

**FINAL REPORT
Complaint Investigation
Oneida School District #351
C-23-01-10a**

The Idaho State Department of Education (SDE), pursuant to its general supervision and oversight responsibilities, initiated a systemic investigation on January 10, 2023, regarding the provision of special education placement and services for students attending the Idaho Home Learning Academy (IHLA), which are schools within the Oneida School District #351 (“District”). The SDE had received information that the District may be out of compliance in special education matters and violated the Individuals with Disabilities Education Act (IDEA).

The original 60 calendar day timeline for completion of this investigation was identified as March 11, 2023. The SDE determined that exceptional circumstances existed with respect to this particular complaint due to the unique makeup of the IHLA and its partners, the state-wide attendance of students, the complexity of the issues, and the volume of records reviewed. The timeline was extended an additional 30 calendar days, or until April 10, 2023.

The following issues were investigated:

- 1. Did the District ensure that each individual assigned to implement students’ individualized education programs (IEPs) and provide services has the requisite certification and content knowledge and skills, consistent with State policies and procedures, to serve students with disabilities? [34 CFR §300.156; 34 CFR §300.207]**
- 2. Did the District ensure that all students with disabilities, regardless of the severity of their disability, who are in need of special education and related services are identified, located and evaluated? [34 CFR §300.111; 34 CFR §300.300 through 34 CFR §300.306]**
- 3. Did the District ensure that special education, related services, and supplementary aids and services have been provided to meet the unique needs of each student with a disability? [34 CFR §300.39; 34 CFR §300.34; 34 CFR §300.114]**
- 4. Did the District ensure that students with disabilities enrolled in the District have the same variety of educational programs and services available to nondisabled students and that each student’s IEP enables the student to be involved in and make progress in the general education curriculum (*i.e.*, the same curriculum as for nondisabled students) so that each student can meet the educational standards that apply to all students? [34 CFR §300.110; 34 CFR §300.320; 34 CFR §300.324; 34 CFR §300.39]**
- 5. Did the District ensure that, to the maximum extent appropriate, students with disabilities are educated with children who are nondisabled and that a continuum of**

alternative placements is available to meet the needs of students with disabilities for special education and related services? [34 CFR §300.114; 34 CFR §300.115]

- 6. Did the District ensure that Idaho’s dual enrollment requirements were followed for those students with disabilities enrolled in the District? [Idaho Code §33-203; Idaho Special Education Manual (2018), p. 113-114]**
- 7. Did the District ensure that students with disabilities receive a free appropriate public education (FAPE)? [34 CFR §300.17]**

Scope of SDE Review and Authority

The SDE administers federal regulations and state regulations governing special education programming requirements for children with disabilities. The SDE’s implementation of the federal regulations to the Individuals with Disabilities Education Act (IDEA) and the corresponding state rules require investigations regarding violations of the provisions. The SDE has investigated and issues this report and Corrective Action Plan (CAP) pursuant to 34 CFR §§300.152(a)(5) and 300.600.

Facts discussed that occurred prior to January 10, 2022, or after January 10, 2023, are for background information only. Federal regulations limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint was received. 34 CFR §300.153(c).¹

Complaint Investigation Review

The SDE’s complaint investigation in this matter included the following:

- Review of the complaint.
- Zoom interviews with District IHLA staff, including school administrators, principals, special education teachers, and general education teachers.
- Review of District-provided documents for 52 randomly selected students throughout Idaho, Kindergarten to Grade 12.
- Review of contracts and Memorandums of Understanding with the Partners, schools and academies, and contracted related service providers.
- Review of the District’s website.
- Review of Partner websites.
- Review of academies and programs websites.
- Review of District policies, student handbooks and special education handbook.
- Review of Partners’ parent and student handbooks and special education procedures.
- Review of Partners’ correspondence to parents.
- Review of District correspondence to parents.
- Review of curricula available to parents.

¹ The Idaho State Department of Education retains jurisdiction of Complaint C-23-01-10a and will “take other appropriate measures within its authority to effect compliance with the IDEA” as determined necessary.

- Research of applicable federal and state laws and case law; review of the Office of Special Education Programs (OSEP) guidance letters; review of the Idaho Special Education Manual (2018); and review of the Idaho State Department of Education and State Board of Education data.

Findings of Fact

General IHLA Overview

1. In cooperation with two Partners, the District operates the IHLA, which consists of two unique schools (grades K-8 and 9-12) for educating students throughout Idaho. The Partners are responsible for student recruitment and for ensuring that all main recruiting is from students who are schooled at home. No direct recruitment is done from brick and mortar districts.
2. The District identifies IHLA as a “K-12 virtual school within the Oneida School District” and as a school of choice. Its educational model delivers support for regular education and special education virtually.
3. The District also operates two elementary schools, one middle school and one high school as brick and mortar traditional schools within the District.
4. The District identifies as being a mastery-based education school district for all of its schools under the provisions of Idaho Code 33-1632.²
5. The District has two school calendars. The calendar for the brick and mortar schools is a 4-day school week and provides for 148 days of instruction. The calendar for IHLA is a 5-day school week and provides for 165 days of instruction. The IHLA calendar provides for longer breaks at Thanksgiving and Christmas as well as two additional weeks off during the school year.
6. 305 certified general education teachers are assigned to teach IHLA students. IHLA general education teachers are hired primarily on a part-time basis and follow the IHLA school calendar. 19 FTE certified special education teachers assigned to IHLA are hired primarily as full-time employees and follow the brick and mortar school calendar.
7. The last day of school for the 2021-22 school year was May 23, 2022. The first day of school for the 2022-23 school year was August 22, 2022.
8. For the 2022-23 school year, the District’s student enrollment for its traditional brick and mortar schools is 959. 7218 students from 41 of the 44 Idaho counties are enrolled in IHLA.³
9. The District originally began IHLA with approximately 220 students during the 2016-17 school year. For each school year thereafter the District’s student enrollment in IHLA increased: approximately 550 students during the 2017-18 school year; 1500 students during the 2018-19 school year and 2500 students during the 19-20 school year. During the 2020-21 school year, the District experienced a significant increase in students enrolling in IHLA due to the pandemic when approximately 7200 students enrolled. A slight decrease in student

² Idaho Code 33-1632 requires the Idaho state department of education to perform certain activities to move Idaho toward mastery-based education, which is defined as “an education system where student progress is based on a student’s demonstration of mastery of competencies and content, not seat time or the age or grade level of the student.”

³ The number of enrolled students is data from March 22, 2023.

enrollment occurred during the 2021-22 school year to 6100 students but increased again to more than 7200 students for the 2022-23 school year.

10. The District contracts with two providers, Tech Trep Academy (TTA) for Kindergarten to Grade 12 and Harmony Educational Services (Harmony) for Kindergarten to Grade 8 (collectively the “Partners”), to provide an educational program to students enrolled in IHLA. The Partners’ educational programs include, among other things: providing core and elective curricula aligned to Idaho State Core Standards; providing online educational service options; providing the learning management system; recruiting students and ensuring all registration documents are provided to IHLA by identified deadlines; arranging for and covering the cost of all required state testing support; providing parent assistance and troubleshooting; ensuring all main recruiting is from students who are schooled at home; providing learning support materials for students; and providing a direct purchasing process for parents to access education support funds for curriculum, enrichment and support materials without the requirement of parent reimbursement.
11. The District and TTA have jointly entered into Memoranda of Understanding with six private academies or programs to provide additional choices for parents to purchase learning support from these private entities. Invoices from service providers are paid directly by TTA.
12. The District and Harmony have jointly entered into Memorandums of Understanding with two private academies or programs to provide additional choices for parents to purchase learning support from these private entities. Invoices from service providers are paid directly by Harmony.
13. The majority of the parents who have enrolled their children in IHLA use the services provided by TTA.

School Enrollment Process

14. The District’s Partners seek out students and families wishing to participate in the IHLA program. The Partner chosen by the parent verifies that each child is in good standing with IHLA. The Partner enrolls the child in their system and provides the parent with a web link to the IHLA enrollment site for new and returning parents to complete IHLA registration. Once the enrollment process with IHLA has been completed, the Partner chosen by the parent is notified by the District that the student is enrolled.
15. The District reserves the right to deny enrollment to students that do not meet IHLA program expectations and District policy provides that the board of trustees reserves the right to limit enrollment in any given program, class, or grade level.⁴
16. Once the Partner is notified by IHLA of an elementary student’s enrollment, the Partner assigns the student to a general education homeroom teacher, who is a District employee. The homeroom teacher oversees each student’s course registration, selection of curriculum by the parent and student success training when provided.
17. Parents of elementary students may also opt to use their supplemental learning funds to enroll in private academies or programs that help their children work on submissions for the Power Learning Goals (State Standards). This occurs through the Memorandum of Understanding between the District, a Partner and the private academy or program. In the few cases where parents choose to utilize a private academy or program, IHLA assigns a teacher to be the link

⁴ This language comes from Idaho Code 33-1404 under the Enrollment Options statute.

between the private entity and the parent. The IHLA teacher grades the student's work and reviews the curriculum.

18. Once the Partner is notified by IHLA of a high school student's enrollment, the Idaho graduation requirements are followed for each grade nine through twelve. Each full-time student takes six classes per semester.

Dual Enrollment

19. District policy provides that dual enrollment within the District may occur for any student who is enrolled in a non-public school (including a home school or private school), is enrolled in a public charter school, or is enrolled in a post-secondary institution. Additionally, dual enrollment may include enrollment in a regular public school (IHLA) and in an alternative school.
20. IHLA informs parents that students are permitted to dually enroll in another public school or an independent homeschool. Students who are dually enrolled in classes from another public high school will not be considered full-time students. Secondary students are required to enroll in at least one course provided directly through IHLA to be considered an IHLA student.
21. TTA, in its Parent Guidebook and monthly newsletters, has notified parents that dual enrollment is allowed with consent from the other school district and that \$170 per semester of supplemental funds are deducted for each course where a student is dually enrolled with another public school.
22. Parents have sought to dually enroll their children in other Idaho school districts, in addition to IHLA, to receive educational services, including special education services.
23. IHLA has enrolled students that are also attending brick and mortar schools in other Idaho school districts.

Supplemental Learning Funds

24. Each full-time student attending IHLA receives \$1700 yearly supplemental learning funds which can be used to purchase supplemental curriculum and resources, including resources from the private academies or programs through the MOU between the private entity, the Partner and the District. TTA recommends that parents purchase core curriculum or required technology first, followed by electives and supplemental learning materials.
25. The \$1700 yearly funds can be used in various ways to supplement a student's learning, including purchasing additional curriculum, paying for supplemental classes or purchasing such items as chicken coops, rabbit hutches, greenhouses, raised garden beds, kitchen supplies for cooking electives, storage containers, filing cabinets, rolling drawers, and digital piano.
26. The supplemental funds may be used to purchase additional direct curriculum options available as opt-in programs. Those students using TTA services have the option to sign up for various teacher-lead online classes.

