

February 12, 2021

VIA ELECTRONIC MAIL

Dr. M. Ann Levett, Superintendent
Savannah-Chatham County School District
208 Bull Street
Savannah, GA 31401

RE: Sullivan, Esq. and Roma (Systemic) v. Savannah-Chatham County School District / Case Number **21-339109**
Formal Complaint Resolution (Findings and Resolution)

Dear Dr. Levett:

The findings are as follows:

1. Placements (34 C.F.R. § 300.116)

Under the IDEA, in determining the educational placement of a student with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and is made in conformity with the least restrictive environment (LRE) provisions. 34 C.F.R. § 300.116(a). Additionally, the public agency must ensure that the student's placement is determined at least annually; is based on the student's IEP; and is as close as possible to the student's home. 34 C.F.R. § 300.116(b). Unless the IEP of a student with a disability requires some other arrangement, the student should be educated in the school that he or she would attend if nondisabled, and in selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs. 34 C.F.R. § 300.116(c)-(d). Moreover, a student with a disability should not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 C.F.R. § 300.116(e).

Here, the complainants assert, within the formal complaint, that "SCCPSS predetermined a placement change for all 4,000 (+/-) students with an IEP." The complainants assert that "SCCPSS administration predetermined that all students across the entire district, regardless of the needs outlined in their Individualized Education Programs (IEPs), will



receive instruction at home.” The complainants further assert that “SCCPSS refused to consider or provide any in-person instruction, services, or supports to students with IEPs, irrespective of a students’ ability to access instruction in the district-approved environment.” Moreover, the complainants assert that “SCCPSS is not authorizing individual IEP teams to determine the services necessary or appropriate for a student to receive a FAPE, as required under the IDEA.”

Under the Constitution of the State of Georgia, “[a]uthority is granted to county and area boards of education to establish and maintain public schools within their limits” and “[e]ach school system shall be under the management and control of a board of education.” Article VIII, Section V, Paragraphs I and II. Under this authority and in the midst of a global pandemic, the Savannah-Chatham County School District (district) determined how their schools would reopen for the 2020-2021 school year, after all schools were closed to in-person instruction in March 2020 through Georgia Governor Brian Kemp’s executive order. The record reflects that during an informal Board of Education (BOE) meeting on July 16, 2020, the district’s superintendent presented a district Academic Re-opening Plan for the 2020-2021 school year for all students. The Academic Reopening Plan recommended a delay of the start of school to August 19, 2020 and to open the 2020-2021 school year through a virtual learning model for all students. According to the July 16, 2020 Academic Reopening Plan, the district’s reopening recommendation was guided by the following: Commitment to Health and Safety, Center for Disease Control (CDC) guidance, GaDOE guidance, SCCPSS Pilot Program, Superintendent’s Reopening Task Force, Department of Public Health, and Community Spread/Transmission.

With respect to the complainant’s assertions regarding predetermination of instruction at home, the district established that all students across the district would receive instruction at home through a full distance/remote alternative instructional delivery model (full distance/remote)¹ at the beginning of the 2020-2021 school year. The decision to provide a full distance/remote learning model for all students was made in conjunction with guidance from the authoritative agencies and resources listed above and in accordance with authority granted in the state constitution. Specifically, the GaDOE emphasized that districts have flexibility to develop a restart plan for the 2020-2021 school year based on health and safety guidance. Therefore, the provision of full distance/remote learning for all students in the district, in and of itself, was not a “predetermination” of instruction, but an exercise of the district’s authority to protect the health and safety of its students and staff in the midst of a global pandemic.

Moreover, the U.S. Department of Education, Office for Civil Rights (OCR) and Office for Special Education and Rehabilitative Services (OSERS) issued guidance on March 21, 2020, addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools

¹ Throughout this complaint investigation, the parties frequently used the term “virtual instruction” when referring to the instructional delivery model at issue in this complaint. For clarity, the GaDOE will use the term “full distance/remote” to refer to the alternative instructional delivery model that is at issue in this complaint. “Full distance/remote” is defined as “Students access educational services using distance learning strategies such as virtual instruction, digital platforms, instructional phone calls, and instructional packets.” GaDOE Guidance on Restart and Implementation for the IDEA, July 30, 2020, page 2.

while serving Children with Disabilities. See Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, OCR and OSERS (March 21, 2020). While this guidance was issued during the abrupt closure of schools nationwide and mandatory school closures in the state of Georgia during the 2019-2020 school year, the guidance is still applicable to the reopening of schools for the 2020-2021 school year. Specifically, the March 21, 2020 document states, in part, “We remind schools they should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students with disabilities. Rather, school systems must make local decisions that take into consideration the health, safety, and well-being of all their students and staff.” *Id.* at 1.

In addition, according to the March 21, 2020 USED OCR and OSERS document, it states, “In this unique and ever-changing environment, OCR and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.” *Id.* at 1-2. The March 21, 2020 USED OCR and OSERS document also states that “[i]t is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency. . . FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students. . .” *Id.* at 2.

The complainants also assert, “SCCPSS refused to consider or provide any in-person instruction, services, or supports to students with IEPs, irrespective of a student’s ability to access instruction in the district-approved environment.” Moreover, the complainants assert, “SCCPSS is not authorizing individual IEP teams to determine the services necessary or appropriate for a student to receive a FAPE, as required under the IDEA.”

