

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 16-71

PROCEDURAL HISTORY

On October 3, 2016, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from non-parent complainants (Complainants) regarding students who attend an elementary school in the Olympia School District (District). The Complainants alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the education of fourteen students (Students A-N).

On October 6, 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 October 18, 2016, OSPI granted the District an extension of time to submit its response.

On November 4 and 7, 2016, OSPI received the District's response to the complaint and forwarded it to the Complainants on November 7, 2016. All student personally identifiable information was removed. The Complainants were invited to reply with any information they had that was inconsistent with the District's information.

On November 14, 2016, OSPI requested additional information from the District. On November 17 and 21, 2016, OSPI received additional information from the District and forwarded it to the Complainants on November 21, 2016.

On November 21, 2016, OSPI received the Complainants' reply. The information was forwarded to the District on the same day.

On November 28, 2016, OSPI requested additional information from the District. On November 29, 2016, OSPI received additional information from the District and forwarded it to the Complainants on the same day.

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

OVERVIEW

During the 2015-2016 school year, the District operated two developmental learning (DLC) classrooms (DLC classroom 1 and DLC classroom 2) at a District elementary school, which were taught by the Complainants (special education teacher 1 and special education teacher 2). In December 2015, special education teacher 2 submitted a request to the District that Student A receive 1:1 paraeducator support. In response, the District director of student support reportedly observed Student A, and determined Student A did not require 1:1 paraeducator support. In February 2016, the District conducted a reevaluation of Student B and then developed a new IEP for Student B. Student B's IEP team agreed that Student B should be moved to a life skills special

education program located at elementary school 2, but Student B was not moved to elementary school 2 until the 2016-2017 school year because staff at the elementary school were told by the District that the life skills program was full. Over the summer of 2016, special education teacher 1 and special education teacher 2 expressed concern to the District student support department that additional paraeducator support was needed for the DLC programs in order to provide the students with services in general education settings as stated in the students' IEPs. The District did not provide the extra support and as result, the teachers determined that some of the students' services in general education settings could not be provided during the upcoming 2016-2017 school year. Also during the 2016-2017 school year, Student C transferred into the District. After starting in the DLC classroom 1, school staff recommended Student C be moved to the life skills program at elementary school 2, which staff believed would better address his needs. However, staff were again informed by the District that the life skills program was full, and Student C continued to attend DLC classroom 1.

The Complainants alleged that the District failed to follow procedures for responding to their requests for 1:1 paraeducator support for Student A. The Complainants also alleged that the District failed to follow procedures for determining Student B's placement during the 2015-2016 school year, and then failed to follow procedures for determining Student C's placement, including considering Student C's least restrictive environment. Additionally, the Complainants alleged that the District did not follow procedures for implementing the IEPs of Students D – N. The District admitted the allegations in part, and denied the allegations in part, and proposed corrective actions to address the violations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on October 4, 2015. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District follow procedures for responding to requests for paraeducator support for Student A?
2. Did the District follow procedures for determining Student B's placement during the 2015-2016 school year?
3. Did the District follow procedures for determining Student C's placement, including considering Student C's least restrictive environment?
4. Did the District follow procedures for implementing the individualized education programs (IEPs) of Students D - N?

LEGAL STANDARDS

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; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090 (effective January 29, 2016).

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. 34 CFR §300.114; WAC 392-172A-02050.

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).

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.

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

FINDINGS OF FACT

2015-2016 School Year

1. The District's 2015-2016 school year began on September 9, 2015.
2. During the 2015-2016 school year, the District operated two developmental learning (DLC) classrooms (DLC classroom 1 and DLC classroom 2) at a District elementary school (elementary school 1).
3. DLC classroom 1 is taught by special education teacher 1 and includes students in kindergarten through third grade. DLC classroom 2 is taught by special education teacher 2 and includes students in first through fifth grade. Special education teacher 1 and special education teacher 2 are the Complainants in this complaint.

DLC Classroom 1

4. At the beginning of the 2015-2016 school year, DLC classroom 1 included special education teacher 1, two classroom paraeducators, and six (6) students. In addition, one of the six students had an assigned 1:1 student specific paraeducator. There were four adults in the classroom of six students.
5. Five of the six students in DCL classroom 1 included Student B, Student D, Student E, Student F, and Student M. These five Students' individualized education programs (IEPs) are discussed in further detail below.
6. **Student B** – During the 2015-2016 school year, Student B was in first grade. Student B's IEP in place at the beginning of the school year was developed in May 2015. The IEP included annual goals in the areas of communication, math, reading, writing, adaptive, and social/emotional. The May 2015 IEP provided for the following specially designed instruction and related services in a *special education setting*:
 - Communication – 30 minutes 6 times monthly
 - Math – 70 minutes 5 times weekly
 - Reading – 70 minutes 5 times weekly
 - Writing – 70 minutes 5 times weekly
 - Adaptive – 35 minutes 5 times weekly
 - Social/Emotional – 90 minutes 5 times weekly
 - Occupational Therapy – 20 minutes 3 times monthly
 - Student Specific Paraeducator Support – 352 minutes 5 times weekly (concurrently)
7. **Student D** – During the 2015-2016 school year, Student D was in first grade. Student D's IEP in place at the beginning of the school year was also developed in May 2015. The IEP included annual goals in the areas of social/emotional, communication, reading, writing, math, and adaptive. The May 2015 IEP provided for the following specially designed instruction and related services in a *special education setting*:
 - Social/Emotional – 20 minutes 5 times weekly
 - Communication – 30 minutes 6 times monthly

- Reading – 80 minutes 5 times weekly
- Writing – 60 minutes 5 times weekly
- Math – 80 minutes 5 times weekly
- Occupational Therapy – 30 minutes 3 times monthly

Student D's IEP also provided for the following specially designed instruction in a *general education setting* provided by either a special education teacher or paraeducator as indicated below:

- Social/Emotional – 45 minutes 7 times weekly (paraeducator)
- Adaptive – 30 minutes 5 times weekly (special education teacher)

8. **Student E** – During the 2015-2016 school year, Student E was in kindergarten. Student E's IEP in place at the beginning of the school year was developed in June 2015. The IEP included annual goals in the areas of gross motor, communication, fine motor, cognitive-reading, cognitive-math, and social/emotional. The June 2015 IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Communication – 30 minutes 6 times monthly
- Cognitive Thinking/Awareness – 210 minutes 5 times weekly
- Fine Motor – 60 minutes 5 times weekly
- Social/Emotional – 30 minutes 5 times weekly
- Occupational Therapy – 30 minutes 3 times monthly
- Physical Therapy – 20 minutes 1 time weekly

Student E's IEP also provided for the following specially designed instruction in a *general education setting* provided by a special education teacher:

- Social/Emotional – 30 minutes 5 times weekly

9. **Student F** – During the 2015-2016 school year, Student F was in first grade. Student F's IEP in place at the beginning of the school year was also developed in June 2015. The IEP included annual goals in the areas of communication, cognitive-reading, cognitive-writing, cognitive-math, social/emotional, and adaptive. The June 2015 IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Adaptive – 30 minutes 5 times weekly
- Cognitive (math) – 45 minutes 5 times weekly
- Cognitive (reading) – 45 minute 5 times weekly
- Cognitive (writing) – 45 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly
- Social/Emotional – 30 minutes 5 times weekly
- Occupational Therapy – 30 minutes 3 times monthly

Student F's IEP also provided for the following specially designed instruction in a *general education setting* provided by either a special education teacher or paraeducator as indicated:

- Social/Emotional – 60 minutes 5 times weekly (paraeducator)
- Adaptive – 30 minutes 5 times weekly (paraeducator)
- Cognitive (math) – 30 minutes 5 times weekly (special education teacher)

- Cognitive (reading) – 30 minutes 5 times weekly (special education teacher)

10. **Student M** – During the 2015-2106 school year, Student M was in kindergarten. Student M’s IEP in place at the beginning of the school year was developed in June 2015. The IEP included annual goals in the areas of social, fine motor, communication, comprehension, cognitive-reading, adaptive, cognitive-writing, and cognitive-math. The June 2015 IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Communication – 30 minutes 2 times weekly
- Adaptive – 45 minutes 5 times weekly
- Social/Emotional – 45 minutes 5 times weekly
- Cognitive (Reading) – 90 minutes 5 times weekly
- Cognitive (Math) – 60 minutes 5 times weekly
- Cognitive (Writing) – 60 minutes 5 times weekly
- Occupational Therapy – 30 minutes 3 times monthly

DLC Classroom 2

11. At the beginning of the 2015-2016 school year, DLC classroom 2 included one special education teacher (special education teacher 2), two classroom paraeducators, and ten (10) students. In addition, one of the ten students had an assigned 1:1 student specific paraeducator. There were four adults in the classroom of ten students.