Curriculum

27. District policy mandates that the superintendent or designee is responsible for the overall facilitation of the District's implementation of curriculum standards assessments. This includes identifying, by category, subpopulations of students and tracking the progress of subpopulations to determine whether equal access to the curriculum exists.
28. The superintendent appoints a Standards and Assessment Committee, which, among other tasks, develops a formative and summative assessment system to be applied on a district-wide basis by the grade level and department teams in assessing the alignment of curriculum to students' achievement of standards and benchmarks.
29. The District's policy provides that the grade level and department teams are composed of certificated personnel currently teaching in the relevant grade level or department. The teams' responsibilities include reviewing the grade level or department curriculum to determine whether there exists a consistency in the curricula in the five core content areas (as appropriate), as it is written, taught, tested, graded, and reported. Additionally, the teams continually reassess the data, as appropriate, during the implementation process and make appropriate adjustments in instruction to align the curriculum to the applicable standards and benchmarks. The collected data regarding the impact of the implementation of curriculum standards and assessments on student learning, including test results and the interpretation thereof, is provided to the Standards and Assessment Committee.
30. District policy specific to IHLA provides that curriculums may use a variety of approaches, methods, resources and student-centered environments to meet Idaho Core Standards. The board will take reasonable steps to confirm that any approved curriculum aligns with Idaho content standards. The District recognizes there are many supplemental, enrichment, and support materials that may be used by teachers, staff, learning coaches and/or administrators that may not have been approved by the board. Those items that fall into the supplemental, enrich, and support category will be reviewed by the general education teacher and/or special education teacher and may be provided as appropriate to support the student's core schedule and help them become more successful.
31. At the elementary level, IHLA administration works with each Partner's curriculum specialist to determine the list of curricula that addresses Idaho content standards that will be offered to parents. The curriculum is approved at the school level.
32. Once a student is registered with IHLA, the parent chooses the classes that will be attended by their child and selects the curriculum through the selected Partner.
33. If a parent prefers something other than the curriculum offered by a Partner, the parent can receive their preferred curriculum through direct order from the Partner or through reimbursement from the designated supplemental learning funds, although supplemental funds may not be used for a curriculum of a sectarian nature.
34. For each grade level, an elementary student's parent can choose to access virtual classes in the core subjects of English Language Arts, math, reading and social studies that are taught live by certified staff two to three times a week and are 30 minutes in duration. These classes are considered supplemental and parents use the supplemental learning fund to pay for these classes. When a parent chooses to have their child participate in a virtual class, the parent will typically use the same curriculum as the teacher.
35. At the high school level parents and students can choose a variety of curricula through Edgenuity, an anchor class, BYU curriculum independent study, or the Idaho Digital

Learning Academy (IDLA) for the six classes taken each semester by full-time students. Most of the classes are asynchronous.⁵

36. High school students taking classes through Edgenuity have a certified teacher assigned to the class. The students are self-paced and the assigned teacher grades assignments and provides students with feedback. There are no supplemental fees for using Edgenuity.
37. Parents are provided the recommended curricula for high school students choosing to take an anchor class. A certified teacher posts an assignment which is due each week and grades the assignments. Students enrolled in the class may be using a variety of curricula. Most of the classes are asynchronous. There are no supplemental fees for taking anchor classes.
38. Students electing to participate in BYU Independent Study online courses are self-paced. The assigned IHLA teacher grades assignments and provides feedback. The classes are asynchronous. There is a supplemental fee for taking these courses.
39. Students may take classes with IDLA. These classes can be either asynchronous or hybrid courses offering synchronous lectures and lessons. There is a supplemental fee for taking these courses.

Attendance

40. District policy specific to IHLA provides that those students enrolled in IHLA are attending a virtual school and are considered to be in attendance if they are successfully completing work and progressing academically in their coursework.
41. At the elementary level, attendance is based on the timely submission of a student's Learning Log or portfolio every two weeks.
42. At the high school level, attendance is based on the timely submission of a student's weekly assignment submissions.
43. Students are not required to log in every day or keep track of seat time.
44. Special education students not attending the services identified on their IEPs are considered to have an unexcused absence. After the third unexcused absence on assessment submissions during a semester, the IEP team will convene to determine the best educational options for the student.

Instruction

45. Upon enrollment of a student in IHLA, the student is a public school student who is instructed at home primarily by their parent as their learning coach. The parent is required to be actively involved in overseeing, supervising and guiding their child in their coursework. Parents commit to providing frequent and focused support to their children as a parent learning coach. As the learning coach, each parent should be prepared to spend 20 to 30 hours a week working with their child. However, at the high school level, parents are not expected to be as involved in their child's educational program.
46. IHLA has developed an online learning coach training and recommends that parents become IHLA certified learning coaches. Upon successfully completing eight modules and passing a final quiz, parents receive an IHLA Learning Coach identification badge.

⁵ Asynchronous learning is a form of instruction that does not occur in the same place or at the same time but allows students to learn on their own schedule, within a certain timeframe.

47. The Partner assigns each elementary student to a virtual homeroom with a designated certified teacher. Each general education teacher is an employee of the District but is assigned an email address by the Partner, as parents respond better knowing that they are associated through a partner. Each homeroom teacher has a weekly virtual office hour to offer personalized support and is available by email. Individual meetings can also be arranged with the teacher.
48. In consultation with the assigned homeroom teacher, parents of elementary students select a core curriculum appropriate for the child's ability level and aligned to the Idaho State Content Standards. Power Learning Goals are standards in core subjects that parallel the Idaho State Content Standards and are used by the District to guide student learning and monitor growth.
49. The parent, as the learning coach, gives the instruction to their child using the curriculum of their choosing. Some parents may enroll their child in a private academy or program that helps students work on submissions for the Power Learning Goals (state standards).
50. Each semester parents, in collaboration with the student's general education teachers, create a student learning plan for each class. The learning plan outlines the Power Learning Goals, lesson content, learning goals, and authentic or formative assessment requirements in each subject area.
51. Students in Kindergarten take four core classes and can select one or two electives.
52. Students in grades 1-6 are graded pass/fail in the core classes of math, Language Arts, science, social studies and two electives.
53. Students in grades 7-8 receive letter grades and take the same core courses of math, Language Arts, science, and social studies and one semester of health and one semester of PE during either 7th or 8th grade.
54. Full-time high school students working towards a diploma enroll in six classes a semester. Students not seeking a high school diploma from the district typically enroll for one or two classes, and parents give written confirmation of the student's non-diploma seeking status. Approximately 10% of high school students are not seeking a high school diploma from IHLA. Instead, some parents have indicated they will provide their child with their own homeschool diploma.

Assessing Student Learning

55. Parents of elementary students submit 8 Learning Logs and 8 Learning Goal Portfolio Submissions for the school year. Each is submitted on a monthly basis for the core subjects. Each submission occurs two weeks after the previous submission.
56. A Learning Log consists of three to five sentences provided by the parent outlining what the student has been working on in the four core subjects during the previous two weeks; without the need to upload work samples.
57. A Learning Goal Portfolio Submission consists of actual artifacts of work, such as a video, math worksheet or essay that occurred in the four core subjects.
58. The homeroom teacher reviews each student's submissions and uses a standards-based grading rubric to grade the work and determine mastery of Idaho standards.
59. TTA's program is based on a mastery education model, meaning that student grades are based on mastery of the Learning Goals and personal educational goals.

60. When a teacher identifies that a student is not making progress based on a review of data, a referral to the Student Success Team (SST) may occur.
61. The SST uses Response to Intervention (RTI) and provides one-to-one instruction with an interventionist once a week and a small group session once a week. Data is collected for six weeks during the intervention, although data may be collected for a longer period of time, including for a year or more.
62. At the high school level, student performance in core classes is assessed on a weekly basis or more, depending on which option is chosen for the class.

Special Education

63. The District adopted the Idaho Special Education Manual (2018) as policy and is responsible for providing all special education services to students with disabilities enrolled in the District, including those students attending IHLA.
64. The District has 52 students who qualify for special education services enrolled at its brick and mortar schools and 423 students who are enrolled at IHLA.⁶
65. The District has three FTE certified special education teachers and one speech therapist for its brick and mortar schools. There are 19 FTE IHLA certified special education teachers who are hired primarily as full-time District employees. All of the related services providers for students attending IHLA are under contract with the District and are not employees.
66. In addition to the District's special education director and assistant, the District has a part-time compliance officer, consisting of a certified special education director, who is responsible for reviewing special education documents for compliance.
67. For the 2022-23 school year, the District changed the provider for its computerized special education student program which provides staff with the special education forms, as District staff found that its previous program was not consistently saving information and did not prompt staff to fully complete documents before it allowed staff to continue on in the program.
68. For the 2022-2023 school year, 5.9% of the total IHLA student population has been identified with a disability under the IDEA. The District's special education student population for the 2022-23 school year falls within the following 13 disability categories:
 - a. Speech Impairment: 29.31%
 - b. Autism: 20.20%
 - c. Other Health Impairment: 17.24%
 - d. Specific Learning Disability: 14.77%
 - e. Language Impairment: 4.43%
 - f. Intellectual Disability: 3.94%
 - g. Developmental Delay: 3.94%
 - h. Multiple Disabilities: 3.20%



⁶ The number of IHLA enrolled students qualifying for special education is data from March 22, 2023. This number changes as students enroll and disenroll.

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69. For the 2021-2022 school year, 11.6% of the total Idaho public school student population was identified with a disability under the IDEA. These students fell within the following 13 disability categories:

- a. Other Health Impairment: 22.59%
- b. Specific Learning Disability: 19.84%
- c. Speech Impairment: 13.66%
- d. Autism: 11.09%
- e. Developmental Delay (DD): 10.60%
- f. Language Impairment: 8.86%
- g. Intellectual Disability: 5.73%
- h. Emotional Behavioral Disorder: 3.62%
- i. Multiple Disabilities: 2.14%
- j. Deaf/Hard of Hearing: 0.95%
- k. Visual Impairment: 0.31%
- l. Traumatic Brain Injury (TBI): 0.30%
- m. Orthopedic Impairment: .29%
- n. Deaf-Blindness: 0.03%⁸

Child Find Process & Referral Process

- 70. The parent may bring forth a concern regarding their child, the general education teacher may report that they have not been receiving timely work submissions from the student, or may report concerns regarding the quality of a student's work.
- 71. If a parent has concerns about their child's academic performance but the child has never had an IEP, the parent is directed to contact their child's general education teacher for referral to the SST. The SST, as a response to intervention (RTI) process, consists of three different tiers of instruction.⁹
- 72. The general education teacher meets with the student and/or parent virtually or calls to help and offer strategies, and the Tier 1 Response to Intervention (RTI) Questionnaire is completed.
- 73. If the student continues to struggle, the parent is asked to complete an SST Referral, and the general education teacher, if needed, will take the parent's concerns to the SST, where a plan for interventions consisting of direct instruction in reading and/or math will be developed for the student and data will be collected for 6 to 9 weeks to determine if the student is making progress or continues to struggle. Interventions may be provided for a longer period for various reasons, such as staffing not being available to conduct testing, the student not showing up for interventions, or the parent may not have signed necessary documents.¹⁰

⁷ This information is based on 406 students receiving special education services and was received from the District, February, 2023.