Under the IDEA, placement decisions must be made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1). In response to the investigators’ question, “Were IEP Teams empowered to consider placements other than virtual/distance learning?” the district responded, in part, “[d]uring the time from August 19, 2020 through October 3, 2020, IEP teams were not empowered to consider placement other than virtual learning. All instruction within the District was virtual/distance. IEP teams did not have the authority to override administrative closure of schools or to approve staff to enter homes of students.” Therefore, by the district’s own admission, during the time period of August 19, 2020 through October 3, 2020, IEP Teams in the district were not permitted to consider all components of an educational placement determination, including the location of the student’s educational services. Although “placement” is historically referred to as “points along the continuum of placement options available for a child with a disability,” see 71 Fed. Reg. 46588, in the IDEA Placements regulation, location of services and the potential harmful effect on the student or on the quality of services that the student

needs is part of the overall educational placement determination. See 34 C.F.R. § 300.116(b)-(d).

A review of the September 21, 2020 IEP of ■■■, reflects the Team's discussion including evaluation results, eligibility determination, present levels including strengths/needs, goals, accommodations, parental concerns, and placement. In the September 21, 2020 IEP of ■■■ parent concerns regarding ■■■'s education states, in part, "We have seen throughout the years how rapport and connection (like he has with [the paraprofessional] and his team at May Institute), and consistent, appropriate implementation of his behavior plan lead to ■■■'s success and growth...Here are options we see... 1. If [the paraprofessional] is willing and able, she may come to our home (with safety considerations in effect) to provide services to ■■■)... 2. ■■■ can come to school to work in a pre-determined space (with appropriate safety precautions) with [the paraprofessional] in order to provide services...3. SCCPSS can contract with the May Institute to ensure the provision of services...4. The provision of OT and Speech can be discussed further..."

In ■■■ September 21, 2020 IEP, additional information related to placement/service options states, in part, "[■■■'s parent] shared the PWN was denied regarding having [the paraprofessional] come into the house. He's had some successes the last couple of days, but she doesn't feel it's short or long term FAPE...[The Special Education Program Manager] shared that currently no students are receiving in-person instruction, but the district will begin phasing in some students. The IEP Team is not able to override the district decision to receive in-person instruction. When in-person instruction returns, he can advocate for ■■■ to be in this group of returning learners. ■■■'s parent] asked if the roll-out plan contains designated groups, does [the Special Education Program Manager] have the authority to allow ■■■'s return, if ■■■ his DLP [*sic*], but he's thinking at home learning. ■■■'s parent] asked about the possibility of contracting someone to work with ■■■, and [the Special Education Program Manager] suggested she email [the district's special education director]." Lastly, at the end of additional information related to placement/service, the ■■■'s September 21, 2020 IEP, in part, "Service options were presented including consultative, co-teaching, supportive services, and separate class. As consultative would not provide the specialized instructional interventions and/or modification to address goals and/or objectives to the maximum extent appropriate, he would benefit from a combination of co-teaching along with supportive services, as well as continued separate class model for speech therapy and OT services."

Based on the record, the IEP Team's placement decision of ■■■ was based on information documented during the ■■■'s IEP Team meeting, with consideration for the student's (*albeit* distance/remote) access to general education curriculum in conjunction with the least restrictive environment. Notably, at the time of ■■■'s September 21, 2020 IEP Team meeting, all students in district, those with and without disabilities, were receiving educational instruction at home due to health and safety concerns. However, when the parent asked the IEP Team to consider in-home services for ■■■ and/or services provided by an outside provider, the Special Education Program Manager stated, "currently no students are receiving in-person instruction...The IEP Team is not able to override the district decision to receive in-person instruction."

While an IEP Team may be unable to “override” a district decision regarding in-person instruction, the IEP Team must be able to discuss and consider a student’s educational placement, which includes discussion and consideration of the location of those services and any potential harmful effect on the student or on the quality of services that the student needs, in accordance with IDEA. While health and safety restrictions may prevent a district from sending their own staff into a student’s home to provide in-person services, the IEP Team must be able to discuss and consider whether in-person services are required for the student to receive a free appropriate public education (FAPE) and if so, how those services will be provided now (e.g., use of private contractors or outside agencies) or how those services will be provided in the future (e.g., provision of compensatory services).

Lastly, the complainants assert that the district’s change to a full distance/remote learning environment for all students with disabilities in the district constituted a “change in placement” under IDEA for all of those students.

Under IDEA, a student’s educational placement must be made in conformity to the LRE provisions, see 34 C.F.R. § 300.116(a)(2), and per the GaDOE, “special education services can be provided anywhere [and] [t]he physical location of the special education services does not automatically change the LRE. For example, students with disabilities who receive majority of their instruction in the school building with nondisabled peers can still receive majority of the virtual instruction with nondisabled peers.” GaDOE Guidance on Restart and Implementation for the IDEA, July 30, 2020, page 9. Therefore, the district’s provision of full distance/remote instruction for all students with disabilities was not a *per se* “change of placement” for all students.

According to USED Office of Special Education Programs’ (OSEP) Letter to Fisher, “In determining whether a ‘change in educational placement’ has occurred, the public agency responsible for educating the child must determine whether the proposed change would substantially or materially alter the child’s educational program. In making such a determination, the effect of the change in location on the following factors must be examined: whether the educational program set out in the child’s IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.” *Letter to Fisher*, 21 IDELR 992, OSEP (July 6, 1994).

The record reflects that the district addressed how students with disabilities under IDEA would receive their special education services in a full distance/remote learning environment through the development of Distance Learning Plans (DLPs). Specifically, in explaining the purpose for DLPs to parents, the district stated, “IEPs and 504 Plans were developed to be implemented in a traditional brick and mortar, face-to-face learning environment. The Distance Learning Plan (DLP) outlines how the IEP or 504 supports and services will be provided in a virtual learning environment. Your child’s IEP or 504 Team will collaborate with you in order to individualize supports to best meet the needs of your child during distance learning.”