12. Five of the ten students in DLC classroom 2 included Student A, Student G, Student I, Student L, and Student N. These five Students are discussed in further detail below.

13. **Student A** – During the 2015-2016 school year, Student A was in second grade. Student A’s IEP in place at the beginning of the school year was developed in May 2015. The IEP included annual goals in the areas of reading, math, writing, social, adaptive, and communication. The May 2015 IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Communication – 30 minutes 6 times monthly
- Adaptive – 30 minutes 5 times weekly
- Math – 90 minutes 5 times weekly
- Reading – 90 minutes 5 times weekly
- Written Language – 30 minute 5 times weekly
- Social/Emotional – 60 minutes 5 times weekly
- Occupational Therapy – 20 minutes 3 times monthly (concurrent)

Student A’s IEP also provided for the following specially designed instruction in a *general education setting* provided by a paraeducator:

- Social/Emotional – 50 minutes 5 times weekly

14. **Student G** – During the 2015-2016 school year, Student G was in first grade. Student G’s IEP in place at the beginning of the school year was developed in June 2015. The IEP included annual goals in the areas of fine motor, gross motor,

communication, cognitive-reading, social/emotional, cognitive-writing, adaptive, and cognitive-math. The June 2015 IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Communication – 30 minutes 6 times monthly
- Cognitive Thinking/Awareness – 135 minutes 5 times weekly
- Adaptive – 45 minutes 5 times weekly
- Social/Emotional – 45 minutes 5 times weekly
- Fine Motor – 45 minutes 5 times weekly
- Gross Motor – 30 minutes 1 time weekly (concurrent)
- Physical Therapy – 30 minutes 1 time weekly
- Occupational Therapy – 30 minutes 3 times monthly

Student G's IEP also provided for the following specially designed instruction in a *general education setting* provided by a paraeducator:

- Adaptive – 30 minute 5 times weekly
- Social/Emotional – 30 minutes 5 times weekly

15. **Student I** – During the 2015-2016 school year, Student I was in second grade. Student I's IEP in place at the beginning of the school year was developed in December 2014 and amended in March 2015. The amended IEP included annual goals in the areas of reading, adaptive, math, social/emotional, and communication. The March 2015 IEP amendment provided for the following specially designed instruction in a *special education setting*:

- Social/Emotional – 30 minutes 3 times daily
- Adaptive – 35 minutes 5 times weekly
- Cognitive (reading) – 75 minutes 5 times weekly
- Cognitive (math) – 75 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly

The March 2015 IEP amendment also stated that the Student would spend 19.73 percent of his school week or approximately 70 minutes, of each school day in a general education setting.

16. **Student L** – During the 2015-2016 school year, Student L was in second grade. Student L's IEP in place at the beginning of the school year was developed in January 2015. The IEP included annual goals in the areas of adaptive, social/emotional, cognitive-math, cognitive-reading, cognitive-writing, communication, and fine motor. The January 2015 IEP provided for the following specially designed instruction in a *special education setting*:

- Cognitive (math) – 90 minutes 5 times weekly
- Cognitive (reading) – 90 minutes 5 times weekly
- Cognitive (writing) – 30 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly
- Adaptive – 25 minutes 5 times weekly
- Social/Emotional – 25 minutes 5 times weekly
- Fine Motor – 30 minutes 2 times monthly

Student L's IEP also provided for the following specially designed instruction in a *general education setting* provided by a special education teacher:

- Adaptive – 30 minutes 5 times weekly
- Social/Emotional – 50 minutes 5 times weekly

17. **Student N** – During the 2015-2016 school year, Student N was in third grade. Student N's IEP in place at the beginning of the school year was developed in March 2015. The IEP included annual goals in the areas of reading, writing, math, social, adaptive, and communication. The March 2015 IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Social/Emotional – 30 minutes 1 time daily
- Social/Emotional – 30 minutes 1 time daily
- Communication – 30 minutes 6 times monthly
- Math – 20 minutes 1 time daily
- Math – 40 minutes 1 time daily
- Reading – 20 minutes 1 time daily
- Reading – 40 minutes 1 time daily
- Writing – 20 minutes 1 time daily
- Writing – 40 minutes 1 time daily
- Occupational therapy – 20 minutes 3 times monthly

Student N's IEP also provided for the following specially designed instruction in a *general education setting* provided by a paraeducator:

- Adaptive – 30 minutes 1 time daily
- Social/Emotional – 30 minutes 1 time daily

18. On September 21, 2015, one student left DLC classroom 2, bringing the classroom total to nine (9) students, and four adults.

Timeline for this Complaint Begins October 4, 2015

19. In November 2015, the District conducted a reevaluation of Student G and the evaluation group determined that Student G was now eligible to receive special education and related services under the category of intellectual disability. On November 17, 2015, Student G's IEP team developed a new IEP based on the results of her reevaluation. The November 2015 IEP included annual goals in the areas of fine motor, gross motor, communication, cognitive-reading, cognitive-writing, adaptive, cognitive-math, and social/emotional. The November 2015 IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Communication – 30 minutes 6 times monthly
- Adaptive – 45 minutes 5 times weekly
- Social/Emotional – 45 minutes 5 times weekly
- Math – 30 minutes 2 times daily
- Reading – 30 minutes 2 times daily
- Writing – 30 minutes 2 times daily
- Physical Therapy – 30 minutes 1 time weekly
- Occupational Therapy – 30 minutes 3 times monthly

Student G's IEP also provided for the following specially designed instruction in a *general education setting* provided by a paraeducator:

- Social/Emotional – 30 minutes 5 times weekly

20. Based on the District's documentation, Student A was transferred to DLC classroom 1 on November 24, 2015. Also on November 24, 2015, two additional students began attending DLC classroom 1, bringing the classroom total to nine (9) students. Also on November 24, 2015, a new student began attending DLC classroom 2, bringing the classroom total to nine (9) students.

21. In December 2015, special education teacher 2 submitted a request for additional paraeducator support to the District student support department on behalf of Student A, because Student A was unable to complete tasks without direct adult support. According to the District's response to this complaint, the District director of student support conducted an observation of Student A, and based on the observation, concluded that Student A did not need student-specific paraeducator support. However, according to the Complainants' reply to this complaint, the District director of student support did not conduct an observation of Student A, and had only seen Student A in the DLC classrooms when the director visited the classrooms for other purposes.

22. On December 7, 2015, Student I's IEP team developed a new IEP. The December 2015 IEP included annual goals in the areas of reading, adaptive, math, social/emotional, and communication. Student I's IEP provided for the following specially designed instruction in a *special education setting*:

- Social/Emotional – 30 minutes 3 times daily
- Adaptive – 35 minutes 5 times weekly
- Cognitive (reading) – 75 minutes 5 times weekly
- Cognitive (math) – 75 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly

The December 2015 IEP also stated that the Student would spend 19.73 percent of his school week, or approximately 70 minutes of each school day, in a general education setting.

23. According to the Complainants' reply, the student in DLC classroom 2 who had an assigned 1:1 paraeducator began to have increased needs in January 2016, and required two paraeducators to be with him at all times. This student is not one of the students identified in this complaint. In response to the increased need, the District gave permission for a substitute paraeducator to assist in DLC classroom 2, but the substitute position was only intermittently filled.

24. On January 22, 2016, Student L's IEP team developed a new IEP for Student L. The January 2016 IEP included annual goals in the areas of communication, writing, fine motor, reading, math, adaptive, and social/emotional. Student L's IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Cognitive (math) – 90 minutes 5 times weekly
- Cognitive (reading) – 90 minutes 5 times weekly
- Cognitive (writing) – 30 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly
- Adaptive – 60 minutes 5 times weekly
- Social/Emotional – 30 minutes 5 times weekly
- Fine Motor – 30 minutes 2 times monthly

Student L's IEP also provided for the following specially designed instruction in a *general education setting* provided by a special education teacher:

- Social/Emotional – 50 minutes 5 times weekly

25. In February 2016, the District conducted a reevaluation of Student B to determine if she would qualify for a new placement in the District's life skills program located at another elementary school (elementary school 2). On February 25, 2016, Student B's evaluation group met to review Student B's evaluation report. The evaluation report recommended that the Student attend a life skills program with 1:1 paraeducator support due to safety concerns.