⁸ Special Education Trends Infographic (Idaho.gov).

⁹ The three tiers in the RTI process typically consist of Tier 1, universal instruction for all students; Tier 2, targeted interventions for specific groups of students; and Tier 3, highly targeted individualized and intensive interventions, which may include the provision of special education services.

¹⁰ Certain student file reviews showed that students received direct instruction with an interventionist for more than six weeks, and up to 14 months before a referral for special education services was made.

74. Progress will be monitored if the student is progressing with the interventions. If the student continues to struggle, second interventions can be provided, or it may be determined appropriate by the SST to refer the student to a reading or math interventionist for direct instruction. IHLA interventionists are certified teachers.
75. If a student has a diagnosed disability, the student will be referred for Tier 2 interventions, consisting of direct instruction, to determine what the adverse effect of the disability might be, and may then be referred for assessments.
76. If the interventions help the student, they will be continued as needed, and no further action will be taken by the District.
77. If the interventions are not effective, a referral is made to the special education department for testing.
78. A special education consent to assess is developed by the special education teacher, interventionist and parent, and the parent is requested to sign a consent allowing assessments to be conducted. Parents may inform staff that certain assessment areas are not needed due to not seeing concerns in the home setting, in which case those areas are not assessed. Additionally, parents may inform staff that they no longer wish to have assessments in certain areas identified on the consent form, in which case those areas are not assessed.
79. Once IHLA staff receive a signed consent for assessment from the parent, the special education teacher submits the signed consent to PresenceLearning (PL), a private telehealth company under contract with the District.
80. District staff did not complete a Referral to Consider a Special Education Evaluation/Reevaluation form until recently, as the staff was unaware of the need to do so.

Evaluation and Eligibility Process

81. The District has contracted with PL to provide certain services, including conducting student evaluations by licensed professionals that are used to determine a student's eligibility for special education services. These professionals include school psychologists, speech-language pathologists, occupational therapists and physical therapists.
82. PL is contacted by the assigned IHLA special education teacher when a student referral for special education occurs.
83. PL conducts all assessments identified on the consent to assess, except for observations, and reviews existing information including reports provided by the parent from private providers.
84. A school psychologist assigned by PL and/or a special education teacher completes the eligibility report. IHLA special education teachers were uncertain as to their role in completing the eligibility report, including providing background information regarding the student, providing a summary of the evaluation team assessments, providing an overview of the adverse effect on educational performance due to the student's disability, and identifying the student's need for specially designed instruction.
85. The data collected by the interventionist is reviewed and utilized in the eligibility process to verify that the determinate factor in determining eligibility for special education services is not due to lack of instruction in the general curriculum in the areas of math or reading (including phonemic awareness, phonics, vocabulary development, comprehension, and fluency).
86. The special education teacher schedules an eligibility team meeting. Parental concerns and requests determine who attends the meeting.

87. At times, the eligibility meeting is held, the student is found eligible for special education services, and immediately thereafter the IEP team meets to review the draft IEP provided by the special education teacher.
88. At other times, the eligibility meeting is held, the student is found eligible for special education services, and the IEP team meets on a later date, during which time the special education teacher may meet with the student to gather baseline data.

IEP Development Process

89. District special education teachers draft the IEP with parent input, schedule an IEP meeting and invite IEP team members to attend, including a general education teacher and the parent. PL school psychologists do not attend IEP team meetings.
90. PL's providers complete the present levels, goals and service times sections of the IEP. Each draft IEP has the statement that services "may be provided via online therapy platform" or "may be provided via telehealth."
91. An IEP meeting is held to review the draft IEP and receive additional parent input. Information received from parents regarding the minutes of instruction that occur in the home setting during the school week for the student are included on the IEP and are identified as the average time inside the general education environment. Because students are instructed at home, parents have various ways to provide instruction, including other educational activities, such as participating in cooperatives or reading daily. These minutes vary greatly from student to student in the files reviewed, from a low of [REDACTED] minutes ([REDACTED] hours) in a school week to a high of [REDACTED] total minutes ([REDACTED] hours) in a school week.
92. A student's IEP may include special education direct instruction minutes provided by the special education staff and special education minutes under the direction of the student's parent as the learning coach, with access to the special education teacher through email and during office hours.
93. The majority of students' IEPs identified the student inside the general education classroom for 80% or more of the school day. In a 6-hour school day, the student is identified as being inside the regular classroom for at least 4 hours and 48 minutes.
94. The majority of student IEPs reviewed include the following statement: "Services may be indirect service time (e.g., observing in the classroom to develop carry-over, consulting with regular and special education teachers and staff) during the first two weeks and the last two weeks of the school year to allow the student to build classroom relationships, participate in beginning and end of year activities and to allow the student's new teachers opportunities to observe in order to develop appropriate schedules and classroom tools, if appropriate." The District includes this language as a "safety net" in case staff need time at the beginning of the school year to begin services or the end of the school year to collect data.

Transfer Students

95. When a student with an existing IEP enrolls in IHLA, current IEP documentation is gathered by the District.
96. Once the special education records are received from the district of residence or the most recent school attended, an IEP meeting is scheduled to determine what special education and

related services may be needed in order for the student to participate in IHLA's virtual programs, and the student's IEP is often amended.

97. The majority of students' IEPs reviewed, where the student transferred from another school district to IHLA, showed a significant decrease in special education services provided. According to staff, the decreases that occurred in certain files were due to a variety of reasons, including parent preference and the home setting for instruction, and the private related services obtained by the parent.

Provision of Special Education and Related Services

98. At the elementary school level, direct special education instruction is provided to students in a virtual group or individual setting, as set forth on each student's IEP.
99. At the high school level, direct special education services are typically in a virtual group setting, with some students needing minimal support and other students with high needs.
100. Those high school students needing minimal support meet in an online Education Support Class for a few minutes each day, Monday through Thursday, where organizational strategies are taught as well as skills to transition into post-secondary education, independent living, and the workforce. Additional instruction and support are given in core subjects. This is an elective course taken in addition to core instruction.
101. Those high school students with high needs are enrolled in basic core classes taught by a special education teacher and take the place of regular core classes.
102. General education teachers attend IEP meetings at the invitation of the special education teacher, but otherwise, there is minimal interaction between the general education teachers and special education teachers unless a parent or a general education teacher has a concern and the general education teacher reaches out to special education staff for assistance.
103. The parent implements portions of a student's IEP, including the general education curriculum chosen by the parent, general education instruction, the accommodations identified on the IEP, and any indirect special education services identified. Parents may also be requested to take progress monitoring data.
104. The related services provided by PL are virtual unless a student's IEP team determines that virtual services do not meet a student's needs.
105. For those instances where a student needs face-to-face related services, the District has contracted with 15 Idaho providers in locations around the state to provide various related services.
106. When determined necessary by a student's IEP team, the District provides a behavioral interventionist to a student in the home setting or the setting selected by the parent.
107. The District, through its contracted providers, occasionally has not had sufficient contracted providers to provide the related services on students' IEPs in a timely manner. In those cases, the District often provided the parent with prior written notice (PWN) informing them that related services have not yet begun due to the lack of a related service provider. When the student was assigned a related service provider, compensatory services¹¹ were provided.

¹¹ Compensatory services are special education and related services provided to make up services due to a failure to implement all or part of a student's IEP. See *Letter to Wolfram and Mandlawitz*, 80 IDELR 196 (OSERS/OSEP 2022).

Least Restrictive Environment and Continuum of Services

108. As stated below, IHLA's special education handbook recognizes that the least restrictive environment for each child must be considered:

What environment will allow them, to the greatest extent, to be educated with their same age peers that do not have disabilities? Is the virtual environment the LRE or is it necessary to enroll them in a brick and mortar school or is part time in a brick and mortar school the better option? We strongly encourage you [the parent] to consider the option of enrolling your child in supplemental activities, coops, athletics, etc., to ensure they are in the least restrictive environment.

109. The parent determines the setting where the student will receive instruction. This may be the home setting, or the parent may have the student attend one of the private academies or programs with a signed Memorandum of Understanding with the District and its Providers.

Analysis and Decision

- 1. Did the District ensure that each individual assigned to implement students' individualized education programs (IEPs) and provide services has the requisite certification and content knowledge and skills, consistent with State policies and procedures, to serve students with disabilities? [34 CFR §300.156; 34 CFR §300.207]**

The purpose of the IDEA includes ensuring that all children with disabilities have available to them a free appropriate public education (FAPE) which meets state standards, provides involvement and progress in the general education curriculum and is provided in conformity with an IEP.¹²

The IDEA requires that all personnel necessary to carry out the purposes of the IDEA are appropriately and adequately prepared and trained, including that personnel have the content knowledge and skills to serve children with disabilities. Personnel qualifications must also be consistent with state certification and licensing that applies to the professional discipline in which personnel are providing special education and related services. All general education and special education teachers must have obtained full State certification, including certification obtained through an alternate route.

The use of paraprofessionals and assistants is permissible so long as those individuals are appropriately trained and supervised in meeting the requirements of the IDEA to assist in the provision of special education and related services to children with disabilities.¹³ In Idaho, paraprofessionals must have a high school diploma or general equivalency diploma and meet other competency requirements. Further, paraprofessionals must work under the direct supervision of a properly certified staff member for the areas they are providing support. Paraprofessionals cannot serve as the teacher of record and may not provide direct instruction to a student unless the paraprofessional is working under the direct supervision of a teacher.¹⁴

¹² 34 CFR 300.1; 300.17; 300.320.

¹³ 34 CFR § 300.156.

¹⁴ IDAPA 08.02.02.007.10.

Issue 1 Findings

The District has clearly defined IHLA's role and mission in its publications. The targeted students for enrollment in IHLA are those students who have been homeschooled by their parents. IHLA is a school of choice and its educational model delivers support to parents and students for regular education and special education virtually. The District has also identified that it provides mastery-based education at both IHLA and its brick and mortar schools. However, unlike its brick and mortar schools, where District staff provides face-to-face direct instruction in the general education curriculum, IHLA does not provide direct instruction in the general education curriculum for all students, including students with disabilities. Instead, the parent is the learning coach and provides instruction to their child using the general education curriculum of their choosing.

The District has hired certified general education teachers, but the teachers' role is to provide parental support, assist in developing student learning logs, assist when requested with identifying appropriate general education curriculum, be available during a weekly office hour and grade the work submitted by students every two weeks.

The general education teachers interviewed all indicated their willingness to meet with a student virtually on a one-on-one basis if a student was struggling, as well as provide assistance to parents when requested. Some of the general education teachers have provided videos for students to review in content areas where it appeared students might be struggling. Some general education teachers also teach a virtual class, which parents may opt to have their child attend and use their supplemental funds for that class. However, general education teachers do not provide direct instruction to the students assigned to them.