The development of DLPs for distance/remote instruction was aligned with both federal and state guidance. Specifically, the GaDOE explained that DLPs are “contingency plans used to document temporary provision of special education services provided during a time of selective or required school closures. The [DLP] may include special education services and related services using options such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities. Distance learning plans are included with the IEP and used to describe any necessary changes or amendments to the IEP based on the use of an alternative instructional delivery model.” GaDOE Guidance on Restart and Implementation for the IDEA, July 30, 2020, page 5. Additionally, a September 28, 2020 document from the U.S. Department of Education, OSERS and OSEP, in reference to the 2020-2021 school year, states, in part, “To ensure that an appropriate IEP is in place for each child, the LEA may need to convene a meeting of the child’s IEP Team...to determine whether any revisions to the IEP are needed... IEP Teams should identify how the special education and related services included in a child’s IEP will be provided and should consider a variety of instructional methods and settings... IEP Teams can discuss how a child’s IEP will be implemented with traditional in-person instruction and how services also could be provided through remote/distance instruction if circumstances require a change to distance learning or a hybrid model.” OSEP QA 20-01, OSERS/OSEP (September 28, 2020). According to federal and state guidance, during the time of selective or required school closures, a student’s educational placement is already determined in the student’s most current IEP, and the purpose of the DLP is to serve as a roadmap to implementing the IEP within the distance/remote environment.

Based on *Letter to Fisher*, the change in location from in-person instruction in the district’s schools to full distance/remote instruction in the student’s home or other parentally-designated location is only a change in placement if the effect of the full distance/remote instruction “substantially or materially altered the student’s education program.” In the context of this case, this determination would be based on: (1) whether the full distance/remote instruction as outlined in the student’s DLP revised the educational program set out in the student’s current IEP (Factor 1); (2) whether the student will be able to be educated with nondisabled children to the same extent in the full distance/remote learning environment (Factor 2); (3) whether the student will have the same opportunities to participate in nonacademic and extracurricular services in the full distance/remote learning environment (Factor 3); and (4) whether the full distance/remote learning environment is the same option on the continuum of alternative placements (Factor 4). As *Letter to Fisher* states, this determination is made on a “case-by-case basis.”

To address the question of whether the district’s transition from in-person instruction to full distance/remote instruction at the beginning of the 2020-2021 school year was a change of placement, the GaDOE reviewed the IEPs, DLPs, and related documents for the 6 students chosen by the complainants and district ([REDACTED]) and the 51 students randomly selected by the GaDOE ([REDACTED]).

In reviewing those documents, the GaDOE used the *Letter to Fisher* case-by-case analysis

as applied to the individual students to determine if the effect of full distance/remote learning substantially or materially altered the student's educational program.

Under Factor 1, in order to determine whether distance/remote instruction, as outlined in the DLP and clarified in subsequently requested documents, revised the educational program set out in each of the students' current IEP, the GaDOE reviewed whether the individual needs of the students as outlined in their IEPs were addressed in the distance/remote learning environment, as appropriate. This review included the following considerations: (a) the student's ability to access distance/remote learning (Factor 1a); (b) whether and to what extent progress on IEP goals and objectives will be monitored (Factor 1b); (c) the provision of necessary supports for the student, caregiver, and teacher (Factor 1c); (d) the type of instruction provided to the student inside and outside the general education classroom (Factor 1d); and (e) the amount of instruction provided to the student inside and outside the general education classroom (Factor 1e). The GaDOE also addressed the three remaining factors in the *Letter to Fisher* case-by-case analysis with regard to each student, namely, whether the student will be able to be educated with nondisabled children to the same extent in the distance/remote learning environment (Factor 2), whether the student will have the same opportunities to participate in nonacademic and extracurricular services in the distance/remote learning environment (Factor 3), and whether the distance/remote learning environment is the same option on the continuum of alternative placements (Factor 4). It is important to note that *Letter to Fisher* did not provide any specific "weight" to any factors; therefore, the GaDOE looked at the factors in totality to determine if the effect of full distance/remote learning substantially or materially altered the students' educational programs.

Factor 1

Under Factor 1, in order to determine whether distance/remote instruction, as outlined in the DLP and clarified in subsequently requested documents, revised the educational program set out in each of the students' current IEPs, the GaDOE reviewed: (a) the student's ability to access distance/remote learning (Factor 1a); (b) whether and to what extent progress on IEP goals and objectives will be monitored (Factor 1b); (c) the provision of necessary supports for the student, caregiver, and teacher (Factor 1c); (d) the type of instruction provided to the student inside and outside the general education classroom (Factor 1d); and (e) the amount of instruction provided to the student inside and outside the general education classroom (Factor 1e).

Factor 1a

Out of the 57 referenced students, a review of their IEPs, DLPs, and related documents did not show any concerns regarding their ability to access distance/remote instruction. Each of the DLPs for the students included the sections titled, "Ability to Access distance learning including preferred types of activities and mode of access" and "Distance Infrastructure available at home." In those sections, the DLPs explained how each student was able to access distance/remote learning and the infrastructure currently in their home or to be

provided by the district to access distance/remote learning. Since each student has different needs that result from their disability, the level of each students' ability to access distance/remote instruction varied.

For example, a review of ■■■'s April 24, 2020 IEP, including the Present Levels of Academic Achievement and Functional Performance (PLAAFP) and consideration of special factors, did not reveal any concerns with ■■■'s ability to access distance/remote instruction. ■■■'s August 12, 2020 DLP indicates that ■■■ prefers virtual classes/online, small group one on one, tutorial with teachers and he is able to access email, Zoom, Microsoft Teams, phone calls, and text. Additionally, ■■■'s DLP indicated that he had the following at home: Wi-Fi, hotspot, smart phone, laptop, desktop, tablet, internet enabled game system or smart TV, webcam, speakers/headphones, and microphone. In another example, a review of ■■■'s February 6, 2020 IEP also did not reveal any concerns with ■■■'s ability to access distance/remote instruction. However, ■■■'s February 6, 2020 DLP indicated that the teachers would "find out if [■■■] is able to access the curriculum through the virtual learning process and provide support for [■■■] once this is established." After receiving requested documents from the district, the record showed that a laptop was provided to ■■■ and his class schedule, progress monitoring data, and semester grades showed that he was able to access the virtual learning platforms via Zoom.