Also on February 25, 2016, Student B's IEP team met to develop a new IEP for Student B. The February 2016 IEP included annual goals in the areas of communication, math, reading, writing, adaptive, and social/emotional. The IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Adaptive – 35 minutes 5 times weekly
- Social/Emotional – 90 minutes 5 times weekly
- Math – 70 minutes 5 times weekly
- Reading – 70 minutes 5 times weekly
- Writing – 70 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly
- Occupational Therapy – 20 minutes 3 times monthly
- Student Specific Paraeducator Support – 352 minutes 5 times weekly (concurrently)

According to the District's response to this complaint, the IEP team agreed that Student B would transfer to the life skills program at elementary school 2 following the District's spring break on April 11, 2016. However, due to "concerns" which "were expressed about the capacity within the life skills program to accept [Student B] into the life skills program following spring break" Student B remained in DLC classroom 1. According to the Complainants, Student B's IEP team was told that the life skills classroom at elementary school 2 was "full" and that Student B would be placed on a waiting list to begin the life skills program in the fall of 2016.

The District's documentation includes a prior written notice, dated February 23, 2016¹, which stated that the District was proposing to write a new IEP, change Student B's least restrictive environment, and provide 1:1 student-specific support for Student B. The prior written notice stated that the reason the District was

¹ It is assumed this date is in error and should reflect a date of February 25, 2016 or later.

proposing the actions was that Student A's academic, adaptive, and social/emotional learning needs required a change in placement to the life skills program at elementary school 2, and continued 1:1 student-specific support. The notice further stated that Student B "would benefit most from a life skills program to address her specific academic and functional adaptive learning needs."

26. Also in February 2016, Student N's IEP team developed a new IEP for Student N. The February 2016 IEP included annual goals in the areas of reading, writing, math, social, adaptive, and communication. The IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Adaptive – 60 minutes 1 time daily
- Social/Emotional – 30 minutes 1 time daily
- Communication – 30 minutes 6 times monthly
- Math – 60 minutes 1 time daily
- Reading – 60 minutes 1 time daily
- Writing – 60 minutes 1 time daily
- Occupational therapy – 20 minutes 3 times monthly

Student N's IEP also provided for the following specially designed instruction in a *general education setting* provided by a special education teacher:

- Social/Emotional – 30 minutes 1 time daily

27. Also in February 2016, the District conducted a reevaluation of Student I, and the evaluation group determined that he continued to be eligible for special education under the category of autism. On March 19, 2016, Student I's IEP team amended his December 2015 IEP to include additional information about the Student's use of assistive technology and reflect the services recommended in the February 2016 evaluation report. The Student's amended March 2016 IEP provided for the following services in a *special education setting*:

- Adaptive – 30 minutes 3 times daily
- Written Language – 35 minutes 5 times weekly
- Reading – 75 minutes 5 times weekly
- Math – 75 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly

The amended IEP also stated that the Student would spend 19.73 percent of his school week, or approximately 70 minutes of each school day, in a general education setting.

28. In March 2016, the District conducted an assistive technology evaluation of Student A, and the evaluation group determined that the Student qualified to receive assistive technology in order to help him communicate more effectively. Student A's IEP team then amended his May 2015 IEP to reflect the findings of the evaluation report and stated that the Student should have access to an iPad, and engage in training with an augmentative and alternative communication (AAC) program in order to use a communication device as his primary mode of communication.

29. On March 31, 2016, Student L's IEP team amended her January 2016 IEP to include ESY services.

30. On May 3, 2016, Student D's IEP team developed a new IEP for Student D. The May 2016 IEP included annual goals in the areas of social/emotional, communication, reading, writing, math, and adaptive. The IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Communication – 30 minutes 6 times monthly
- Social/Emotional – 20 minutes 5 times weekly
- Reading – 80 minutes 5 times weekly
- Math – 80 minutes 5 times weekly
- Writing – 60 minutes 5 times weekly
- Occupational Therapy – 30 minutes 3 times monthly

Student D's IEP also provided for the following specially designed instruction in a *general education setting* provided by either a special education teacher or paraeducator as indicated:

- Social/Emotional – 45 minutes 7 times weekly (paraeducator)
- Adaptive – 30 minutes 5 times weekly (special education teacher)

31. On May 9, 2016, Student A's IEP team developed a new IEP for the Student. The May 2016 IEP included annual goals in the areas of reading, writing, math, social, adaptive, and communication. The IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Communication – 30 minutes 6 times monthly
- Adaptive – 30 minutes 5 times weekly
- Math – 90 minutes 5 times weekly
- Reading – 90 minutes 5 times weekly
- Written Language – 30 minute 5 times weekly
- Social/Emotional – 60 minutes 5 times weekly
- Occupational Therapy – 20 minutes 3 times monthly (concurrently)

Student A's May 2016 IEP also provided for the following specially designed instruction in a *general education setting* provided by a paraeducator:

- Social/Emotional – 50 minutes 5 times weekly

32. On May 20, 2016, Student F's IEP team developed a new IEP. The May 2016 IEP included annual goals in the areas of communication, cognitive-reading, social/emotional, cognitive-writing, cognitive-math, and adaptive. The IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Adaptive – 60minutes 5 times weekly
- Cognitive (math) – 60 minutes 5 times weekly
- Cognitive (reading) – 60 minute 5 times weekly
- Cognitive (writing) – 60 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly
- Social/Emotional – 60 minutes 5 times weekly

- Occupational Therapy – 30 minutes 3 times monthly

Student F's IEP also provided for the following specially designed instruction in a *general education setting* provided by a paraeducator:

- Social/Emotional – 30 minutes 5 times weekly
- Adaptive – 30 minutes 5 times weekly

33. On May 27, 2016, Student's M's IEP team developed a new IEP. The May 2016 IEP included annual goals in the areas of social, communication, cognitive-reading, adaptive, cognitive-writing, and cognitive-math. The IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Communication – 30 minutes 6 times monthly
- Adaptive – 30 minutes 5 times weekly
- Social/Emotional – 60 minutes 5 times weekly
- Cognitive (Reading) – 60 minutes 5 times weekly
- Cognitive (Math) – 60 minutes 5 times weekly
- Cognitive (Writing) – 60 minutes 5 times weekly
- Occupational Therapy – 20 minutes 3 times monthly

Student M's May 2016 IEP also provided for the following specially designed instruction in a *general education setting* provided by a special education teacher:

- Social/Emotional – 30 minutes 5 times weekly
- Adaptive – 30 minutes 5 times weekly

34. On June 2, 2016, Student E's IEP team developed a new IEP. The June 2016 IEP included annual goals in the areas of gross motor, communication, fine motor, cognitive-reading, cognitive-math, and social/emotional. The IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Communication – 30 minutes 6 times monthly
- Social/Emotional – 30 minutes 5 times weekly
- Cognitive Thinking/Awareness – 175 minutes 5 times weekly
- Gross Motor – 30 minutes 1 time weekly
- Fine Motor – 15 minutes 5 times weekly
- Physical Therapy – 20 minutes 1 time weekly
- Occupational Therapy – 20 minutes 3 times monthly

Student E's IEP also provided for the following specially designed instruction in a *general education setting* provided by a special education teacher:

- Social/Emotional – 60 minutes 5 times weekly

35. On June 10, 2016, special education teacher 1 emailed the District director of student support, stating that she was at her "wits end" and a program paraeducator was threatening to quit if they did not get additional help in DLC classroom 1. Special education teacher 1 asked what she needed to do to start the process of getting more paraeducator support. The teacher also asked if she would only be assigned two classroom paraeducators for the 2016-2017 school year, and if she would receive paraeducator support for integrating the students into general

education settings. The teacher stated that one of her students was requiring 1:1 paraeducator support almost continuously throughout the day, and the student's behaviors were escalating. The teacher did not feel that she was "going to get anywhere" without help managing the situation. In response, the director of student support stated that he was forwarding the teacher's concerns about paraeducator support to the executive director of student support so they could talk about it on June 13, 2016.