The District has hired certified special education teachers who provide direct instruction virtually as set forth on each student's IEP. The District has also contracted with related service providers to provide speech-language therapy, occupational therapy and physical therapy. However, the district does not have qualified paraprofessionals to assist the special education teachers in the implementation of each student's IEP, but instead uses the parent in that role. While the District has a process for parents to become certified learning coaches and receive an IHLA Learning Coach identification badge, the eight training modules do not meet the appropriate training and supervision required by the IDEA to assist in the provision of special education and related services to children with disabilities. Nevertheless, parents are responsible for providing the accommodations identified on their child's IEP and in some instances are listed on the IEP as the provider of "indirect services." Additionally, some parents have been provided with progress monitoring forms to fill out in the home setting so that the certified special education teacher can use that information on the student's progress report.

Issue 1 Conclusion

The District failed to ensure that each individual assigned to implement students' IEPs and provide services has the requisite certification and content knowledge and skills, consistent with State policies and procedures, to serve students with disabilities.

This allegation is **founded** and the District is **out of compliance**.

2. Did the District ensure that all students with disabilities, regardless of the severity of their disability, who are in need of special education and related services are identified, located, and evaluated? [34 CFR §300.111; 34 CFR §300.300 through 34 CFR §300.306]

Each Idaho school district is responsible for establishing and implementing an ongoing child find system within the district's geographic boundaries to locate, identify and evaluate students suspected of having disabilities who may need special education, regardless of the severity of the disabilities.¹⁵

Because the child find obligation is an affirmative one for all school districts, a parent is not required to request that a district identify and evaluate a child. A district may not take a passive approach and wait for others to refer a student for special education services; the district must actively seek out IDEA-eligible students. Part of seeking out potentially eligible students means watching for red flags among its students and referring students who may have a disability and need special education. Additionally, a district cannot use a parent's preference to excuse its responsibility for child find.¹⁶

In implementing child find in virtual schools, it is recommended that districts consider taking other steps, such as conducting screenings and distributing parent questionnaires that empower staff members to identify children with disabilities who may need special education and related services, despite limited in-person contact with a student.¹⁷

A district may attempt prereferral interventions before referring a student for an IDEA evaluation. However, a district cannot use its prereferral or Response to Intervention (RTI) process to reject a referral or fail to conduct a timely evaluation. If there is reason to suspect that the child is a child with a disability in need of special education and related services, the district must obtain parental consent within a reasonable period of time and conduct an initial evaluation within 60 days, regardless of whether the district is also monitoring the student's progress in its RTI intervention process. A district may violate its child find duty by repeatedly referring a student for interventions rather than evaluating the student's need for special education and related services.¹⁸ It is generally not acceptable for a district "to wait several months to conduct an evaluation or to seek parental consent for an evaluation if the public agency suspects the child to be a child with a disability."¹⁹

¹⁵ Idaho Special Education Manual, 2018 (Manual), p. 20.

¹⁶ . *Compton Unified Sch. Dist. v. Addison*, 54 IDELR 71 (9th Cir. 2010), *cert. denied*, 112 LRP 1321,132 S. Ct. 996 (2012)

¹⁷ *Dear Colleague letter*, 68 IDELR 108 (OSERS/OSEP 2016).

¹⁸ *Memorandum to State Dirs. of Special Educ.*, 56 IDELR 50 (OSEP 2011).

¹⁹ *Questions and Answers on Response to Intervention (RTI) and Early Intervening Servs. (EIS)*, 47 IDELR 196 (OSERS 2007).

Child find includes a district's obligation to complete a *Referral to Consider a Special Education Evaluation/Reevaluation* form, obtain parental consent to evaluate and conduct a timely evaluation. An evaluation under the IDEA serves two purposes: 1) identifying students who need specialized instruction and related services because of an IDEA-related disability, and 2) helping IEP teams identify the special education and related services required by a student.²⁰ Each district must conduct a full and individual initial evaluation in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.²¹ When conducting initial evaluations and reevaluations, a district is required to review existing evaluation data on the child, including evaluations and information provided by the child's parents, current classroom-based, local or state assessments and classroom-based observations, and observations by teachers and related service providers.²² This information is gathered to assist eligibility teams in determining whether: (1) a student has a disability that meets IDEA criteria; (2) the disability adversely affects the student's educational performance; and (3) the student requires specially designed instruction.²³

A comprehensive initial evaluation must be conducted within 60 calendar days. School breaks, regardless of the length of the break and the availability of staff, do not increase the time frame for conducting initial evaluations.²⁴ Only two specific exceptions exist to the 60-day timeline requirement: 1) where a parent repeatedly fails or refuses to produce the child for evaluation; or 2) where a child enrolls in another public school after the 60-day timeframe has begun and prior to a determination by the previous district as to whether the child is a child with a disability.²⁵ The evaluation team includes the same membership as the IEP team, although not necessarily the same individuals, and includes other qualified professionals as needed to ensure that appropriate and informed decisions are made.²⁶ When the evaluation team is reviewing whether a student is suspected of having a specific learning disability, a school psychologist is an additional required member of the team. When considering autism as a disability category, a school psychologist and a speech-language pathologist are required members of the evaluation team.²⁷

The evaluation team must consider evidence of the student's insufficient progress in response to effective, evidence-based instruction and intervention that indicates the student's performance level and rate of improvement are significantly below that of grade-level peers. This is documented with data that establishes that the core curriculum is effective for most students. The most recent whole grade performance data used to verify appropriate instruction in the areas of concern may include results from the standards-based assessment system. The data considered by the evaluation team must also include information gathered prior to, or as part of the referral process that documents the student was provided appropriate instruction in general education settings. Child specific data regarding appropriate instruction may include: (1) verification that core (universal) instruction was provided regularly; (2) data indicating that the student attended

²⁰ 71 Fed. Reg. 46,548 (2006).

²¹ 34 CFR 3200.304.

²² 34 CFR 300.305.

²³ Manual at 65.

²⁴ *Letter to Reyes*, 59 IDELR 49 (OSEP 2012).

²⁵ 34 CFR 300.301.

²⁶ 34 CFR 300.8; 300.306; Manual at 31.

²⁷ Manual at 31, 46.

school regularly to receive instruction; (3) verification that core instruction was delivered according to its design and methodology by qualified personnel; and (4) verification that differentiated instruction in the core curriculum was provided.²⁸

Issue 2 Findings

A review of selected student files and staff interviews revealed that the District did not affirmatively seek out those students suspected as having a disability. Rather, those students identified as struggling academically by the parent or general education teacher monitoring the student's work submissions were referred to the RTI process (i.e., Student Success Team), including students with known disabilities, such as [REDACTED] or intellectual disability. The interventions were intended to occur for 6 to 9 weeks, but often lasted for a longer period, including up to 14 months, before the student was referred for a special education evaluation. The reasons given by staff for the longer period in the RTI process included the fact that many of the students were previously attending a homeschool setting and it was unknown what instruction those students had received, some students failed to attend the interventions on a regular basis, some parents failed to sign necessary documentation, and at times there was a lack of sufficient personnel to conduct the evaluation. While the District may use its RTI process to provide prereferral interventions, administrative needs and lack of staffing are not reasons for failing to timely meet the District's child find obligations. Further, if the District has reason to believe that a child is a child with a disability, such as those students with [REDACTED] or intellectual disability, the District must complete a *Referral to Consider a Special Education Evaluation/Reevaluation* form, which it failed to do, and seek parental consent to conduct an evaluation, which the District also failed to do on a consistent basis.

In Idaho, during the 2021-22 school year, 11.6% of all public school students were identified as having a qualifying disability. With regard to IHLA students for the 2022-23 school year, the District has identified 5.9% of its student population as having a qualifying disability. The percentage of disabilities in certain categories during the 2021-22 school year in Idaho included Other Health Impairment (OHI), at 22.59%, Specific Learning Disabilities (SLD) at 19.84%, Speech Impairment at 19.84% and Autism at 11.09%. IHLA has a significantly higher percentage of students identified as having a Speech Impairment at 29.31%, and Autism at 20.20% while it has a lower percentage of students identified as OHI at 17.24%, and SLD at 14.77%.

This information by itself does not definitively establish that the District is under-identifying students with disabilities and over-identifying students in particular disability categories. But this information, in conjunction with the District's reliance on parents and on general education teachers, who have had limited contact with and have little knowledge about the student, for referrals for special education, does show that the District's child find obligations are not being met.

Staff interviews revealed that parents are the driving force throughout the special education evaluation process. Staff defers to parent preference regarding which areas of need will be assessed. Consent for assessments signed by parents often did not align with the areas actually

²⁸ Manual at 53-54.

assessed or the areas of concern. Various explanations were given by staff regarding this inconsistency, including parents deciding after signing the consent that they didn't want a particular related service, such as physical therapy, occupational therapy or speech/language therapy, so that area was not assessed; a second consent was created to add areas; or additional areas to assess were added through an email conversation at parent request. There was little evidence that general education observations were conducted, although parent consent was provided. These changes resulted in the District failing to meet its obligation to evaluate each referred student in all areas of the suspected disability.

When evaluating a student suspected of having a specific learning disability (SLD), staff indicated they are able to gather evidence that the student's performance level and rate of improvement are below grade level peers. However, District staff must also show evidence that both instruction and intervention are effective. This is demonstrated with information documenting that prior to, or as part of, the referral process, the student was provided appropriate instruction in general education settings. Appropriate instruction includes consideration of both child specific information and whole grade performance data. However, because of IHLA's structure, where the parent is the educator providing instruction in the home setting, certified personnel are not able to verify that instruction has been provided to the student regularly and with fidelity. Additionally, it is not possible to compare whole grade performance data to demonstrate the effectiveness of the core curriculum as the parents select their child's curriculum.

A review of student files found that many of the eligibility reports were incomplete and failed to provide student-specific background information, including a summary of existing evaluation data and information provided by the parents, and failed to provide information regarding current classroom-based assessments, local or State assessments, and classroom-based observations by teachers and related service providers. During staff interviews, it was clear that the special education teachers were under the impression that the PL school psychologists would complete this section. Additionally, the summary of the evidence in the eligibility report often failed to summarize the findings and document the disability, failed to identify the adverse effect the student's disability had on educational performance, and failed to identify the student's need for specially designed instruction.

A review of student files showed that the District failed to complete certain student evaluations within the 60-day timeline. Although parents were informed in some instances by the District through a prior written notice (PWN) of the District's need to extend the time for completing the evaluation, the reasons given did not fall within the two exceptions for extending the timeline. Namely, the reasons given were due to scheduling needs, not due to a parent's failure to make the student available for the evaluation, and not due to a student enrolling in IHLA after the evaluation process had begun in another school district.

Issue 2 Conclusion

The District failed to ensure that all students with disabilities, regardless of the severity of their disability, who are in need of special education and related services are identified, located, and evaluated.

This allegation is **founded** and the District is **out of compliance**.