In another example, ■■■'s August 27, 2020 IEP states in the PLAAFP, "[■■■] is non-ambulatory and uses a wheelchair for travel in her environment. [■■■] requires voice output devices/AAC to participate in academic activities as well as expressing her wants and needs. [■■■] also requires frequent verbal, gestural and physical guidance to participate in educational activities. ■■■'s August 27, 2020 DLP states that "[■■■] has access to a laptop with a camera and speakers while at home. Parent will utilize laptop and hotspot to participate in virtual activities and/or assignments. Currently, there are no known barriers to [■■■'s] online participation. However, the parent has requested a minimal amount of work that requires much technological manipulation and student activity that involves added physical involvement/manipulation. The parent has requested virtual sessions for specific time frames and days." Based on the ■■■'s PLAAFP as stated above, ■■■'s ability to access distance/remote learning was limited. However, the record reflects that ■■■'s teacher provided one-on-one instruction to ■■■'s parent and caregivers on how to access Zoom, Teams, ItsLearning, and ULS Student login portal. Some of ■■■'s IEP goals referenced physical and/or verbal support and prompting, and the progress monitoring data revealed that ■■■'s caregivers assisted with physical support. Additionally, ■■■'s teachers and providers provided support to the caregivers and conducted virtual observations and activities with ■■■. Due to the impact of ■■■'s disability, ■■■'s access to the distance/remote learning environment was accomplished, in part, through the supports provided from ■■■'s teachers directly to ■■■'s caregivers.

Factor 1b

Out of the 57 referenced students, a review of their IEPs, DLPs, and related documents did not show any concerns regarding whether and to what extent progress on IEP goals and

objectives will be monitored. Each of the DLPs for the students included the section titled, “How will goals/objectives be monitored?” A review of the DLPs revealed that all of the DLPs explained “how” the goals and objectives would be monitored, but nearly none of the DLPs listed the specific goals and objectives that would be monitored during distance/remote learning. When questioned about this observation, the district reported that “[a]ll Special Education Teachers, Special Education Itinerant Teachers, and Speech-Language Pathologists, should continue to collect data weekly for all goals and objectives within a student’s IEP, or as outlined in the student’s Distance Learning Plan. . . Academic and speech-language goals/objectives must be progress monitored. [] Goals that require environmentally based, in person observation (i.e., behavior, daily living skills, Adaptive PE, etc.) will not have quantitative measurement data; however, the case manager and/or service provider should provide qualitative data to address the manner in which the goals were addressed in the home setting to the greatest extent possible. This may include informal observation and reports provided by the parent, when available.”

In a review of the referenced students’ IEPs and progress monitoring documents, it was determined that progress on goals and objectives was monitored during distance/remote learning. The progress monitoring documents included the students’ goals and objectives as provided on their current IEPs, data points, dates, and progress notes, if applicable. As far as how often goals and objectives were monitored, some of the DLPs included the frequency with which data would be collected, while others did not. It is worth noting that the IDEA does not specify how often data must be collected on goals and objectives, but instead when periodic reports on the progress must be provided. See 34 C.F.R. § 300.320(a)(3)(ii). Nevertheless, the frequency of collecting progress monitoring data on goals and objectives is important, especially during distance/remote learning. Upon reviewing the referenced students’ DLPs, for the DLPs that did not include the frequency with which the goals and objectives would be monitored, progress monitoring data was requested from the district. Although the district reported that data should be conducted weekly, upon review of this data, it was determined that goals were progress monitored at least monthly.

For example, ■■■’s August 14, 2020 DLP states, “[■■■]s goals will be monitored weekly- data will be collected during times when the teacher is conducting a virtual lesson with [■■■], as well as by obtaining feedback from the parent/guardian based on direct observation of skills related to the goal in the IEP. Data will also be gathered and relayed to [the teacher] by the parent via texted images of completed work and observations, short videos of completed work and observations, and emails of completed work and observations.” Despite indicating in the DLP that the goals would be monitored weekly, ■■■’s progress monitoring data show data points once a month in September, October, November and December 2020 on the two annual goals listed in ■■■’s February 7, 2020 IEP.

In another example, ■■■’s August 25, 2020 DLP states, “[■■■]’s goals and objectives will be monitored by direct teacher/para observation, parent observational feedback, checklists completed by parents/teacher/paras, emails, student products, zoom and teams meetings,

picture and video evidence, phone calls, and texts.” Since no frequency on monitoring goals was provided, additional information was requested. Upon review, [REDACTED]’s teacher reported that “When [REDACTED] attended virtual classes I was able to progress monitor based on what I saw in class (manding for letters, numbers, songs, taking turns) However, at times his camera would be off. We would request it to be turned back on but it wasn't always done. Then in Sept[ember] he stopped coming to zoom classes completely. I found programs he could do at home like zearn, activities were put in its learning but the student never logged on. In October I created a binder of laminated hands-on activities. I also sent home a copy of his IEP goals and made specific materials for his IEP goals. I have asked Mom to send me videos, pictures, of [REDACTED] working at home so I could progress monitor. Mom did once. I asked several more times but never received anymore. I was unable to progress monitor without being able to see what he is working on. I purchased boom cards so he could work on academic and IEP goals but he has never logged in. Mom does check in daily for attendance purposes.” In this example, it is clear that [REDACTED]’s teacher attempted to, and at times was able to, monitor progress on [REDACTED]’s goals, but at other times, the teacher was unable to do so based on circumstances outside of the teacher’s control. As shown above, even though [REDACTED] did not consistently log into the virtual platform, [REDACTED]’s teacher sought out ways to continue to engage [REDACTED] in learning and to work on [REDACTED]’s goals and objectives.