36. In June 2016, the District conducted a reevaluation of Student L. On June 14, 2016, Student L's evaluation group determined the Student was now eligible for special education services under the category of intellectual disability. The evaluation report recommend Student L receive specially designed instruction in the areas of communication, reading, math, written language, and social/emotional, and also receive occupational therapy as a related service. The District did not develop a new IEP for Student L based on the results of her June 2016 evaluation report.
37. The District's 2015-2016 school year ended on June 17, 2016.

Summer 2016

38. On July 14, 2016, special education teacher 2 emailed the District executive director of student support and the director of student support, stating that over the 2015-2016 school year, she had spoken with the director many times about the need for a dedicated classroom paraeducator to assist in general education settings. Special education teacher 2 stated that at one point, she had been told that the DLC program would receive a paraeducator for the end of the 2015-2016 school year and the upcoming 2016-2017 school year, but this had not yet occurred. The teacher stated that she felt like she was "stuck between a rock and a hard place in providing appropriate services" for her students, as she had to choose between providing integration support in general education settings and academic instruction in DLC classroom 2. The teacher stated that both of these service delivery strategies were invaluable to the success of the students, and that when she chose inclusion supports, students in DLC classroom 2 had reduced paraeducator and teacher time for specially designed instruction. The teacher further stated that many times during the 2015-2016 school year, she was alone in DCL classroom 2 with eight students at a time in order to provide the required integration support. The teacher was also unable to take a planning period during the school day because of providing inclusion support for students. The teacher stated that she was okay with her decision to give up her planning period, but could not continue to do this during the upcoming school year as she needed time for evaluations and writing IEPs, as well as preparing class materials. Additionally, special education teacher 2 stated that she knew she could request 1:1 paraeducator support for all of the students that integrated into general education settings, but did not feel that approach was the best solution in the long term, as she wanted the students to learn to be more independent, and for some of them to be able to transition to less restrictive special education settings, which required a lot of paraeducator support. The teacher also stated that she knew that budget played a large role in providing paraeducator

support, and if requesting a 1:1 paraeducator was the best way to secure funding, then she could do that. The teacher stated that she was looking for any support she could be provided, and wanted her students to be successful and receive the supports they needed. In response, the executive director of student support stated that they would review the District's budget capacity. The executive director also stated that the District currently had a large number of 1:1 assigned paraeducators which did not "lend itself very well" to inclusion in the general education setting. The executive director stated that other special education teachers had made similar requests, and that she would get back to special education teacher 2.

39. On July 28, 2016, special education teacher 1 emailed the District executive director of student support and the director of student support, stating that she wanted to continue to address the importance of moving forward with a plan for how to best serve the students in self-contained classrooms. Special education teacher 1 stated that she was well aware of the importance of providing students with inclusion opportunities in general education settings as much as possible, but was struggling with finding a way to provide such opportunities without impacting the ratio balance needed to provide appropriate supervision to students in the classroom. The teacher stated that she felt that she was forced to choose between providing the integration opportunities her students deserved while at the same time, maintaining a functioning academic program. The teacher stated she often had to forgo academic work in the classroom due to not having enough paraeducator support to provide direct instruction when the classroom paraeducators were out providing support for students in general education settings. The teacher also stated that she currently did not have the opportunity to take a planning period or lunch period, as she often could not leave the classroom during the school day due to the students' needs. The teacher stated that this was not sustainable, but did not currently see another way to manage supervision of the students during the paraeducators' scheduled breaks. The teacher expressed that she would "burn out" if she continued to work in this matter, and wanted to be able to have time to prepare materials, complete evaluations, and record assessment data during the work day. Additionally, the teacher stated that she had several students who had the potential to make tremendous growth in an integrated setting and move toward greater independence, but at this time, lacked the paraeducator support to be successful at moving toward those goals. Special education teacher 1 stated that she knew budget was the main factor in making decisions about how to staff special education programs, and understood that it was difficult to secure funding to provide for staffing ratios that would make for an ideal learning situation, but felt that if additional support was not provided, it would negatively impact her students, and decrease their potential to transition into more inclusive settings. The teacher then asked if DLC classroom 1 would be assigned a paraeducator to support inclusion, or if she should begin the process of requesting 1:1 paraeducator support for specific students that required support in general education settings. In response, the executive director of student support stated that she would speak with the principal at elementary school 1 and also look into what resources and options were available.

40. On August 13, 2016, special education teacher 2 emailed the District executive director of student support, stating that she knew that she had already emailed her about paraeducator support, but she now had many parents who were anxiously waiting to find out about integration support. Special education teacher 2 stated that she had two students who really needed to be in a special education resource environment, but could not successfully transition without paraeducator support. She also stated that other students should have access to their non-disabled peers, but were unable to do so because of a shortage of paraeducator support. Special education teacher 2 then stated that she had discussed the topic with special education teacher 1, and they had also discussed the topic at length with the parents of their students. Both teachers wanted to be able to begin planning for the 2016-2017 school year, and communicating with parents and general education teachers about inclusion in general education settings. Special education teacher 2 then again expressed that parents were concerned about inclusion opportunities. The teacher asked that the executive director provide both she and special education teacher 1 with a tentative timeline for a decision about additional classroom paraeducator support and/or let them know if they should begin writing up requests for 1:1 paraeducator support for specific students. Special education teacher 1 indicated that three students in DLC classroom 2 would need requests, as well as three students in DLC classroom 1.
41. In response, the executive director of student support stated that she and director of student support were reviewing the issue with the school principal, but that they had been more focused on filling current teaching positions. The executive director stated that she “truly” understood the need for support and the District was trying to figure out how to pay for it. The executive director then provided an example of how another school team had documented the need for additional paraeducator support by developing a schedule that showed when additional staff coverage was needed. That team was able to identify times that could be covered by other building paraeducators. The executive director stated that she looked forward to working with special education teacher 2 on the issue and was “excited” to focus on inclusion and looking for creative ways to make that happen. The executive director then provided days she was available to meet.
42. On August 24, 2016, special education teacher 2 emailed the District executive director of student support and the director of student support and attached a schedule for the upcoming year. The teacher stated that she had three students who required “major” support, two for integration purposes, and one for severe behaviors. The teacher wanted to begin the school year with enough staff in place for the students to be successful. Special education teacher 2 then provided additional information about the three students who required “major” support.
43. In response to special education teacher 2’s email, the director of student support emailed the executive director of student support, stating that after having spoken with special education teacher 2 and special education teacher 1, he felt strongly that they needed to meet with them to discuss paraeducator support in the DLC programs. The director proposed a meeting on August 31, 2016. The executive

director then agreed to the meeting, but stated that she would be surprised if the District had the capacity to pay for additional paraeducator support, and asked if the District would also add paraeducator support at other elementary schools.

44. According to the District's response to this complaint, prior to the beginning of the 2016-2017 school year, special education teacher 1 and special education teacher 2 agreed that students in DLC classroom 1 and DLC classroom 2 whose IEPs provided for specially designed instruction in the general education setting, would not receive that instruction during the upcoming 2016-2017 school year.

2016-2017 School Year

45. The District's 2016-2107 school year began on September 7, 2016, with students in kindergarten beginning on September 12, 2016.
46. During the 2016-2017 school year, Student B began attending elementary school 2.

DLC Classroom 1

47. At the beginning of the 2016-2017 school year, DLC classroom 1 included special education teacher 1, two classroom paraeducators, and nine students. In addition, two of the nine students had an assigned 1:1 student specific paraeducator.² There were five adults assigned to the nine students.
48. Eight of the nine students in DCL classroom 1 included Student A, Student C, Student D, Student E, Student H, Student J, Student K, and Student M. These Students are discussed in further detail below.
49. **Student A** – During the 2016-2017 school year, Student A was in third grade. Student A's May 2016 IEP was in place at the beginning of the school year (see finding of fact no. 31) According to the Complainants, special education teacher 1 submitted a request for additional paraeducator support for Student A in September 2016. According to the District's response to this complaint, the District's student support department has no record of special education teacher 1's September 2016 request. However, as part of the District's investigation of the Complainants' allegations, special education teacher 1 provided the District with a copy of a request. Also according to the District's response to this complaint, the District plans to undertake a review of Student A's program, including use and access of his ACC device.
50. **Student C** – During the 2016-2017 school year, Student C was in kindergarten. Student C is discussed below:

² According to the Complainants' reply to the District's response, although two of the students (Student C and another student not part to this complaint) had assigned 1:1 paraeducators, the paraeducator assigned to Student C was not hired until October 19, 2016. Prior to that time, Student C was assigned a substitute paraeducator, but a substitute was only present approximately 2-3 days per school week. The other student specific paraeducator did not begin work until November 8, 2016.