3. Did the District ensure that special education, related services, and supplementary aids and services have been provided to meet the unique needs of each student with a disability? [34 CFR §300.39; 34 CFR §300.34; 34 CFR §300.114]

“Special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.²⁹ “Specially designed instruction” means adapting, as appropriate to the needs of an eligible child the content, methodology or delivery of instruction to address the unique needs of the child that result from the child’s disability and which ensures access of the child to the general education curriculum so that the child can meet the educational standards that apply to all students.³⁰ “Related services” are defined as such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.³¹ “Supplementary aids and services” consist of aids, services and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.³²

For those students found to be eligible for special education services due to a qualifying disability,³³ a district is required to develop an Individualized Education Program (IEP) that describes the student’s individual needs and identifies the appropriate services and placement designed to meet each student’s unique needs.³⁴ The eligibility report is the foundation from which a student’s individual needs are identified, and from which the IEP is developed.³⁵

When developing or revising a student’s IEP, district staff must avoid predetermination of a child’s educational program and must ensure that the parents of a student with a disability have a meaningful opportunity to participate in each IEP meeting.³⁶ “The IEP team meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child.”³⁷ Districts must consider parents’ suggestions and, to the extent appropriate, incorporate these in the IEP. However, the mandate to “consider” parent input does not mean “acquiesce.”³⁸ Nor does parent participation mean that parents are responsible for implementing all or part of the student’s IEP, as the district is responsible for providing each student with a disability with a free appropriate public education (FAPE).³⁹

²⁹ 34 CFR 300.39.

³⁰ 34 CFR 300.39(b)(3).

³¹ 34 CFR 300.34.

³² 34 CFR 300.42.

³³ There are 13 qualifying disabilities under the IDEA. 34 CFR 300.8.

³⁴ *Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005).

³⁵ See discussion in Issue 2 regarding eligibility report requirements.

³⁶ *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 100 (6th Cir. 2004), *cert. denied*, 110 LRP 16999, 546 U.S. 936 (2005); 34 CFR 300.322.

³⁷ *Letter to Richards*, 55 IDELR 107 (OSEP 2010).

³⁸ *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 (8th Cir. 1999).

³⁹ 34 CFR 300.17; see discussion in Issue 7 regarding free appropriate public education.

All decisions made in IEP meetings must be by a consensus, or general agreement, of the IEP team members. However, should IEP team members be unable to reach a consensus, the district makes the decision, as it is the district that is ultimately responsible for ensuring that the student is offered an appropriate program.⁴⁰

As soon as possible following the development of the IEP, the special education and related services, and supplementary aids and services identified on a student's IEP must be made available.⁴¹ Further, at the beginning of each school year, school districts must have an IEP in effect for each child with a disability within its jurisdiction.⁴² The services can be provided by qualified district staff or by qualified individuals or entities contracting with the district to provide appropriate services.⁴³ In both instances, the district is responsible for overseeing and ensuring that each student's IEP is fully implemented.

Issue 3 Findings

A review of student files and staff interviews revealed that the special education teachers defer to the parent regarding the special education and related services, and supplementary aids and services that are provided (or not provided) to each child with a disability. As discussed in Issue 2, the eligibility report is the foundation upon which the IEP is developed. Because many of the eligibility reports did not evaluate students in all areas of suspected disability, the corresponding IEPs were developed using insufficient or incomplete information in determining the special education and related services that should be provided to each student with a disability.

The files of students who transferred from another public school district to IHLA often showed a significant decrease in special education and related services when comparing the transfer IEP to the IEP developed by the District. Staff explained that this difference was a result of the parent's decision to educate the child in the home setting, the parent's preference for services, and the private services the student was receiving. While the parent must be allowed to have meaningful participation in the IEP development process, the District must ensure that the IEP appropriately meets a student's needs. By deferring to parents rather than coming to a consensus regarding student needs, the District failed to ensure that the special education and related services set forth on the IEPs meet the needs of each student with a disability.

Several IEPs were identified in which the parent was listed on the IEP as providing indirect or consultative services to the student in the home setting, and those minutes were listed on the IEP as special education services. In some instances, parents were asked to complete progress monitoring forms that were then used by the special education teacher for progress reporting purposes. Additionally, most students' IEPs identified various accommodations that are to be provided in both the general education setting and the special education setting. Because the general education teacher does not provide direct instruction to students, the parent, as the learning coach, is expected to provide the accommodations to the student in the home setting. However, the responsibility for the implementation of a student's IEP rests solely with the

⁴⁰ 34 CFR 300.503; *Letter to Richards*, 55 IDELR 107 (OSEP 2010); Manual at 66.

⁴¹ 34 CFR 300.323.

⁴² 34 CFR 300.323.

⁴³ See discussion in Issue 1 regarding qualified staff.

District. This responsibility cannot be assigned in whole or in part to the parent of the child with a disability.

The majority of student IEPs reviewed included the statement that special education services may be indirect service time during the first two weeks and the last two weeks of the school year. Staff interviews explained this statement as being a “safety net” for administrative purposes in case school staff needed additional time during those weeks to observe the student, prepare programming and complete documentation. The IDEA requires that all IEPs be fully implemented at the beginning and throughout each school year. No provision in the IDEA provides for or allows actions to be taken for administrative purposes such as is described in this paragraph.

The District has two separate academic calendars. One calendar applies to its brick and mortar schools and IHLA special education staff and provides for a 4-day school and work week. The other calendar applies to IHLA students and general education staff and provides for a 5-day school and work week. Because the IHLA calendar provides a 5-day school week, students receive two additional weeks off during the school year and longer breaks for Thanksgiving and winter break. With the additional weeks off and longer breaks in the IHLA calendar, certified special education teachers working a 4-day week are available approximately 15 days less in the school year to students attending IHLA on a 5-day school week. Although special education staff indicated they are available to students on Fridays, depending on the circumstances, the consistent availability of staff does not exist. Because of the two different calendars, students with disabilities do not have access to special education and related services as identified on the IHLA school calendar.

Issue 3 Conclusion

The District failed to ensure that special education, related services, and supplementary aids and services have been provided to meet the unique needs of each student with a disability.

This allegation is **founded** and the District is **out of compliance**.

- 4. Did the District ensure that students with disabilities enrolled in the District have the same variety of educational programs and services available to nondisabled students and that each student’s IEP enables the student to be involved in and make progress in the general education curriculum (*i.e.*, the same curriculum as for nondisabled students) so that each student can meet the educational standards that apply to all students? [34 CFR §300.110; 34 CFR §300.320; 34 CFR §300.324; 34 CFR §300.39]**

The IDEA requires that each school district take steps to ensure that students with disabilities have available to them a variety of educational programs and services that are available to nondisabled students.⁴⁴ Further, each student’s IEP must include a statement regarding how the student’s disability affects the student’s involvement and progress in the general education curriculum, and the instruction provided to the student must be adapted, as appropriate, to meet

⁴⁴ 34 CFR 300.110.

the individual student needs, including adapting the content, methodology, or delivery of instruction to ensure each student with a disability has access to the general curriculum so that the student can meet the educational standards that apply to all students.⁴⁵

All Idaho school districts are required to deliver a core of instruction⁴⁶ for each student in elementary, middle/junior high and high schools. All students attending Idaho schools are required, at a minimum, to meet the state standards as established by the State Board of Education. Students meet standards through rigorous accountability, which includes challenging examinations, demonstrations of achievement, and other appropriate tests and measures.⁴⁷ School districts may offer instruction through a “virtual school,” which is defined as the delivery of “a full-time, sequential program of synchronous and/or asynchronous instruction primarily through the use of technology via the internet in a distributed environment. Schools classified as virtual must have an online component to their school with online lessons and tools for student and data management.”⁴⁸ The IDEA requirements apply equally to students with disabilities attending public virtual schools. “The educational rights and protections afforded to children with disabilities and their parents under IDEA must not be diminished or compromised when children with disabilities attend virtual schools.”⁴⁹

School districts can opt to utilize a mastery-based education system where student progress is based on a student’s demonstration of mastery of competencies and content, not seat time or the age or grade level of the student.⁵⁰ School districts, through their board of trustees, are authorized to adopt their own curricular materials after receiving advice from the district’s board-appointed curricular materials adoption committee. All curricular materials adopted by the board must be consistent with Idaho content standards.⁵¹

Issue 4 Findings

The District’s board of trustees adopted a policy entitled “Curriculum: Standards, Alignment and Assessment” which set forth the board’s approval process for curriculum and established a district-wide standards and assessment committee. The committee’s responsibilities include developing a systemic approach in the District for implementing the state standards and developing a formative and summative assessment system. Grade level and department teams consisting of certified personnel members currently teaching in the relevant grade level are tasked by the policy with various responsibilities including reviewing grade level curriculum to determine whether consistency in the curricula in the five core content areas exists as it is

⁴⁵ 34 CFR §300.320; 34 CFR §300.324; 34 CFR §300.39.

⁴⁶ “Core curriculum” is defined as Tier 1 instruction, consisting of instruction and supports to all students in a general educational classroom setting and includes educator led small groups to provide differentiated learning. Core instructional practices and strategies are evidence-based and are tightly aligned to state academic standards. The learning experiences in which all students participate. Idaho MTSS Component Definitions, SDE (2022) available at: <chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://www.sde.idaho.gov/topics/mtss/files/Idaho-MTSS-Component-Definitions.pdf>.

⁴⁷ IDAPA 08.02.03.102.

⁴⁸ Idaho Code 33-5202A.

⁴⁹ *Dear Colleague Letter*, 68 IDELR 108 (OSERS/OSEP 2016).

⁵⁰ Idaho Code 33-1632.

⁵¹ Idaho Code 33-118; 33-512A; IDAPA 08.02.03.004.01.

written, taught, tested, graded and reported. The superintendent or designee is responsible for appointing a Standards and Assessment Committee and identifying by category, subpopulations of students, including students with disabilities, and tracking the progress of the subpopulations to determine whether equal access to the curriculum exists.

Although the District's policy and state administrative rules require that the board of trustees adopt the curriculum that will be used in its schools, staff interviews confirmed that this process is not utilized for the curriculum provided through IHLA. Instead, the District uses its Partners to provide available curriculum options which the Partners have determined meet state standards and from which parents may choose to use in the home as the learning coaches for their children. IHLA staff meet with the Partners each year to review the curriculum options and determine which options will be made available to parents, which, in some instances, the parents purchase with their supplemental learning funds. Parents may also elect to use their supplemental learning funds to purchase additional learning materials that will be used in the home. Board approval of the curriculum materials is not sought, nor are the curricula options made available to the parents reviewed by the district-wide standards and assessment committee.

While the District identifies IHLA as a "virtual school" and a "school of choice" that provides "mastery-based education," these designations do not exempt the District from ensuring that students with disabilities have access to the same variety of educational programs and the same general education curricula that are provided to nondisabled peers so that each student can meet the educational standards that apply to all students. By failing to follow its policy and instead delegating its statutory duties to the Partners for curriculum adoption and ensuring that the curriculum used by its students meets state standards, the District failed to provide students with disabilities the same variety of educational programs and the same general education curriculum as all other students attending District schools.