Factor 1c

Out of the 57 referenced students, a review of their IEPs, DLPs, and related documents showed concerns regarding the provision of necessary supports for the student, caregiver, and/or teacher for only 1 student ([REDACTED]). For the remaining 56 students, no concerns were noted. Specifically, in reviewing the students’ IEPs, including the PLAAFP, consideration of special factors, and student supports, and their DLPs, 56 of the students had the provision of necessary supports to participate in the distance/remote learning environment. Each of the DLPs included a section titled, “Accommodations” and “Recommendations” under each content area. In those sections, the students’ DLPs listed the specific accommodations that would be provided to the students in each content area and any recommendations the Team had for the student, caregiver, and/or teacher to assist the student in the distance/remote learning environment.

For example, [REDACTED]’s February 26, 2020 IEP included the following instructional accommodations: small group, proximity seating, provide study guides, allow use of formula cards, checklists, graphic organizers, visual study aids, cue student to start work or continue working on an assignment, teach the use of self monitoring, use repetition and check for understanding, preview new vocabulary, and extended time to complete assignments. Under each content area in [REDACTED]’s August 19, 2020 DLP, the listed accommodations were the same as the accommodations in [REDACTED]’s February 26, 2020 IEP except proximity seating, which may not be necessary during distance/remote learning.

In another example, [REDACTED]’s February 28, 2020 IEP included the following instructional accommodations: use hand gestures, full assistance with daily living skills, adaptive

positioning, hand over hand activities, use of music in coordination with lessons, arrange activity arrays in 2 or less and increase print and picture size for better Eye Gaze. ■■■'s August 27, 2020 DLP indicated that ■■■'s distance/remote instruction would be via an instructional phone call from ■■■'s teacher twice a week. ■■■'s parent indicated that ■■■ can actively interact while listening to the phone rather than a computer and the parent will give feedback on ■■■'s interaction/responses as the teacher reads stories and other related activities from ULS. Under each content area on ■■■'s August 27, 2020 DLP, the only accommodation included was hand over hand assistance. Based on the type of instruction that will be provided to ■■■ (instructional phone calls), there was no concern with the DLP only including the one accommodation. Nevertheless, additional documentation was requested to explain and clarify any IEP accommodations that were provided to ■■■ in the distance/remote learning environment. The district provided a statement from ■■■'s teacher that is providing the instructional phone call. The statement stated that the hand over hand prompting is the most invasive of all the prompting as it requires the teacher/parent. In this case, the parent has assumed the responsibility of utilizing full physical prompting for ■■■. The statement also indicates that ■■■'s nurse helps with positioning his body so that he can listen to the virtual lesson. Therefore, the supports that ■■■ required during distance/remote instruction were provided to ■■■'s caregivers from ■■■'s teachers as they worked together to provide for ■■■'s educational needs.

Although a review of IEPs, DLPs, and related documents did not reveal any concerns regarding the provision of necessary supports for the student, caregiver, and/or teacher for 56 of the referenced students, for 1 student, ■■■, concerns were noted. ■■■'s September 26, 2019 IEP's impact of the disability on involvement and progress in the general education curriculum section states, "[■■■] has basic weaknesses in reading comprehension grade-level reading requirements which affect his academics across all domains. The learning process with his learning disability impact reading comprehension and math calculation. In the classroom, [■■■] needs several reminders to begin work and stay on task. Although he can read the material, he has difficulty recalling multiplication facts and details of what he has read if the material is grade level. He benefits from having short and simple directions with examples, read orally and repeated as needed. He needs opportunities for movement in the classroom to remain focused on his core content instruction. He is a very visual learner and visual aids assist him. He has to have notes and visual aids to help him comprehend assignments. [■■■] needs to understand the relevance of new concepts he's learning." ■■■'s September 26, 2019 IEP includes the following instructional accommodations: small group, when needed, repeat/paraphrase directions, extended time, visual cues, give short and simple directions with examples, graphic organizers, color coding, and teachers may reduce the number of questions or math problems.

Despite ■■■'s needs as stated above and the various accommodations in his IEP, ■■■'s August 28, 2020 DLP only includes two accommodations: small group, when needed and extended time (time and a half). The DLP does not explain why ■■■ would not need the other accommodations in his IEP during distance/remote instruction. For instance, if ■■■'s IEP Team determined that repeat/paraphrase directions, giving short and simple directions with examples, or reducing the number of questions or math problems was needed during

in-person instruction, it is unclear how such supports would also not be needed for distance/remote instruction. Additional documentation was requested to explain and clarify any IEP accommodations that are provided to [REDACTED] in the distance/remote learning environment (e.g., through teacher, provider, or online programs/platforms). The district responded that “[t]he IEP accommodations that are provided to [REDACTED] in the virtual environment are small group, when needed and extended time (time and a half). . .” The district acknowledged the other accommodations in [REDACTED]’s IEP, but there was no clear explanation in the record of why the IEP Team determined that [REDACTED] did not need those other accommodations in the distance/remote environment. Therefore, in the absence of such explanation, it was determined that the failure to provide those accommodations to [REDACTED] in the distance/remote environment deprived him of the necessary supports as set out through his IEP.