- On September 6, 2016, Student C transferred into the District from another Washington school district, and was enrolled at elementary school 1. At that time, the Student was eligible for special education, but did not have a current IEP in place, and required a reevaluation by October 3, 2016.³
- On September 7, 2016, special education certificated staff at elementary school 1 reviewed Student C's records, and discussed that at that time, it was unclear if Student C should be placed in DLC classroom 1 or in a special education life skills program at elementary school 2, because his current transfer evaluation report was three years old. Special education teacher 1 recommended that Student C be placed in DLC classroom 1 to start, and if needed, a decision could be made to move him to the life skills program at elementary school 2.
- On September 12, 2016, the District's kindergarten school year began, and Student C began attending DLC classroom 1.
- Also on September 12, 2016, the school psychologist at elementary school 1 emailed the District director of student support regarding Student C's placement. The psychologist stated that now that special education teacher 1 had had an opportunity to work with Student C, the teacher believed that the life skills program at elementary school 2 would be most appropriate. The psychologist stated that she agreed with special education teacher 1. The psychologist also stated that although staff were just about to get started on conducting a reevaluation of Student C, staff wanted to have the Student moved to elementary school 2 so he could participate with his peers in settling into the life skills classroom. The psychologist asked that the director of student support advise her on next steps.
- Based on the District's documentation, a transfer review meeting occurred on September 13, 2016 to review Student C's IEP and evaluation report from his prior school district. However, it is unclear from the documentation if Student C's parents attended the meeting. While the District's documentation includes a September 8 meeting notice, indicating the parents were invited to the transfer review meeting, the District's meeting notes do not show that the parents attended the meeting, and the District's transfer review form is not signed by the parents. Instead, the transfer review form states that the parents were "informed in person" and a copy of the transfer review form was mailed home.
- The District's meeting notes from the September 13 transfer review meeting show that staff members at elementary school 1 discussed that Student C

³ According to the District's response to this complaint, Student C was initially determined eligible for special education in October 2013 by another Washington school district when Student C was in preschool. In September 2014, that school district developed an IEP for Student C, but due to medical issues, Student C did not attend school during the 2014-2015 and 2015-2016 school years.

needed a lot of staff support due in part to his pica⁴, and special education teacher 1 explained the specific safety issues associated with the pica. The staff also discussed that due to Student's C health issues, he had a compromised immune system, that his speech level was just emerging, and that his functioning levels appeared to be well below that of other students in the DLC program. Staff then discussed that the life skills program at elementary school 2 would be "most suitable" for Student C, but that staff at elementary school 2 had indicated that the life skills program was "full". Also at the meeting, the staff members completed a District transfer review form which stated that the District would continue the placement and services indicated in Student C's September 2014 transfer IEP. The District's documentation also includes a prior written notice, dated September 12, 2016⁵, stating that the District would continue the special education services as described in Student C's expired IEP and current evaluation. The notice also stated that a new evaluation would be completed by the District on or before October 3, 2016.

- Also on September 13, 2016, special education teacher 1 emailed the District executive director of student support and the director of student support, stating that she had urgent concerns related to Student C's safety in DLC classroom 1. Special education teacher 1 stated that Student C was putting non-food items in his mouth at a consistent rate throughout the day, and that she was keeping a detailed list of items in the data she was collecting. The teacher stated that some of the non-food items were avoidable, such as trash, but other things such as sucking on tables and chairs were more difficult to avoid. The teacher stated without an adult "glued" to Student C's side all day, there was no way to keep him from putting items in his mouth. The teacher also stated that this was a "huge safety concern" considering Student C's compromised immune system, as the Student was not even supposed to eat food touched by another person. The teacher then expressed further examples of safety concerns and stated that Student C was not able to access the academic activities in the classroom, even at the lowest level. The teacher stated that Student C's parents were involved and were also concerned about his safety. The teacher further stated that at the very least, she was in need of immediate paraeducator support until the District figured out what to do long term for Student C. Additionally, the teacher stated that she understood the life skills program at elementary school 2 was full, but that Student C had to come first, and his needs needed to be met. The teacher asked that the executive director and director inform her what course of action should be taken at that time, and what the next steps should be. The teacher noted that the parents had signed consent for Student C's reevaluation that same day.

⁴ A pica is an eating disorder typically defined as the persistent ingestion of nonnutritive substances for at least 1 month at an age for which this behavior is developmentally inappropriate. <http://emedicine.medscape.com/article/914765-overview>.

⁵ It is assumed this date is in error and should reflect a date of September 13, 2016 or later.

- In response, the District executive director of student support stated that the teacher could request a substitute paraeducator to cover the need, and that the school secretary or principal could put in the request. The executive director also stated that she would discuss the needs of elementary school 1 with the director of student support, and the transfer process to elementary school 2. Additionally, the executive director also stated that there were building resources that the school principal and team could recommend.
- On September 28, 2016, Student C's evaluation group/IEP team met to review the results of the District's reevaluation. The parents participated by phone. The evaluation group/IEP team determined that Student C continued to be eligible for special education services under the category of autism. The IEP team then developed an IEP for Student C. The September 2016 IEP included annual goals in cognitive-reading, cognitive-math, cognitive-writing, adaptive, social/emotional, and communication. The IEP provided for the following specially designed instruction and related services in a *special education setting*:
 - Social/Emotional – 90 minutes 5 times weekly
 - Cognitive (math) – 30 minutes 5 times weekly
 - Cognitive (reading) – 30 minutes 5 times weekly
 - Cognitive (writing) – 20 minutes 5 times weekly
 - Adaptive – 120 minutes 5 times weekly
 - Communication – 10 minute 5 times weekly
 - Occupational Therapy – 15 minutes 2 times monthly
 - Physical Therapy – 20 minutes 3 times monthly
 - Student specific paraeducator support – 305 minutes 5 times weekly (concurrently)

Student C's IEP also provided for the following related service in a *general education setting*:

- Student specific paraeducator support – 47 minutes 5 times weekly
- In the process of developing Student C' IEP, the IEP team discussed moving the Student to a special education life skills program located at elementary school 2, and the school psychologist and special education teacher 2 expressed that the life skills program was the most appropriate placement for Student C. However, according to the District's response to this complaint, the school psychologist and special education teacher 1 "were dissuaded from pressing for placement of [Student C] in the life skills program due to capacity concerns expressed by [elementary school 2] staff."
- Based on the District's September 28, 2016 prior written notice, the IEP team agreed that the Student should remain in DLC classroom 1 because he had so far, had a positive experience in DLC classroom 1. The prior written notice does not reflect that school psychologist and special education teacher 1 believed that the life skills program would be more appropriate for Student C. Instead, the prior written notice states "we considered placement of this student in either the DLC or the life skills settings. Because this determination does not impact his

services or his LRE, we considered placing him in life skills, and have determined that he should remain in the DLC classroom with student specific paraeducator support.” The notice also stated that the placement in DLC classroom 1 “may be reconsidered at another time based on other factors such as progress towards goals, level of support needed, and other factors.”

51. **Student D** – During the 2016-2017 school year, Student D was in second grade. Student D’s May 2016 IEP was in place at the beginning of the school year (see finding of fact no. 30)
52. **Student E** – During the 2016-2017 school year, Student E was in first grade. Student E’s June 2016 IEP was in place at the beginning of the school year (see finding of fact no. 34)
53. **Student H** – During the 2016-2017 school year, Student H was in first grade. At the beginning of the 2016-2016 school year, Student H transferred into the District from another Washington school district and began attending DLC classroom 1. At that time, the Student had an IEP in place which had been developed in May 2015. On September 12, 2016, the District issued a prior written notice, proposing to continue the services stated in Student H’s May 2016 IEP from the other Washington school district.