Issue 4 Conclusion

The District failed to ensure that students with disabilities enrolled in the District have the same variety of educational programs and services available to nondisabled students and that each student's IEP enables the student to be involved in and make progress in the general education curriculum (i.e., the same curriculum as for nondisabled students) so that each student can meet the educational standards that apply to all students.

This allegation is **founded** and the District is **out of compliance**.

- 5. Did the District ensure that, to the maximum extent appropriate, students with disabilities are educated with children who are nondisabled and that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services? [34 CFR §300.114; 34 CFR §300.115]**

The least restrictive environment (LRE) component of the IDEA requires that each school district ensure that:

1. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
2. Special classes, separate schooling, or other removals of children with disabilities from the regular educational environment occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁵²

The IDEA requires that a district develop a “continuum of alternative placements,” which is the range of potential placements in which a district can implement a student's IEP. The continuum begins with the regular classroom and becomes more restrictive at each placement on the continuum, including special classes, special schools, home instruction and instruction in hospitals and institutions.⁵³

Special classes, separate schooling, or other removals of children with disabilities from the regular educational environment are permitted only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁵⁴ Each student’s LRE must be determined based on the individual needs of the student. Impermissible factors for determining placement may include disability category, the configuration of the delivery system, availability of educational or related services, availability of space and administrative convenience.⁵⁵

The LRE provision applies equally to students with disabilities attending public virtual schools. IEP teams are responsible for determining the appropriateness of a placement and may make an individualized determination that virtual school is not appropriate based on a student’s unique needs. Although the term “placement” technically means a district's offer of special education and related services, the term may also be used when discussing the setting where an IEP team and district offer to educate the student and when referring to the location in which services will be provided.

Placement decisions are made only after the development of an IEP, as only after the IEP has been developed does a district have a basis for determining where a student’s needs can be met.⁵⁶ If that process is reversed, there is a danger of denying the student FAPE by developing an IEP to meet a predetermined setting.⁵⁷

A change in location for the provision of special education services may result in a change in placement if the change substantially alters a student’s educational program.⁵⁸ Factors to consider are whether the educational services in a student’s IEP can be implemented in the new

⁵² 34 CFR 300.114(a).

⁵³ 34 CFR 300.115(a).

⁵⁴ 34 CFR 300.114.

⁵⁵ *Letter to VanWart*, 20 IDELR 1217 (OSEP 1993).

⁵⁶ 65 Fed. Reg. 36,591 (2000).

⁵⁷ *Spielberg v. Henrico County Pub. Sch.*, 441 IDELR 178 (4th Cir. 1988), *cert. denied*, 110 LRP 47003, 489 U.S. 1016 (1989).

⁵⁸ 71 Fed. Reg. 46,588 (2006).

location, whether the student will be educated with nondisabled peers to the same extent, and whether the student will have the same opportunities to participate.⁵⁹

Issue 5 Findings

The District's *Special Education Handbook for IHLA* states that each child's least restrictive environment must be considered. This includes determining whether the virtual school environment is appropriate. Further, parents are encouraged to find supplemental activities, co-ops and athletics for students enrolled in IHLA to ensure they are in the least restrictive environment. Although the *Special Education Handbook* addresses LRE, the practice of staff deferring to parent choice in their decision to educate their children in the home setting as their learning coach is counter to the LRE requirements, effectively predetermines each student's placement, and fails to provide for a continuum of placements, depending on student needs.

Staff interviews confirmed that parents enroll their children in IHLA for the provided education mode and are allowed to make the final decision regarding placement. This results in a violation of LRE, as students with disabilities enrolled in IHLA are not being educated with their nondisabled peers. The only direct instruction provided to students with disabilities is provided by the special education teachers. The only other students attending the direct instruction in a virtual classroom are other students with disabilities. Students with disabilities are not provided access to their general education peers through a virtual classroom or in another setting. Suggesting that parents enroll in supplemental activities to allow their children with disabilities to interact with other children outside of a school setting is not what the LRE provisions require.

Although parents may utilize their supplemental learning funds to pay for their child to attend one of the academies or programs under a Memorandum of Agreement with the District and a Partner, this placement is not made through the IEP team process but is a unilateral placement decision made by the parent.

Staff interviews identified that a disconnect exists between general education and special education staff communications and educational programs. There are few if any, opportunities for collaboration to occur between and among certified staff. Yet, the majority of IEPs reviewed identified the LRE for each student as being inside the general education classroom for 80% or more of the school day. This means that in a 6-hour school day, the student is in the regular classroom for at least 4 hours and 48 minutes. This statement is misleading, as the general education classroom implies that each student is not only attending a general education classroom but has access to age-appropriate nondisabled peers in the classroom and is being taught the general education curriculum by a certified general education teacher. This, in fact, is not the case due to the model of the school, where students are instructed in a restrictive home environment by their parents as the learning coach, are not interacting with nondisabled peers, and are being taught curriculum chosen by their parent.

⁵⁹ *Letter to Tymeson*, 81 IDELR 23 (OSEP 2022).

Issue 5 Conclusion

The District failed to ensure that, to the maximum extent appropriate, students with disabilities are educated with children who are nondisabled and that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services.

This allegation is **founded** and the District is **out of compliance**.

6. Did the District ensure that Idaho’s dual enrollment requirements were followed for those students with disabilities enrolled in the District? [Idaho Code §33-203; Idaho Special Education Manual (2018), p. 113-114]

In Idaho, dual enrollment occurs when a child of school age, who is enrolled in a private school, public charter school, or is homeschooled⁶⁰ requests to also enroll in a traditional school district or a public charter school in order to participate in public school programs and activities. Dual enrollment can also include joint enrollment in a traditional public school and an alternative public school program or enrollment in a post-secondary institution.⁶¹

Under the dual enrollment provisions, a student who is homeschooled is considered to be a non-public student. If a student is enrolled in a traditional school district and the parent elects to homeschool the student for part of the school day, the student is treated as a homeschooled student for dual enrollment purposes. The homeschool placement becomes the primary educational setting for the student. If a homeschooled student had an IEP while attending a traditional school district, the district where the student dually enrolls does not have an obligation to provide a free appropriate public education to the student.⁶² In this case, as a non-public student, a homeschooled student may enroll in general education courses under the same criteria and conditions as students without disabilities and may receive accommodations in the general education courses for which they are enrolled on a Section 504 plan if needed.⁶³

A student enrolled in an Idaho school district may not enroll in another school district solely for the purpose of receiving special education services. In those instances where a student is enrolled in two Idaho school districts at the same time, the districts involved have entered into an agreement for the purposes of sharing a program and address the tuition to be paid to the receiving school district or waived by the receiving school district.⁶⁴

⁶⁰ “Homeschool” is defined as educational instruction in a home setting under the direction of the student’s parent. Dual Enrollment Q&A, at 2. The Dual Enrollment Q&A is available at <https://www.sde.idaho.gov/sped/sped-manual/files/chapters/shared/Dual-Enrollment-Q&A.pdf>.

⁶¹ Idaho Code 33-203; Dual Enrollment Q&A.

⁶² Dual Enrollment Q&A, Question 36.

⁶³ Dual Enrollment Q&A, Question 37.

⁶⁴ Idaho Code 33-1402.

Issue 6 Findings

The District's policy accurately identifies that dual enrollment within the District may occur for any student enrolled in a non-public school, including a homeschool or private school, a public charter school, or a post-secondary institution.

The information regarding dual enrollment provided to parents by the District and its Partners is different from the District's policy, as it informs parents that students are permitted to dually enroll in another public school or an independent homeschool. One Partner has informed parents that dual enrollment is allowed with consent from the other school district and that \$170 per semester per course will be reduced from the student's supplemental funds.

Parents have enrolled their children in IHLA and have also enrolled or continued the enrollment of their children in another Idaho school district in order to receive special education services and/or related services. By enrolling a student in IHLA, the District becomes fully responsible for providing that student with all educational services, including special education and related services, to which the student is entitled. The only exceptions to this obligation are in those instances where the District has clearly established that the student is enrolling on a part-time basis because the student is also enrolled in a private school or is receiving homeschool instruction. In this case, the student is not entitled to special education services.

The issue of dual enrollment tends to be confusing to parents due to the model of IHLA, which targets traditional homeschool students for enrollment. The Partner initially enrolls the student in their system and provides the parent with a web link to the IHLA enrollment site to complete the IHLA registration. The parent-chosen Partner, not the District, provides parents with all communications, curriculum choices, and supplemental learning funds. While staff indicated that parents are made aware that IHLA is part of a public school system, the Partners also assign the homeroom teacher and provide the email addresses for the District's general education teachers, as parents have been found to more positively respond (due to parents general preference of being aligned with "homeschooling" rather than being associated with the public school system), believing they are associated with the District through their chosen Partner.

An additional factor causing confusion exists at the high school level where the District permits students to enroll in IHLA as non-diploma-seeking students, who typically enroll on a part-time basis. Parents sign a written confirmation of the student's non-diploma status; approximately 10% of IHLA high school students are non-diploma seeking. In this case, the District must determine, on a case-by-case basis, whether a non-diploma-seeking student with disabilities is also receiving homeschooling. In that case, the student with disabilities may dually enroll but is not entitled to special education services. A student does not have the right to enroll on a part-time basis with another traditional school district once they are enrolled with IHLA.

Issue 6 Conclusion

The District failed to ensure that Idaho's dual enrollment requirements were followed for those students with disabilities enrolled in the District.

This allegation is **founded** and the District is **out of compliance**.

7. Did the District ensure that students with disabilities receive a free appropriate public education (FAPE)? [34 CFR §300.17]

The IDEA provides that a free appropriate public education (FAPE) means special education and related services that: 1) are provided at public expense, under public supervision and direction, and without charge to parents; 2) meet the standards of the state educational agency (SEA), including the requirements of the IDEA; 3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and 4) are provided in conformity with an individualized education program (IEP).⁶⁵ Districts must ensure that FAPE is available to all students with disabilities who require special education and related services, even if those students are advancing from grade to grade.⁶⁶ These requirements apply whether students with disabilities attend public brick and mortar schools or public virtual schools.⁶⁷

The U.S. Supreme Court has defined the standard for FAPE, holding that “a student offered an educational program providing ‘merely more than de minimis’ progress from year to year can hardly be said to have been offered an education at all.” In those instances when a child is fully integrated in the regular classroom, an IEP typically should provide a level of instruction reasonably calculated to permit advancement through the general education curriculum. When a child is not fully integrated in the regular classroom and not able to achieve on grade level, the IEP need not aim for grade-level advancement, “[b]ut his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”⁶⁸

Failure to meet IDEA procedural requirements may result in a denial of FAPE in those instances where they impede a child’s right to FAPE; significantly impede a parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the parent’s child; or caused a deprivation of educational benefits.⁶⁹ Situations in which FAPE was found to be denied due to procedural violations include failing to meet timelines for notice, evaluations, or referrals; failing to address a student’s needs; failing to implement a student’s IEP; failing to provide proper notice; and failing to provide parents a meaningful opportunity to participate in the IEP team process.⁷⁰

The IDEA requires that an IEP team develop a student’s IEP. The IEP team must generally include the following individuals:

⁶⁵ 34 CFR 300.17.