Factor 1d

Out of the 57 referenced students, a review of their IEPs, DLPs, and related documents showed concerns regarding the type of instruction provided to the students inside and outside the general education classroom for 5 students ([REDACTED]). For the remaining 52 students, no concerns were noted. Specifically, in reviewing the students’ IEPs, including the special education and related services they receive inside and outside the general education classroom, and the students’ DLPs and subsequently requested documents, those 52 students received the same or similar type of instruction in the distance/remote environment, as they did during in-person instruction. It is worth noting that the district’s DLPs include a section for each content area where special education and related services will be provided and a space to list the teacher, service provider, and/or paraprofessional. However, in a review of the DLPs for all 57 students, none of them list the specific type of instruction that will be provided, such as consultative, supportive, collaborative, co-taught, separate class, or separate school. Instead, some DLPs list the names of teachers and providers under each content area or list the titles of teachers and providers, such as general education teacher, special education teacher, paraprofessional, SLP, etc. In reviewing the students’ DLPs, when it was unclear whether the student was receiving the same or similar type of instruction in distance/remote learning as they did during in-person instruction, a request was made for additional documents, such as the students’ weekly schedule, the teachers’/providers’ weekly schedules, and the titles of the teachers who were listed by name in the DLPs. After conducting this review, it was determined that 5 of the 57 students had a substantial difference between the type of instruction they were provided during in-person instruction through their IEP and type of instruction they were provided during distance/remote instruction.

First, [REDACTED]’s November 6, 2019 IEP indicates that [REDACTED] receives the following instruction inside the general education classroom: Collaborative instruction with Special Education Teacher for 14.5 hours per week in English Language Arts (ELA), Reading, and Math and Supportive Services with a Paraprofessional for 10 hours per week in Social Studies and Science. [REDACTED]’s August 25, 2020 DLP includes the content areas of Reading and Math and the teacher is listed as “K. Kittles”. The DLP also includes the content areas of ELA,

Science, and Social Studies and the teacher is listed as “Kumari Rani Bolle.” Kumari Rani Bolle is listed as the teacher of record on █’s August 25, 2020 DLP and is a special education teacher. There is no information on the DLP regarding who K. Kittles is and what his/her title is. It is also unclear from the DLP whether █ is going to receive collaborative instruction in the distance/remote environment. Additional documentation was requested including the title of the teachers listed on █’s DLP, █’s weekly schedule, and the weekly schedule of █’s teachers. A review of the additional documentation revealed that K. Kittles is a paraprofessional and supportive services through the paraprofessional (K. Kittles) is provided to █ during Wilson/ELA/Reading, Math, and Science/Social Studies with a general education teacher. Collaborative instruction with a special education teacher (K. Bolle) and a general education teacher is provided to █ during Writing only. Therefore, even though █’s November 6, 2019 IEP requires collaborative instruction in ELA, Reading, and Math and supportive instruction in Science and Social Studies, █’s August 25, 2020 DLP includes collaborative instruction in ELA, Science and Social Studies, and supportive instruction in Reading and Math. Based on █’s IEP and DLP, the decrease in support from collaborative instruction to supportive services in Reading and Math and the increase in support from supportive services to collaborative instruction in Science and Social Studies during distance/remote instruction is a substantial difference from the instruction █ receives during in-person instruction. Furthermore, based on █’s weekly schedule, █ is receiving supportive services in Reading and Math as stated in the DLP; however, █ is also receiving supportive services, instead of collaborative instruction in Science and Social Studies, and only receiving collaborative instruction in Writing.

Next, █’s February 6, 2020 IEP indicates that █ receives the following instruction inside the general education classroom: Collaborative instruction provided by the “SpEd Teacher” for 7.5 hours per week in ELA and 7.5 hours per week in Science. █’s September 9, 2020 DLP includes the content areas of ELA and Science and no name or title is provided within those content areas. Additional documentation was requested including █’s weekly schedule and the weekly schedule of █’s teachers. A review of the additional documentation revealed that █ is receiving collaborative instruction in Economics and supportive services in Geometry. Thus, for the first semester of the 2020-2021 school year, █ was not enrolled in the academic courses noted in his IEP and DLP (ELA and Science), but instead in Social Studies and Math. To the extent that █ needed collaborative instruction in the two courses that he was enrolled in, he only received that instruction in one course, Social Studies. While the record reflects that █ was on block scheduling and his first semester schedule was limited to four courses, it is unclear why the Team developed a DLP that did not reflect the courses █ was actually taking. The DLP was developed in September 2020, close to a month after the semester started. The discrepancy in the courses that █ took and the misalignment of required supports, absent any explanation or clarification, is a substantial difference between the type of instruction █ was provided during in-person instruction through his IEP and the type of instruction █ was provided during distance/remote instruction.

Additionally, █’s April 28, 2020 IEP indicates that █ receives the following instruction inside the general education classroom: Hearing Impaired services provided on a

consultative basis by the Hearing-Impaired teacher for 0.25 hours weekly to address “hearing needs,” and co-teaching services for 15 hours a week provided by the Special Education teacher for Reading, Science, and Social Studies. ■■■■■’s April 28, 2020 IEP indicates that he receives the following instruction outside of the general education classroom: speech and language services in a separate class with a SLP for 0.13 hours per week (30 minutes a month) to address articulation. ■■■■■’s August 29, 2020 DLP includes the content areas of ELA and the names and titles of a general education teacher, special education teacher, and the Deaf/Hard of Hearing (D/HH) teacher. The DLP also includes the content areas of Math, Science, and Social Studies and the names and titles of a general education teacher and special education teacher. The content area of Speech is not in ■■■■■’s August 29, 2020 DLP.