Student H’s transfer May 2015 IEP included annual goals in the areas of speech, adaptive, cognitive, reading, cognitive-pre-reading, cognitive-writing, cognitive-pre-math, fine motor, and gross motor. The IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Academic – 100 minutes 5 times weekly
- Adaptive – 50 minutes 5 times weekly
- Personal/Social – 50 minutes 5 times weekly
- Physical Therapy – 20 minutes 3 times monthly
- Occupational Therapy – 30 minutes 3 times monthly
- Speech and Language Therapy – 30 minutes 6 times monthly

Student H’s IEP also provided for the following specially designed instruction in a *general education setting* provided by a special education teacher/paraeducator:

- Personal/Social – 20 minutes 5 times weekly
- Personal/Social – 20 minutes 5 times weekly

54. **Student J** – During the 2016-2017 school year, Student J was in kindergarten. Student J’s IEP in place at the beginning of the school year was developed in May 2016 when the Student attended a District preschool program. The May 2016 IEP included annual goals in communication, reading, math, writing, fine motor, social, and adaptive. The IEP provided for the following specially designed instruction and related services in a *special education setting*:
- Adaptive – 40 minutes 5 times weekly
 - Social/Emotional – 80 minutes 5 times weekly
 - Cognitive (reading) – 60 minutes 5 times weekly
 - Cognitive (writing) – 60 minutes 5 times weekly

- Cognitive (math) – 60 minutes 5 times weekly
- Occupational Therapy – 20 minutes 3 times monthly
- Communication – 30 minutes 6 times monthly

Student J's IEP also provided for the following specially designed instruction in a *general education setting* provided by a special education teacher:

- Social/Emotional – 30 minutes 5 times weekly

55. **Student K** – During the 2016-2017 school year, Student K was in kindergarten. Student K's IEP in place at the beginning of the school year was developed in June 2016 when the Student attended a District preschool program. The June 2016 IEP included annual goals in communication, adaptive, social, cognitive-reading, cognitive-writing, and cognitive-math. Student K's IEP provided for the following specially designed instruction and related services in a *special education setting*:

- Adaptive – 30 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly
- Social/Emotional – 60 minutes 5 times weekly
- Cognitive Thinking/Awareness – 180 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly (related service)
- Occupational Therapy – 30 minutes 1 time weekly

Student K's IEP also provided for the following specially designed instruction in a *general education setting* provided by a special education teacher:

- Social/Emotional – 30 minutes 5 times weekly

56. **Student M** – During the 2016-2017 school year, Student M was in first grade. Student M's May 2016 IEP was in place at the beginning of the school year (see finding of fact no. 33)

DLC Classroom 2

57. At the beginning of the 2016-2017 school year, DLC classroom 2 included special education teacher 2, two classroom paraeducators, and eight (8) students. There were three adults and eight students assigned to the classroom.

58. Five of the eight students in DCL classroom 2 included Student F, Student G, Student I, Student L, and Student N. These Students are discussed in further detail below.

59. **Student F** – During the 2016-2017 school year, Student F was in second grade. Student F's May 2016 IEP was in place at the beginning of the school year (see finding of fact no. 32)

60. **Student G** – During the 2016-2017 school year, Student G was in second grade. Student G's November 2015 IEP was in place at the beginning of the school year (see finding of fact no. 19)

61. **Student I** – During the 2016-2017 school year, Student I was in third grade. Student I's December 2015 IEP, which was amended in March 2016, was in place at the beginning of the school year (see finding of fact no. 27)
62. **Student L** – During the 2016-2017 school year, Student L was in third grade. Student L's January 2016 IEP, which was amended in March 2016, was in place at the beginning of the school year (see finding of facts no. 24 and no. 29)
63. **Student N** – During the 2016-2017 school year, Student N was in fourth grade. Student N's February 2016 IEP was in place at the beginning of the school year (see finding of fact no. 26)
64. On October 3, 2016, the Complainants filed this citizen complaint.

CONCLUSIONS

Issue 1: Requests for Paraeducator Support for Student A – The District failed to follow procedures for responding to the Complainants' request for paraeducator support for Student A. An IEP team, not a school district, is responsible for determining if a student requires additional services. When any member of a student's IEP team requests that a student receive additional services, such as 1:1 paraeducator support, the IEP team should immediately convene to discuss the request, and determine whether the IEP team has enough information to decide if the student requires such support. If the IEP team determines more information is needed, the district must document the decision in a prior written notice, collect additional information in a timely manner, and then hold another IEP meeting to decide if the 1:1 paraeducator support is needed. Here, the District failed to convene an IEP team meeting in response to special education teacher 2's December 2015 request for 1:1 paraeducator support, and instead, reportedly observed Student A without informing his parents, and then unilaterally determined that Student A did not require the additional 1:1 support. While the District can develop procedures for collecting information regarding a student's need for paraeducator support, the District's procedures cannot circumvent the IEP team process. The District will hold an IEP meeting, which includes all members of Student A's IEP team, to discuss whether Student A requires 1:1 paraeducator support. The District will clearly document any decisions made at the IEP meeting in a prior written notice, which will be provided to the parents and be reviewed with the other members of Student A's IEP team.

Issue 2: Procedures for Determining Student B's Placement during the 2015-2016 School Year – The District admitted in its response to this complaint that it failed to follow procedures for determining Student B's placement during the 2015-2016 school year and proposed providing training for DLC program and life skills program staff regarding the procedures for making decisions about educational placement. Based on the facts in this complaint, the staff at elementary school 1 did follow procedures for determining Student B's educational placement. The staff agreed that the DLC classroom might not be Student B's appropriate placement, conducted a required reevaluation of Student B before making a significant change to her placement,

developed an IEP based on her reevaluation results, and then documented the IEP team's decision to move Student B to a life skills program in a prior written notice. The failure to move Student B to the life skills program in a timely manner, was not due to a failure of staff to follow procedures, but instead appears to be associated with the District's administrative failure to facilitate Student B's move to her new school in a timely manner. While districts can adopt service delivery strategies and systems, the adoption of such strategies and systems cannot compromise the implementation of a properly formulated IEP.

Issue 3: Procedures for Determining Student C's Placement – When determining a student's placement, the selection of an appropriate placement for a student should be based upon the student's IEP, least restrictive environment, placement option that provides a reasonably high probability of assisting the student to attain annual IEP goals, and a consideration of any potential harmful effect on the student, or on the quality of services needed. The District's documentation indicates that Student C's placement determination was not based on the factors listed above, but instead upon the presumption that the life skills program at elementary school 2 was "full". The District admits in its response to this complaint, that program capacity should not have been used as a factor in determining Student C's placement. It is also noted that the District staff do not appear to have considered the District's description of characteristics of students best suited for DLC programs, and characteristics of students best suited for life skills program in determining Student C's placement.⁶ The District will hold an IEP team meeting to review Student C's current placement in DLC classroom 1 and determine if DLC classroom 1 is Student C's appropriate placement. The District will document that the IEP team has considered all the requirements stated in WAC 392-172A-02060.

Issue 4: IEP Implementation Students D-N – The Complainants alleged that the District failed to implement the IEPs of Students D-H and Student J-N in regard to the provision of specially designed instruction in a general education setting. The Complainants also alleged that Student I did not have access to his non-disabled peers as stated in his IEP.

2015-2016 School Year – In the District's response to this complaint, the District states that in investigating the Complainants' allegation, the Complainants (special education teacher 1 and special education teacher 2) clarified that Students D, E, F, G, and M were provided services in general education settings consistent with the students' IEPs during the 2015-2016 school year. The Complainants did not refute the District's statements in their reply to the District's response. The District has substantiated that Students D, E, F, G, and M received services in the general education setting consistent with their IEPs during the 2015-2016 school year. Students I, L, and N are discussed below:

⁶ Included in the District's response to this complaint are District procedures, which outline characteristics of students who are best suited for placement in DLC programs and characteristics of students who are best suited for placement in life skills programs. According to the Complainants, prior to receiving the District's response, the Complainants had not received a copy of the District's procedures, and have not received training on these topics during the course of their employment with the District.

