goals, some goals had not yet been initiated. The District is required to provide specially designed instruction regarding the skills a student needs to reach his annual IEP goals. Failure to provide sufficient instruction to address an IEP annual goal, may result in a failure to implement a student’s IEP. Additionally, if a student does not have the prerequisite skills to begin working on a goal, then an IEP goal should instead be aimed at a student’s acquisition of such pre-requisite skills.

**Issue 5: Least Restrictive Environment** – The Student’s amended February 2015 IEP, which was in place at the beginning of the 2015-2016 school year, stated that the Student would spend approximately 100 percent of his school day in a special education setting, but did not discuss whether the Student would participate in any general education settings during the 2015-2016 school year. The IEP noted that when the Student was in preschool during the 2014-2015 school year, his class occasionally participated in a school wide assemblies. Given the requirement that students must be provided the opportunity to participate in the general education setting to the maximum extent appropriate, the Student’s amended February 2015 IEP should have at least discussed the extent to which the Student could/could not participate in the general education environment during the 2015-2016 school year. Additionally, the Student’s February 2016 IEP also failed to discuss the extent to which the Student would/would not participate in the general education setting. However, despite the lack of information in the IEPs stating that the Student would participate in the general education setting, the documentation in this complaint shows that the Student did participate in recess with non-disabled peers, and did attend school assemblies. The District will hold an IEP meeting prior to the beginning of the 2016-2017 school year to clarify the Student’s access to the general education environment, and reflect this decision in the Student’s IEP.

**Issue 6: Reevaluation** – A reevaluation must be completed once every three years, unless the parent and the district agree that a reevaluation is unnecessary. The Student’s triennial evaluation was due by February 11, 2016, but at the October 8, 2015 IEP meeting, the IEP team discussed conducting the Student’s reevaluation early. However, it is unclear from the District’s documentation in this complaint if the IEP team decided that the reevaluation would be conducted early, as there are no meeting notes



or a prior written notice to confirm that decision. The District's documentation does show that after the October 8, 2015 meeting, the Parent asked that the reevaluation process begin, but was not provided a consent form for almost six weeks. If the District did not plan to conduct the Student's reevaluation early, it should have provided the Parent prior written notice in response to her request.

Additionally, a reevaluation must address all areas of suspected disabilities and be completed 35 school days after the District received consent. Here, the District failed to include adapted PE as an area of assessment on the notification/consent form provided to the Parent, despite the staff and Parent agreeing that it was needed, and then conducted an adapted PE assessment without obtaining the Parent's consent. Additionally, the reevaluation did not include assessments in the area of orientation and mobility, despite the Parent requesting this as part of the reevaluation. The District also did not complete the reevaluation 35 school days after receiving the Parent's consent on November 24, 2015, which was January 29, 2016. Instead, the District held an evaluation meeting on February 1, 2016, and at that meeting determined: the vision assessment conducted as part of the reevaluation was not fully completed, and more information was needed; assessments should be done in the area of orientation and mobility; and, changes needed to be made to the reevaluation report. The evaluation group/IEP team then met again on February 11, 2016, but it is unclear if the reevaluation report was completed at that time, as the Parent did not receive a finalized copy of the report until the end of May 2016. It is also noted that the reevaluation report is misdated. The District failed to follow procedures for conducting the Student's reevaluation.

**Issue 7: IEP Development** – The District failed to develop the Student's annual IEP by the February 2, 2016 due date. While the District held an IEP meeting on February 1, 2016, to develop the Student's IEP, the IEP team did not have enough time to complete the IEP, as the meeting also included a review of the Student's reevaluation results. It is recommended the District adopt a practice of scheduling IEP meetings at least one week before an annual IEP must be developed in order to ensure there is enough time for the IEP team to complete the IEP in a timely manner.

**Communication Reports** – The District failed to follow procedures for considering the Parent's request for daily communication reports. Based on the documentation in this complaint, at the March 24, 2016 IEP meeting, the Parent expressed concern that the Student's IEP did not include an accommodation for a daily communication log or a medical log. On April 20, 2016, the Parent sent the regional program supervisor an email requesting that daily communication be added as an accommodation in the Student's IEP. When a parent requests that changes be made to an IEP, the District must either hold an IEP meeting to discuss the changes, or agree to amend the IEP without holding an IEP meeting. Here, the District did not schedule a meeting so the IEP team could discuss the proposed accommodations. Instead, the regional program supervisor agreed to the changes, and then sent the Parent an updated version of the Student's IEP on May 27, 2016, reflecting the communication log accommodation. As there is no prior written notice reflecting the IEP amendment, it is unclear if the May 27 amendment was adopted by the Student's IEP team/District. The District will hold an

IEP meeting prior to the beginning of the school year to clarify the Student's IEP as he begins attending his new elementary school and special education program, and to ensure staff understand their responsibilities for implementing the IEP.