Although ■■■■■’s IEP included co-taught instruction for Reading, Science, and Social Studies, ■■■■■’s DLP added co-taught instruction for Math, even though problem solving in Math is a strength noted in ■■■■■’s IEP. Additional documentation was requested including documentation of special education and related services provided to ■■■■■, ■■■■■’s weekly schedule, and the weekly schedule of ■■■■■’s teachers/providers. Based on the additional documentation, ■■■■■ is receiving co-taught instruction in Math and Reading, but not in Science and Social Studies. The decrease in support from co-taught instruction to no support in Science and Social Studies and the increase from no support to co-taught instruction in Math is a substantial difference. Also, even though ■■■■■’s April 28, 2020 IEP required 30 minutes a month of speech services, no speech services were included in the DLP and no speech services were provided during the first semester of the 2020-2021 school year due to an SLP vacancy. The failure to include speech services in the DLP and ultimately provide those services was a substantial difference in the type of instruction provide to ■■■■■. Additionally, the record reflects that from September to early October 2020, although ■■■■■ remained enrolled in the district, he was not able to log into the virtual platform after his log in stopped working. Based on emails between school staff, there was speculation as to whether ■■■■■’s sign in information changed when there was a teacher change. The emails did show that ■■■■■’s parent tried to obtain updated login information for ■■■■■ after his login abruptly stopped working, to no avail. By the second quarter of the 202-2021 school year, ■■■■■ was able to access his services. Nevertheless, the decrease in support in Science and Social Studies, the increase in support in Math, and the failure to provide services is a substantial difference between the type of instruction ■■■■■ was provided during in-person instruction through his IEP and the type of instruction ■■■■■ was provided during distance/remote instruction.

■■■■■’s December 9, 2020 IEP indicates that he receives the following instruction inside the general education classroom: Collaborative instruction with “SpEd Teacher” for 25 hours per week in Other: Social Studies, Math, English/Language Arts, and Science. ■■■■■’s August 26, 2020 DLP includes the content areas of Math, Science, and Social Studies and a general education teacher and special education teacher is listed. The DLP also includes the content area of ELA and a general education teacher is listed. Therefore, based on the DLP, ■■■■■ would only receive collaborative instruction in Math, Science, and Social Studies, but not ELA. After reviewing schedules for ■■■■■ and his teachers, they revealed that ■■■■■

received collaborative instruction in ELA, but not in Math, Social Studies, and Science, in direct contradiction to the DLP. The failure to provide collaborative instruction in three academic subjects is a substantial difference between the type of instruction [REDACTED] was provided during in-person instruction through his IEP and the type of instruction [REDACTED] was provided during distance/remote instruction.

[REDACTED]'s January 13, 2020 IEP indicates that [REDACTED] receives the following instruction inside the general education classroom: Collaborative instruction for 10 hours per week from the special education teacher in the content areas of ELA and Math and supportive services for 15 hours per week from a paraprofessional in the content areas of Science, Social Studies, and Connections. [REDACTED]'s August 31, 2020 DLP includes the content areas of Reading, Math Science, and Social Studies and a general education teacher is listed. The DLP also includes the content area of ELA and no teacher is listed. Based on the DLP, [REDACTED] is not receiving any support in her academic classes from a special education teacher or paraprofessional in the distance/remote environment, as only general education teachers are listed on the DLP. A request for additional documents, including the schedules of [REDACTED] and her teachers, was made. The additional documentation includes clarification on who the special education teacher and paraprofessional are. However, when comparing [REDACTED]'s schedule to the schedule of the special education teacher and paraprofessional, they reveal that the student is not receiving any support in ELA, Math, Science, and Social Studies. None of the times when [REDACTED] is in her academic classes aligns to the times when the special education teacher and paraprofessional are in the academic classes. The failure to provide collaborative instruction or supportive services in any academic areas is a substantial difference between the type of instruction [REDACTED] was provided during in-person instruction through her IEP and the type of instruction [REDACTED] was provided during distance/remote instruction.

Factor 1e

Out of the 57 referenced students, a review of their IEPs, DLPs, and related documents showed substantial concerns regarding the amount of instruction provided to the students inside and outside the general education classroom for 1 student ([REDACTED]). For the remaining 56 students, no concerns were noted. Specifically, in reviewing the students' IEPs, including the special education and related services they receive inside and outside the general education classroom, and the students' DLPs and subsequently requested documents, those 56 students received the same or similar amount of instruction in the distance/remote environment as they did during in-person instruction. It was noted that the amount of instruction in the distance/remote learning environment may be different than the amount of instruction during in-person instruction. Specifically, the district reported that "[t]he time a student is served through virtual learning is not a minute for minute match to that of the IEP service hours due to the difference in the virtual learning schedules and the utilization of synchronous and asynchronous activities. The virtual bell schedules and master schedules were developed at the building level. Special education teachers and therapists worked collaboratively with parents on an individual basis in order to schedule

sessions with the student at a time that was convenient to the parent, when the student was not available during regularly scheduled times due to circumstances in the home.”

The district’s DLPs include a section under each content area titled “Frequency” and the Team writes the number of times per day/week/month. While most DLPs consistently included the number of times per day/week/month that special education services would be provided to the students, that information alone does not assist in determining the specific or approximate amount of instruction provided to the students. In comparison, the district’s IEPs for their students include “frequency” as hours per week and include a specific number. It is worth noting that IDEA does not specify whether frequency of services must be listed as the specific amount of time per day/week/month for those services. See 34 C.F.R. § 300.320(a)(7) (stating that the “anticipated frequency” must be included in IEPs, but does not include a definition of “frequency”). Nevertheless, since none of the DLPs include the specific amount of instruction provided inside and outside the general education classroom during distance/remote instruction, additional information was requested for all 57 students, including weekly schedules and service logs, as applicable. Also, while the amount of instruction in a distance/remote environment may not be a “minute for minute match” to the amount of instruction during in-person instruction, the total amount of instruction in a distance/remote environment for a student with a disability under IDEA should be commensurate with the total amount of instruction provided to their non-disabled peers, absent some explanation or justification for a difference based on the student’s individual needs. Therefore, upon request, the district provided samples of general education student schedules in the grades and at the schools of requested students. The GaDOE reviewed whether there was a substantial difference in the amount of instruction provided to the referenced students during distance/remote learning in comparison to the amount of instruction provided during in-person learning per their IEPs, in conjunction with the amount of instruction provided to their non-disabled peers.