- **Student I** – During the 2015-2016 school year, Student I had IEPs in place which stated that the Student would spend 19.73 percent of his school week or approximately 70 minutes, of each school day in a general education setting. Based on the information provided by special education 2 as part of the District's response, Student I did not have access to the general education setting as stated in his IEP due to a lack of paraeducator support. This is a failure to implement Student I's IEP.
- **Student L** – In January 2016, Student L's IEP team developed a new IEP, which provided for the following specially designed instruction in a general education setting:
 - Social/Emotional – 50 minutes 5 times weekly

According to information provided by special education teacher 2 in the District's response to this complaint, Student L did not receive specially designed instruction in a general education setting consistent with her IEP from January-June 2016. From January 22, 2016, when Student L's IEP was developed, until June 17, 2016, when the District's 2015-2016 school year ended, there were 98 school days. During those 98 school days, the Student should have received 4,900 minutes (approximately 81.5 hours) of specially designed instruction in the area of social/emotional in the general education setting. This is a material failure to implement Student L's IEP.

- **Student N** - In February 2016, Student N's IEP team developed a new IEP, which provided for the following specially designed instruction in a general education setting:
 - Social/Emotional – 30 minutes 1 time daily

According to information provided by special education teacher 2 in the District's response to this complaint, Student N did not receive specially designed instruction in a general education setting consistent with his IEP from April 11-June 17, 2016. From April 11, 2016, when Student N's IEP was developed, until June 17, 2016, when the District's 2015-2016 school year ended, there were 49 school days. During those 49 school days, the Student should have received 1,470 minutes (24.5 hours) of specially designed instruction in the area of social/emotional in the general education setting. This is a material failure to implement Student N's IEP.

2016-2017 School Year – The District admitted in its response to this complaint that Students D-H and Students J-N did not receive specially designed instruction in the general education setting during the 2016-2017 school year, and that Student I did not have access to his non-disabled peers as stated in his IEP during the 2016-2017 school year. The District asserts that the Complainants unilaterally determined that students in DLC classroom 1 and DLC classroom 2 would not receive services in the general education setting. However, according to the Complainants' reply to the District's response, the Complainants did not unilaterally determine to cease providing services for all students in general education settings. Rather, the Complainants determined that

some students would receive “minimal general education time” as paraeducator support permitted. Students D – N are discussed further below:

- **Student D** – Student D’s IEP in place at the beginning of the 2016-2017 school year was developed in May 2016 and provided for the following specially designed instruction in a general education setting:
 - Social/Emotional – 45 minutes 7 times weekly
 - Adaptive – 30 minutes 5 times weekly

From September 9, 2016, when the District’s 2016-2017 school year began, until the Complainants filed this complaint on October 3, 2016, there were 19 school days. During those 19 school days, the Student should have received 1,197 minutes (approximately 20 hours) of specially designed instruction in the area of social/emotional, and 570 minutes (9.5 hours) of specially designed instruction in the area of adaptive skills in a general education setting. Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, these services were not provided.

- **Student E** – Student E’s IEP in place at the beginning of the 2016-2017 school year was developed in June 2016 and provided for the following specially designed instruction in a general education setting:
 - Social/Emotional – 60 minutes 5 times weekly

From September 9, 2016, when the District’s 2016-2017 school year began, until the Complainants filed this complaint on October 3, 2016, there were 19 school days. During those 19 school days, the Student should have received 1,140 minutes (19 hours) of specially designed instruction in the area of social/emotional in a general education setting. Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, these services were not provided. However, according to the Complainants, Student E is currently integrated into a general education reading group, but does not receive paraeducator support as specified in the IEP.

It is also noted that Student E’s June 2016 IEP fails to specify the amount of services Student E will receive in the areas of cognitive-reading and cognitive-math, but instead, the IEP generically states that Student E will receive services in the area of cognitive-thinking/awareness. Student E’s IEP does not meet IDEA and state requirements. The District will conduct a reevaluation of Student E to determine the academic services and other services the Student requires, and then hold an IEP meeting to develop a new IEP for Student E which meets the requirements stated in WAC 392-172A-03090.

- **Student F** – Student F’s IEP in place at the beginning of the 2016-2107 school year was developed in May 2016 and provided for the following specially designed instruction in a general education setting:
 - Social/Emotional – 30 minutes 5 times weekly

- Adaptive – 30 minutes 5 times weekly

From September 9, 2016, when the District's 2016-2017 school year began, until the Complainants filed this complaint on October 3, 2016, there were 19 school days. During those 19 school days, the Student should have received 570 minutes (9.5 hours) of specially designed instruction in the area of social/emotional, and 570 minutes (9.5 hours) of specially designed instruction in the area of adaptive skills in a general education setting. Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, these services were not provided. However, according to the Complainants' reply, Student F has currently been receiving services in the general education setting for 90 minutes per week.

- **Student G** – Student G's IEP in place at the beginning of the 2016-2017 school year was developed in November 2015 and provided for the following specially designed instruction in a general education setting:
 - Social/Emotional – 30 minutes 5 times weekly

From September 9, 2016, when the District's 2016-2017 school year began, until the Complainants filed this complaint on October 3, 2016, there were 19 school days. During those 19 school days, Student G should have received 570 minutes (9.5 hours) of specially designed instruction in the area of social/emotional in a general education setting. Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, these services were not provided.

- **Student H** – Student H's transfer IEP in place at the beginning of the District's 2016-2017 school year was developed in May 2015 by another Washington school district, and provided for the following specially designed instruction in a general education setting:
 - Personal/Social – 20 minutes 5 times weekly
 - Personal/Social – 20 minutes 5 times weekly

From September 9, 2016, when the District's 2016-2017 school year began, until the Complainants filed this complaint on October 3, 2016, there were 19 school days. During those 19 school days, Student H should have received 760 minutes (approximately 12.75 hours) of specially designed instruction in the area of personal/social in a general education setting. Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, these services were not provided.

It is also noted that Student H's transfer IEP does not include annual goals in the area of personal/social, does not include specially designed instruction in the area of cognitive skills, and fails to specify the amount of time Student H will receive services in the areas of reading, cognitive-pre-reading, cognitive-writing, cognitive-math. Student H's IEP does not meet IDEA and state requirements, and the District should not have accepted the transfer IEP as written. The

District will conduct a reevaluation of Student H to determine the academic services and other services the Student requires, and then hold an IEP meeting to develop a new IEP for Student H which meets the requirements stated in WAC 392-172A-03090.

- **Student I** – Student I’s IEP in place at the beginning of the District’s 2016-2017 school year was developed in December 2015 and amended in March 2016. The amended IEP did not provide for any specially designed instruction in a general education setting. However, the amended IEP stated that the Student would spend 19.73 percent of his school week or approximately 70 minutes of each school day in a general education setting. From September 9, 2016, when the District’s 2016-2017 school year began, until the Complainants filed this complaint on October 3, 2016, there were 19 school days. During those 19 school days, Student I should have had access to his general education peers for approximately 1,330 minutes (approximately 22 hours). Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, Student I did not have access to his general education peers as provided for in his IEP.
- **Student J** – Student J’s IEP in place at the beginning of the District’s 2016-2017 kindergarten school year was developed in May 2016 and provided for the following specially designed instruction in a general education setting provided by a special education teacher:
 - Social/Emotional – 30 minutes 5 times weekly

From September 12, 2016, when the District’s 2016-2017 kindergarten school year began, until the Complainants filed this complaint on October 3, 2016, there were 16 school days. During those 16 school days, Student J should have received 480 minutes (8 hours) of specially designed instruction in the area of social/emotional in a general education setting. Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, these services were not provided.

- **Student K** – Student K’s IEP in place at the beginning of the District’s 2016-2017 kindergarten school year was developed in June 2016 and provided for the following specially designed instruction in a general education setting provided by a special education teacher:
 - Social/Emotional – 30 minutes 5 times weekly

From September 12, 2016, when the District’s 2016-2017 kindergarten school year began, until the Complainants filed this complaint on October 3, 2016, there were 16 school days. During those 16 school days, Student K should have received 480 minutes (8 hours) of specially designed instruction in the area of social/emotional in a general education setting. Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, these services were not provided.

It is also noted that Student K's June 2016 IEP fails to specify the amount of services Student K will receive in the areas of cognitive-reading, cognitive-math, and cognitive-writing, but instead, the IEP generically states that Student K will receive services in the area of cognitive-thinking/awareness. Student K's IEP does not meet IDEA and state requirements. The District will conduct a reevaluation of Student K to determine the academic services and other services the Student requires, and then hold an IEP meeting to develop a new IEP for Student K which meets the requirements stated in WAC 392-172A-03090.