⁶⁶ 34 CFR 300.101(c)(1).

⁶⁷ *Dear Colleague Letter*, 68 IDELR 108 (OSERS/OSEP 2016).

⁶⁸ *Andrew F. v. Douglas County School District. RE-1*, 137 S. Ct. 988 (2017).

⁶⁹ 34 CFR 300.513(a)(2).

⁷⁰ *Doug C. v. State of Hawaii Dep’t of Educ.*, 61 IDELR 91 (9th Cir. 2013); *Forest Grove Sch. Dist. v. T.A.*, 52 IDELR 151 (U.S. 2009).

1. The parents of the child.
2. Not less than one general education teacher of the child (if the child is or may be participating in the general education setting).
3. Not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child.
4. A district representative who 1) is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; ii) is knowledgeable about the general education curriculum; and iii) is knowledgeable about the availability of district resources.
5. An individual who can interpret the instructional implications of evaluation results.
6. At the discretion of the parent or the district, other individuals with knowledge or special expertise about the child, including related services personnel when appropriate; and
7. Whenever appropriate, the child with the disability.⁷¹

The individual chosen to serve as the general education teacher on a student's IEP team does not need to be the student's current teacher. However, the individual selected must have worked with the student.⁷² The role of the regular education teacher as an IEP team member is to participate in the development of the IEP, including, as appropriate, the determination of appropriate positive behavioral interventions and supports and other strategies for the child, and the determination of supplementary aids and services, program modifications, and support for school personnel.⁷³ Additionally, a school psychologist may be a mandatory member of the IEP team when needed to interpret the instructional implications of evaluation results.⁷⁴

A student's IEP, developed through the IEP team process, is a district's offer of FAPE and must contain a description of the student's special education, related services, and supplementary aids and services.⁷⁵ A student's need for related services, like the need for special education, must be determined on an individual basis as part of the IEP process and must be based on an assessment of the student's individual needs.⁷⁶

IEP goals must align with state academic achievement standards for the grade in which the student is enrolled. Aligning IEP goals with each state's challenging academic content standards reflects the IDEA's emphasis on having high expectations for students with disabilities. However, districts may not abandon the individualized decision-making process, a critical component of the IEP development process. Rather, the IEP team must consider how the student's disability affects the student's progress toward annual goals that are aligned with state academic achievement standards.⁷⁷

⁷¹ 34 CFR 300.321.

⁷² *A.G. v. Placentia-Yorba Linda Unified Sch. Dist.*, 52 IDELR 63 (9th Cir. 2009, unpublished).

⁷³ 34 CFR 300.324(a)(3).

⁷⁴ *Douglas County Sch. Dist.*, 75 IDELR 237 (SEA CO 2019).

⁷⁵ 34 CFR 300.320.

⁷⁶ *Letter to Ackerhalt*, 60 IDELR 21 (OSEP 2012).

⁷⁷ *Dear Colleague Letter*, 66 IDELR 227 (OSERS/OSEP 2015).

Districts must initiate and conduct meetings to review each student's IEP periodically and if appropriate, revise its provisions. At a minimum, a meeting must be held for this purpose at least once a year.⁷⁸ If a student is not making progress on the annual goals at the level the IEP team expected, the team must revisit the IEP and revise it as necessary to ensure the student is receiving appropriate special education and related services and ensure that the goals are individualized and ambiguous.⁷⁹ Districts should be cautious when considering the appropriateness of repeating goals from year to year, as an IEP must be reasonably calculated to enable a student to make progress that is appropriate in light of the student's circumstances.

Whenever a district proposes or refuses "to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child," a prior written notice (PWN) must be sent to the parent within a reasonable period of time.⁸⁰ The PWN must provide sufficient detail to allow parents to participate in their child's educational services decisions in an informed way and must allow parents sufficient time to fully consider the change and respond to the action before it is implemented.⁸¹ A PWN is also required in those instances where a change is being proposed by the parent.⁸² Providing parents with verbal notice as a substitute for written notice does not fulfill the PWN obligation.⁸³ A district's failure to provide PWN within a reasonable time before it implements a change constitutes a procedural violation that may result in a denial of FAPE.⁸⁴

Issue 7 Findings

All findings set forth in Issues 1 through 6 are incorporated herein by reference.

Eligibility reports often mentioned that students needed related services, yet those areas of need were often not evaluated, nor were related services provided on the student's IEP. Staff explained in their interviews that many of the students who qualified for an IEP were receiving outside services and that their parents indicated to the evaluation team and/or IEP team that they did not wish to access school-based related services. Staff often did not request access from parents to contact the private providers to gather relevant information regarding the students,

⁷⁸ 34 CFR 300.324.

⁷⁹ *Questions and Answers on Andrew F. v. Douglas County School District RE-1*, 71 IDELR 68 (EDU 2017).

⁸⁰ A prior written notice must include the following information:

1. A description of the action proposed or refused by the district.
2. An explanation of why the district proposes or refuses to take the action.
3. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
4. A statement that the parents have protection the IDEA's procedural safeguards and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
5. Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.
6. A description of other options that the IEP team considered and the reasons why those options were rejected.
7. A description of other factors relevant to the district's proposal or refusal.

34 CFR 300.503(b).

⁸¹ *Letter to Chandler*, 59 IDELR 110 (OSEP 2012).

⁸² *Letter to Lieberman*, 52 IDELR 18 (OSEP 2008).

⁸³ *Union Sch. Dist. v. Smith*, 20 IDELR 987 (9th Cir. 1994), *cert. denied*, 109 LRP 36508, 513 U.S. 965 (1994).

⁸⁴ *El Paso County Sch. Dist. 2*, 113 LRP 44602 (SEA CO 08/15/13).

including what services were being provided. Parents were informed that the District was ready, willing and able to provide related services if the parents changed their minds. As discussed in Issue 2, the District has an obligation to evaluate in all areas of suspected disability, including related service areas, yet failed to do so. Although parents indicated they did not wish to access school-based related services for their child, the District nevertheless had an obligation to formally offer, through the IEP and PWN process, all of the services determined necessary to provide FAPE to the student. Without offering an IEP which identified all of the educational services needed by a student to receive FAPE, the parents were unable to make informed decisions regarding their child's special education program. The District's actions constituted procedural violations that resulted in a denial of FAPE, as the eligibility process was incomplete, the IEP process was incomplete, adequate prior written notices were not provided, and parents were denied the opportunity for meaningful participation.

The review of records and interviews with general education teachers revealed that while students' IEP teams have included a general education teacher, that teacher has not typically provided the student with direct instruction in the general education curriculum, or worked with the student, as the parent provides the instruction in the home setting. Without having worked with the student, the general education teacher is unable to meaningfully participate in the development of the student's IEP or provide input regarding the possible need for positive behavioral interventions, supports and other strategies for the student, or provide input regarding the student's need for supplementary aids and services, program modifications, or the need for school personnel support. Further, it is the District's practice that the school psychologist who evaluated the student attends the eligibility team meeting, but does not attend IEP team meetings. Depending on the circumstances, a school psychologist may need to attend specific IEP meetings in order to interpret the instructional implications of the evaluation results for the other team members. Additionally, while a District representative is typically present at IEP team meetings, it is unclear what knowledge that individual has regarding the general education curriculum, as the parent has chosen the general education curriculum to be used in the home setting and may be supplementing that curriculum with additional resources of the parent's choosing.

The review of student files identified that many of the students' IEPs provided that, as an accommodation, or as an adaptation or modification, students would work at the grade level that aligned to the student's instructional level and turn in lower grade level work. However, no actions were taken to adapt the lower grade level curriculum to match the core curriculum standards for the student's grade level. Instead, it appeared that students with disabilities were provided basic classes instructed by the special education staff. Further, some of the general education teachers appeared to believe that special education students did not need to be held accountable for meeting state standards once they were identified as having a disability and were provided an IEP.

Certain IEPs and progress reports reviewed identified that those students had met some of their IEP goals several months prior to the next annual review date, but no actions were taken to amend the IEP during the school year to provide for more challenging goals. On the flip side, IEPs were reviewed where, during the annual review process, IEP goals remained the same because it was noted that the student made no progress towards the goals during the previous 12 months. No documentation was provided that showed the District considered the appropriateness

of repeating the goals from year to year, nor that the District determined the student's IEP was reasonably calculated to enable a student to make appropriate progress in light of the student's circumstances.

An appropriate FAPE includes not only special education and related services, but also requires that students with disabilities receive an appropriate preschool, elementary, and secondary school education. Because of the IHLA model, where parents are the teachers/learning coaches for their children in the home setting, parents decide what special education services they wish to have for their child, decide what general education curriculum will be used, and identify the number of hours of instruction each week their child will receive. Further, the facts have clearly established that students with disabilities attending IHLA received little, if any, general education direct instruction by certified staff.

Issue 7 Conclusion

The District failed to ensure that students with disabilities receive a free appropriate public education (FAPE).

This allegation is **founded** and the District is **out of compliance**.

Corrective Action Plan

The District is out of compliance in seven (7) of seven (7) allegations and is in violation of the IDEA. The SDE orders the following corrective actions to address the findings of noncompliance addressed in this report:

Regarding All Allegations

1. Staff Training

A. Personnel: The District shall arrange for the following individuals involved in developing and/or implementing District policy, practice and procedure and in the IDEA evaluation process, eligibility determination, development and implementation of IEPs for all students with disabilities attending IHLA to participate in professional development training with Idaho Special Education Support and Technical Assistance (SESTA) prior to **March 15, 2024**:

- a. Superintendent
- b. District special education director and staff
- c. District school counselors
- d. IHLA special education compliance officer
- e. IHLA executive director
- f. IHLA K-8 administration
- g. IHLA high school administration
- h. All IHLA special education teachers
- i. All IHLA general education teachers
- j. All contracted related services personnel
- k. Representatives of each Partner

B. Training Format: The District shall consult with SESTA and the SDE Dispute Resolution Coordinator to determine the appropriate format for the training. It is the District's responsibility to contact SESTA and schedule training dates and times **before May 15, 2023**, to arrange for training on the following topics, at a minimum:

- Child Find, including prereferral requirements
- Evaluation and eligibility requirements, including:
 - The importance of the referral process and the referral form
 - The requirement to evaluate in all areas related to the suspected disability
 - The importance of providing background information regarding the student in the eligibility report
 - The need to summarize existing reports and other relevant data in the eligibility report
 - Ensuring all required components are present for determining whether a student meets a disability category, including SLD.
- IEP development, including:
 - The IEP team membership, team member roles, and IEP team process
 - Coming to a consensus in the IEP team process
 - Ensuring meaningful parental participation
 - Ensuring the IEP offers FAPE
- Ensuring a student's IEP provides for the student to be involved in and make progress in the general education curriculum
- Progress monitoring and data collection requirements
- Obligations regarding the least restrictive environment
- Obligations to provide a continuum of placement options
- Requirements for Prior Written Notice when proposing or refusing changes to the educational placement or the provision of FAPE to students on IEPs
- The obligation to begin all services listed on a student's IEP at the beginning of the school year and to continue providing all services to through the end of the school year
- The obligation to offer a free appropriate public education individualized to meet all of the educational needs of a child with a disability, including related services, when needed
- The obligation to revise a student's IEP, as appropriate, whenever it is determined that the student has met a goal or any lack of expected progress by a student toward the annual goals and in the general education curriculum

C. Training Documentation: Following each training by SESTA, the District will provide to the SDE Dispute Resolution Coordinator, **within seven (7) calendar days** of completion and **no later than March 31, 2024**, the following:

- The agenda for the training;
- The training materials presented;

- Sign-in sheets with:
 - The participants' printed names;
 - Their roles;
 - Original signatures of the participants; and
 - The time in and out of the training.