**1:1 Aide** – The District failed to follow procedures for considering the Parent's request for a 1:1 aide. In the spring of 2015, the Parent requested that the Student receive support from 1:1 aide when he attended kindergarten in the fall of 2015. In response, the District stated that the IEP team would need to take data and make a decision after the Student began school in the fall of 2015. The Parent then expressed her request for a 1:1 aide for the Student in October 2015, believing the aide could assist in addressing the Student's medical and other educational needs. On November 23, 2015, the Parent sent an email, asking that the Student have a 1:1 aide. On February 12, the Parent emailed District staff a letter, requesting that the Student receive a 1:1 aide and again, outlined her reason for the request. The Parent then requested an IEP meeting to discuss the request, and a meeting was eventually held on March 24, 2016. However, based on the meeting notes, it is unclear if a decision was ever made regarding the Parent's request for a 1:1 aide, and the District did not provide the Parent with prior written notice documenting any decisions related to the request. While the District is not required to agree to all of a parent's requests, the District is required to consider the request and provide the parent notice of the reason the request has been refused. Here, the Parent repeatedly asked for a 1:1 aide, and the District did not provide the Parent prior written notice in response to that request. After the Parent filed this complaint, the District held an IEP meeting and eventually agreed to provide the Student with a 1:1 aide.

**Issue 8: Placement Procedures** – Prior to making a significant change in a student's placement, the District must first conduct a reevaluation. At the beginning of the 2015-2016 school year, the Student's placement was a full-time special education placement for students who were categorized as medically fragile. The Parent then requested that the Student's placement be changed to a program for students who were less impacted by their disabilities, and had more access to the general education environment. Given the proposed change in the District's program models, and the possible change in the level of nursing care the Student needed, the District correctly discussed the need to complete a reevaluation prior to changing the Student's placement. However, as discussed above, the District did not document the need for the reevaluation in a prior written notice after the October 8 meeting, and then delayed beginning the evaluation process. Once the Student's reevaluation was completed, the IEP team should have determined if a change in placement would occur. However, due to issues with completing the reevaluation, and the lack of documented medical information from the Student's neurologist from the Parent to help determine the level of nursing care the Student needed, the IEP team could not make the determination until June 2016.

It is also noted that in making a placement decision, the IEP team must consider: the student's IEP; least restrictive environment; the placement option(s) that provide a reasonably high probability of assisting the student in attaining his annual goals, and a consideration of any potential harmful effect on the student or the quality of services the student needs. After considering these factors, the IEP team then must determine an

appropriate placement at the school located closest to the student's home. The District is reminded that while it can adopt service models to consolidate resources and meet the needs of students, the District cannot limit a student's access to a particular program based on the need for a related service.

### **CORRECTIVE ACTIONS**

On **September 12, 2016**, **October 10, 2016**, and **January 9, 2017**, the District will provide documentation to OSPI that the following corrective actions have been completed.

#### **STUDENT SPECIFIC:**

1. Prior to the beginning of the District's 2016-2017 school year, the District will hold an IEP meeting with the Student's new IEP team to clarify the accommodations in the Student's February 2016 IEP. The IEP team will also discuss the amount of time the Student will have access to the general education setting and update his IEP to reflect this. If possible, the Student's new 1:1 aide will attend the meeting. By **September 12, 2016**, the District will submit 1) a copy of any meeting invitations; 2) a copy of the amended IEP; and, 3) a copy of any related prior written notices.
2. Also by the beginning of the District's 2016-2017 school year, the District will meet with the Parent to develop a schedule to provide the Student with 4 hours of occupational therapy. The services will be provided outside of the Student's regular school day and must be provided by a occupational therapist. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **December 30, 2016**. The District will provide OSPI with documentation of the schedule by **September 12, 2016**.

No later than **January 9, 2017**, the District shall provide OSPI with documentation that the compensatory services have been completed. The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **January 9, 2017**.

3. By **September 12, 2016**, the District will provide documentation that the Parent has been reimbursed for any day she transported the Student to and/or from school during the 2015-2016 school year.

#### **DISTRICT SPECIFIC:**

By **September 30, 2016**, the District will provide training for administrators, and the special education certificated staff, including educational staff associates (ESAs), who work at elementary school 1. The District will use the training materials approved by

OSPI for the training required in SECC 15-10, which focused on IEP development and implementation, procedures for amending an IEP, progress reporting, and prior written notice. The training will also include a discussion of the decision issued in this complaint. By **October 10, 2016**, the District will submit documentation that staff participated in the training. This will include a sign-in sheet and a roster of who should have attended so OSPI can verify that staff participated.

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.

*NOTE: The district may request an electronic version of the matrix by e-mailing [Thin Le](mailto:Thin.Le@k12.wa.us) at [Thin.Le@k12.wa.us](mailto:Thin.Le@k12.wa.us).*

Dated this \_\_\_\_ day of August, 2016

Douglas H. Gill, Ed. D.  
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.)