- **Student L** – Student L's IEP in place at the beginning of the District's 2016-2017 school year was developed in January 2016, and amended in March 2016. The amended IEP provided for the following specially designed instruction in a general education setting provided by a special education teacher:
 - Social/Emotional – 50 minutes 5 times weekly

From September 9, 2016, when the District's 2016-2017 school year began, until the Complainants filed this complaint on October 3, 2016, there were 19 school days. During those 19 school days, Student L should have received 950 minutes (approximately 16 hours) of specially designed instruction in the area of social/emotional in a general education setting. Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, these services were not provided.

It is also noted that the District failed to develop a new IEP for Student L after conducting a reevaluation in June 2016, despite the change in Student L's eligibility category and recommended services as a result of the reevaluation. The District will hold an IEP meeting and develop a new IEP for Student L.

- **Student M** – Student M's IEP in place at the beginning of the District's 2016-2017 school year was developed in May 2016 and provided for the following specially designed instruction in a general education setting provided by a special education teacher:
 - Social/Emotional – 30 minutes 5 times weekly
 - Adaptive – 30 minutes 5 times weekly

From September 9, 2016, when the District's 2016-2017 school year began, until the Complainants filed this complaint on October 3, 2016, there were 19 school days. During those 19 school days, Student M should have received 570 minutes (9.5 hours) of specially designed instruction in the area of social/emotional, and 570 minutes (9.5 hours) of specially designed instruction in the area of adaptive skills in a general education setting. Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, these services were not provided.

- **Student N** – Student F's IEP in place at the beginning of the District's 2016-2017 school year was developed in February 2016 and provided for the following

specially designed instruction in a general education setting provided by a special education teacher:

- Social/Emotional – 30 minutes 1 time daily

From September 9, 2016, when the District's 2016-2017 school year began, until the Complainants filed this complaint on October 3, 2016, there were 19 school days. During those 19 school days, Student F should have received 570 minutes (approximately 9.5 hours) of specially designed instruction in the area of social/emotional in a general education setting. Due to the limited availability of paraprofessional time to accompany the Student into the general education setting as described above, these services were not provided.

Compensatory Services – To address the failure to provide Students D-H, and Students J-N with services in the general education setting as described in their IEPs, and the failure to provide Student I with access to his general education peers, the District will provide students D-N twenty (20) hours of compensatory services. The 20 hours of compensatory services will be provided during a week long period over the summer of 2017, which will include access to non-disabled peers to the maximum extent possible. The services will not exceed four hours per day. These services are in addition to any extended school year (ESY) services that IEP teams independently determine are needed for Students D-N. The services will be provided by certificated special education teachers with support from paraeducators and the summer program will be staffed at the same ratio that the District staffs the DLC classrooms during the school year. For students with an IEP that requires 1:1 paraeducator support, the District will also provide 1:1 paraeducator support for those same students during the summer program.

CORRECTIVE ACTIONS

On **December 16, 2016, January 20, 2017, February 6, 2017, March 31, 2017, May 12, 2017, June 2, 2017, and August 25, 2017**, the District will provide documentation to OSPI that the following corrective actions have been completed.

STUDENT SPECIFIC:

1. By **August 21, 2017**, the District will provide Students D-N twenty (20) hours of compensatory services. The 20 hours of compensatory services will be provided during a week long period over the summer of 2017, which will include access to non-disabled peers to the maximum extent possible. The services will not exceed four hours per day. These services are in addition to any extended school year (ESY) services that IEP teams independently determine are needed for Students D-N. The services will be provided by certificated special education teachers with support from paraeducators and the summer program will be staffed at the same ratio that the District staffs the DLC classrooms during the school year. For students with an IEP that requires a 1:1 paraeducator support, the District will also provide 1:1 paraeducator support for those students during the summer program. The District will also provide transportation for the students in the summer compensatory

program consistent with the transportation provided for these students during the school year.

- By **March 24, 2017**, the District will send a letter to all parents/guardians of Students D-N, informing them of this complaint decision and that compensatory services will be offered during the summer of 2017. The letter will include the dates and times the summer compensatory services will be offered, as well as the location of the summer program. The letter will specify that parents/guardians must inform the District if their student will participate in the summer program by May 1, 2017.
 - By **March 31, 2017**, the District will submit copies of all letters sent to parents/guardians of Students D-N.
 - By **May 12, 2017**, the District will submit a roster of all students who will participate in the summer program and any other related documentation.
 - By **June 2, 2017**, the District will submit documentation that it has entered into contracts with certificated special education teachers and paraeducators to provide services for 20 hours over 1 week in the summer of 2017.
 - By **August 25, 2017**, the District will provide attendance records for the summer program.
2. **Student A** – By **January 13, 2017**, the District will hold an IEP meeting, which includes all members of Student A's IEP team, to discuss whether Student A requires paraeducator support. The District will clearly document any decisions made at the IEP meeting in a prior written notice, which will be provided to the parents and reviewed with the other members of Student A's IEP team. By **January 20, 2017**, the District will submit: 1) a copy of the meeting invitations; 2) a copy of any amended IEP; 3) a copy of the prior written notice; and, 4) a copy of any other related documentation. Based on the decisions made by Student A's IEP team, OSPI may also request additional documentation related to Student A.
 3. **Student C** – By **January 13, 2017**, the District will hold an IEP meeting to review Student C's current placement in DLC classroom 1 and determine if DLC classroom 1 is Student C's appropriate placement. The District will document that the IEP team has considered all the requirements stated in WAC 392-172A-02060. If Student C's IEP determines that the life skills program at elementary school 2 is a more appropriate placement for the Student, the District will immediately take steps to transition Student C to the life skills program by February 6, 2017. By **January 20, 2017**, the District will submit: 1) a copy of the meeting invitations; 2) a copy of the prior written notice; and, 3) a copy of any other related documentation. Based on the decisions made by Student C's IEP team, OSPI may also request additional documentation related to Student C.
 4. **Student E** – By **January 31, 2017**, the District will complete a reevaluation of Student E, and hold an evaluation/IEP meeting to review the results of the reevaluation and develop a new IEP for Student E, which meets the requirements stated in WAC 392-172A-03090. By **February 6, 2017**, the District will submit: 1) a copy of any meeting invitations; 2) a copy of the consent for evaluation; 3) a copy of

the evaluation report; 4) a copy of the new IEP; and, 5) a copy of any related prior written notices.

5. **Student H** – By **January 31, 2017**, the District will complete a reevaluation of Student H, and hold an evaluation/IEP meeting to review the results of the reevaluation and develop a new IEP for Student H, which meets the requirements stated in WAC 392-172A-03090. By **February 6, 2017**, the District will submit: 1) a copy of any meeting invitations; 2) a copy of the consent for evaluation; 3) a copy of the evaluation report; 4) a copy of the new IEP; and, 5) a copy of any related prior written notices.
6. **Student K** – By **January 31, 2017**, the District will complete a reevaluation of Student K and hold an evaluation/IEP meeting to review the results of the reevaluation and develop a new IEP for Student K, which meets the requirements stated in WAC 392-172A-03090. By **February 6, 2017**, the District will submit: 1) a copy of any meeting invitations; 2) a copy of the consent for evaluation; 3) a copy of the evaluation report; 4) a copy of the new IEP; and, 5) a copy of any related prior written notices.
7. **Student L** – By **January 13, 2017**, the District will hold an IEP meeting to develop a new IEP for Student L based on the recommendations in the June 2016 evaluation. By **January 20, 2017**, the District will submit: 1) a copy of the meeting invitations; 2) a copy of the new IEP; 3) a copy of the prior written notice; and, 4) a copy of any other related documentation.

DISTRICT SPECIFIC:

In its response to this complaint, the District stated that it will provide the DLC classrooms with “enhanced” paraeducator support to allow the students to access general education settings consistent with their IEPs, and will assign a District program specialist to assist special education teacher 1 and special education 2 in developing schedules to ensure students are receiving their services as described in their IEPs. OSPI accepts these corrective actions. By **December 16, 2016**, the District will provide OSPI with documentation that it has begun taking steps to hire additional or assign additional paraeducators to the DLC classrooms. By **January 20, 2017**, the District will provide service schedules showing that Students A, D-N are scheduled to receive services in general education settings consistent with their IEPs, and are receiving the services. The service schedule will specify the days and times the students receive their services in general education settings and indicate who is providing them.

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 [Thinh Le](mailto:Thinh.Le@k12.wa.us) at Thinh.Le@k12.wa.us.

Dated this ____ day of December, 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.)