The District shall upload these documents to the secure server and notify the Dispute Resolution office that they have been uploaded.

2. **Join EdPlan Cohort:** The District shall transition from its current IEP software platform to the State-provided platform, EdPlan. The District will reach out to the SESTA Director to coordinate this change and shall provide a letter of assurance to the Dispute Resolution office describing its communication and outlining the software platform transition plan by **April 25, 2023**.
3. **Required Communications:** The District shall provide the following written communications, following SDE approval, by **July 31, 2023**:

At least two weeks prior to sending each communication, the District will provide a copy of the intended letter to the SDE for review and approval. This shall be done by uploading the communication to the secure server and notifying the Dispute Resolution office.

Within two weeks of sending each communication, and no later than July 21, 2023, the District will upload a copy of all sent communications outlined above to the secure server and notify the Dispute Resolution office.

A. Communications with Parents

- a. Parent Notification: The District shall notify each parent of a child currently attending IHLA of its IDEA obligations for child find, special education referral, eligibility determination, IEP development, and provision of a free appropriate public education.
- b. District Communication: All communications with parents regarding IHLA, its programming, curriculum, classes, courses, etc. shall be **created and provided solely** by the District and its employees.
- c. Email Correspondence: All email correspondence to parents by District employees shall be from a District-provided email address and will include a signature line that shall identify that IHLA is a public school within the District.
- d. Future Student Enrollment: During the enrollment process, the District shall provide a version of the parent notification above and a questionnaire that parents may fill out and submit to the District setting forth any child-specific academic or behavior concerns parents may have.

B. Communication with Idaho School Districts

- a. The District shall review its files and identify those students with disabilities who, following their enrollment with IHLA, also enrolled in another traditional school district on a part-time basis.
- b. By **July 31, 2023**, the District shall contact the other traditional school districts identified through its review process, inform those districts of each student's enrollment in IHLA, and notify the other school district of the District's obligation to provide each IHLA enrolled student with a free appropriate public education by providing the student with *all special education services*, as set forth on the student's IEP.

C. Communications with Partners

- a. The District shall notify its Partners in writing that **effective June 1, 2023**, the Partner shall no longer directly communicate with parents, and all communications with parents regarding IHLA, its programming, curriculum, classes, courses, etc. shall be *created and provided solely* by the District and its employees or contracted related service providers.
- b. The District shall notify its Partners that all District employees will no longer be utilizing email addresses provided by the Providers **effective June 15, 2023** and that all email correspondence to parents by District employees shall be from District-provided email addresses and shall identify that IHLA is a public school within the District.
- c. The District shall notify its Partners that the homeroom teacher assignment for all students shall be conducted by the District, **effective immediately**.
- d. The District shall notify its Partners that the District is solely responsible for enrolling students in IHLA and that students will no longer be first enrolled by the Partner, and then enrolled in the District, **effective immediately**.
- e. The District shall notify its Partners that, **effective June 1, 2023**, all curriculum offerings provided by the Partners must first be approved by the board of trustees for all students following its curriculum adoption policy.

D. Communications with Organizations with a Memorandum of Understanding with the District

- a. The District shall notify those organizations (identified in this Final Report as academies and programs) with whom it has a Memorandum of Understanding (MOU) to provide educational options to parents using supplemental funds that the educational options are not available unless or until approved by the board of trustees for all students following its curriculum adoption policy.

E. Communications with Related Service Providers

The District shall notify all contracted related service providers:

- a. Its obligation to evaluate in all suspected areas related to a child's disability and to offer related services through the IEP team process, regardless of whether the student receives privately related services.
- b. Its obligation to have regular contact with the special education case manager.
- c. That any direct communication with parents should also include (cc:) the special education case manager.

F. Communications with the Public

- a. The District shall publish on its District website and IHLA's pages its IDEA obligations for child find, special education referral, eligibility determination, IEP development, and provision of a free appropriate public education.

4. Review of Existing Contracts: The following actions shall occur by **July 15, 2023**:

- The District shall review its existing contracts with its Partners and make any amendments necessary to ensure compliance with this CAP.
- The District shall review its existing Memorandums of Understanding with academies and programs to ensure compliance with this CAP.
- The District shall review its existing contracts and agreements with related service providers to ensure compliance with this CAP.
- The District shall ensure that any subsequent contracts and Memorandums of Understanding are in compliance with this CAP.
- A letter verifying compliance with this requirement and signed by the District's attorney shall be provided on or before **July 31, 2023**, by uploading a copy to the secure server and notifying the Dispute Resolution office of the upload.

5. Review of District Policies, Practices and Procedures:

- The District board of trustees shall review its policies, practices and procedures and make the appropriate modifications necessary to ensure compliance with the requirements pertaining to its policy requiring the appointment of a curricular materials adoption committee to advise the board on the selection of curricular materials for use uniformly within all schools of the District, pursuant to **Idaho Code 33-512A**. Any policy in conflict with this requirement shall be removed from board policy. A written assurance signed by the Superintendent and Board Chair shall be provided to the Dispute Resolution office no later than **July 31, 2023**, confirming that this action has occurred.
- The District board of trustees shall review its policies, practices and procedures and make the appropriate modifications necessary to ensure compliance with **Idaho's dual enrollment statute**. Any policy, practice or procedure in conflict with this requirement shall be removed from those documents, handbooks, correspondence, or other means for communicating with parents and the public. A written assurance signed by the Superintendent and Board Chair shall be provided to the Dispute Resolution office no later than **July 31, 2023**, confirming that this action has occurred.
- Provide a written assurance that a curricular materials adoption committee has been established as required by state law and board policy and applies uniformly to all schools within the District, **signed by the District's superintendent and Board chair**, to the Dispute Resolution office not later **July 31, 2023**.
- Provide a written assurance on an annual basis not later than **July 15 of each year** to the Dispute Resolution office that the board has annually followed the policy and adopted the curricular materials for use within the schools of the District for as long as the SDE maintains oversight of this CAP.

6. **Oversight and Enforcement:** The SDE, pursuant to its monitoring and enforcement responsibilities under 34 CFR §300.149 and §300.600, will immediately assume oversight of the corrective actions required to ensure that the District becomes compliant in all the above matters no later than the beginning of the 2023-2024 school year. The SDE's oversight shall include, but is not limited to, requiring:

- **Additional Staffing Requirements**

- a. An additional certified special education director and a certified school psychologist assigned by the SDE, shall assist the District with ensuring IDEA compliance for all students with disabilities attending IHLA.
- b. The special education director and school psychologist designated by the SDE:
 1. shall not be employees of the District
 2. shall be considered school officials with legitimate educational interests and shall have access to all records, including student records, needed to fulfill their role under this CAP.
- c. The District shall be financially responsible for **all costs** associated with the services the assigned special education director and the school psychologist provide.
- d. A review shall be conducted by the District superintendent, the Director of SESTA or designee, and the SDE Special Education Director or designee, to determine the continued need for the additional staffing and shall occur on or before **June 1, 2024**.

- **Instruction by Certified Staff**

- a. The District shall ensure that all students with disabilities are receiving direct instruction in the general education curriculum by certified staff.
- b. The District shall ensure that all components of each student's IEP are implemented by certified general education and special education staff, including accommodations, modification and adaptations, and supplementary aids and services.
- c. The District shall ensure that each child with a disability is provided a free appropriate public education.
- d. By or before **July 31, 2023**, the District shall coordinate with the SDE assigned special education director and SESTA to create a written plan to ensure the above requirements are met. A copy of the plan will be provided to the SDE by uploading it to the secure server and notifying the Dispute Resolution office by **August 10, 2023**.


- **Participation in On-Going Training through SESTA Targeted Technical Assistance:** By **March 31, 2024**, the District, in consultation with the SESTA Director or designee and the SDE Special Education Director or designee, shall determine the appropriate means to provide ongoing training for staff and related service providers, and provide, at a minimum, the training listed above for new staff members and new related services providers.

- a. The District shall propose a comprehensive plan after consultation with SESTA regarding the appropriateness of participation in targeted technical assistance through SESTA.
- **Review of District Special Education Policies, Practices and Procedures:** By **November 30, 2023**, the District, in collaboration with the SESTA Director or designee, will provide the SDE with the following District-specific written policies, practices, and procedures, which shall comply with the IDEA and apply uniformly to all schools and students within the District:
 - a. Child find and special education referral procedures.
 - b. Evaluation and eligibility procedures.
 - c. IEP team membership, roles and responsibilities
 - d. The IEP development process
 - e. The provision of related services
 - f. Progress monitoring
 - g. Prior written notice
- **Six-Month Follow-Up:** Before **October 1, 2023**, the District’s Special Education Director, IHLA executive director, and Superintendent will meet with the SESTA Director or designee and SDE Special Education Director or designee to:
 - a. Discuss the progress of the implementation practices and procedures related to the provided training and any needed next steps; and
 - b. Schedule an additional meeting to collaborate and finalize any steps needed to ensure the District’s readiness for the upcoming school year as it relates to the services and placement of students with disabilities.
 - c. The District will upload the meeting minutes from the six-month follow-up to the secure server **within seven (7) calendar days** of the meeting and **no later than October 7, 2023**, and notify the SDE Dispute Resolution Office that they have been uploaded.

7. Ongoing Oversight: Due to the extensive nature of this Corrective Action Plan, the SDE has determined that ongoing oversight is expected to last, at a minimum, three to five (3-5) years. Once full compliance with IDEA requirements have been met, this complaint will be formally closed.

This final report marks the end of the complaint investigator's involvement in this matter. All future inquiries should be directed to Kimberli Shaner, Dispute Resolution Coordinator, Idaho State Department of Education.

Dated this 6th day of April, 2023, by:



ELAINE EBERHARTER-MAKI
Complaint Investigator

Accepted by:



KIMBERLI SHANER
SDE Dispute Resolution Coordinator