For example, ■■■’s November 6, 2019 IEP indicates that he receives the following instruction inside the general education classroom: Collaborative instruction with Special Education Teacher for 14.5 hours per week in ELA, Reading, and Math and Supportive Services with a Paraprofessional for 10 hours per week in Social Studies and Science, for a total of 24.5 hours per week of special education services. Based on ■■■’s course schedule, ■■■ receives a total of 12.5 hours per week of special education services. While this is close to half of the amount of special education services that ■■■ received during in-person instruction, when ■■■’s schedule is compared to a general education student in the same grade and school as ■■■, they are receiving approximately 13 hours per week of academic instruction. Therefore, there was no concern regarding the amount of instruction provided to ■■■ inside and outside the general education classroom during distance/remote instruction.

In another example, ■■■ required 29 hours/week of separate class instruction in all academic areas. Upon review of ■■■’s course schedule, it indicates that ■■■ receives 8.5 hours/week of separate class virtual instruction. The substantial difference in the amount of special education services resulted in a request of the course schedule of ■■■’s non-disabled peers. Upon review, the record shows that ■■■’s course schedule with regard to

academic instruction included 1.5 hours of whole group sessions daily and one hour of individual sessions on Wednesdays. However, the course schedule of a general education student in the same grade and school as ■■■ revealed academic instruction for approximately 3.5 hours daily. In fact, while ■■■ receives approximately 8.5 hours/week of academic instruction, his non-disabled peers receive approximately 17.5 hours/week of academic instruction. Therefore, the amount of instruction that ■■■ received in distance/remote instruction was substantially different than the amount of instruction provided to his non-disabled peers and substantially different from the amount of instruction provided during in-person learning. ■■■ was the only student where a substantial difference was noted in the amount of instruction in distance/remote learning compared to the amount of instruction provided during in-person learning based on their IEP *and* compared to the amount of instruction provided to their non-disabled peers.

Factors 2 and 3

Out of the 57 referenced students, a review of their IEPs, DLPs, and related documents did not indicate any concerns regarding the second and third factors in the *Letter to Fisher* analysis. Specifically, the move from in-person to full distance/remote learning in the district did not substantially or materially altered any of the referenced students' opportunities to be educated with nondisabled students. Students who received instruction inside the general education classroom during in-person instruction also received instruction inside the "virtual" general education classroom during distance/remote instruction. The record showed that the students had access to online platforms, such as Zoom, Teams, and Google Classroom, and they participated in those platforms with their non-disabled peers.

For example, ■■■'s December 2, 2020 IEP required ■■■ to receive collaborative instruction with a special education teacher and supportive services with paraprofessional in all academic areas. ■■■'s December 2, 2020 DLP included all of the academic content areas and a general education, special education teacher, and paraprofessional were listed. Additionally, ■■■'s Fall 2020 schedule showed that ■■■ received collaborative instruction and supportive services in the general education classroom with the appropriate staff.

Moreover, the move from in-person to full distance/remote learning in the district allowed students to have the same opportunities to participate in nonacademic and extracurricular services in the distance/remote learning environment, to the extent that those services were offered to all students. The record showed that the students had the same opportunities to participate in their "connections" or "specials" classes with their nondisabled peers in the distance/remote environment.

For example, ■■■'s August 28, 2020 DLP included the content area of "Specials" and the music, art, physical education, and computer teachers were listed. Additionally, ■■■'s Fall 2020 schedule showed that ■■■ participated in "Specials" 30 minutes daily. In another example, ■■■'s Fall 2020 schedule showed that she participated in Specials at the same time each day with her non-disabled peers.

Furthermore, the district reported that “[t]he offerings of nonacademic and extracurricular activities were made at the school level. Students were able to attend virtual connections offered at each site. . . Students served in separate classes had opportunities to participate in Brain Breaks with their typically developing peers. Examples of school wide virtual opportunities include but are not limited to the following: Red Ribbon Week activities, nutrition and health, Trunk or Treat, middle and high school sports, Brain Breaks, school council, virtual book fair, virtual counseling, etc.” The record reflected various school-wide newsletters and announcements made to all students regarding upcoming activities, including sports tryouts.

Factor 4

Out of the 57 referenced students, a review of their IEPs, DLPs, and related documents revealed that for 5 students (██████████), the distance/remote instructional environment was not the same option on the continuum of alternative placements. While IDEA lists the continuum of alternative placements broadly as instruction in regular classes, special classes, home instruction, and instruction in hospitals and institutions, see 34 C.F.R. § 300.115(b)(1), the state special education rules provide the following service models under the continuum of alternative placements: supportive services, consultative, collaborative, co-teaching, small group/separate class, separate school or program, home based, residential, and hospital homebound. See Ga. Bd. of Educ. R. 160-4-7-.07(3). Therefore, the consideration under the fourth factor is whether the district’s move from in-person instruction to distance/remote instruction resulted in the referenced students receiving instruction through a service model, as specified under state special education rules, that was different from the service model provided in their current IEPs.

The 5 named students (██████████) are the same students included in Factors 1d and 1e above. In this case, where there was a substantial difference between the type of instruction provided during in-person instruction through their IEPs and the type of instruction provided during distance/remote instruction, there was also a determination that the move to distance/remote instruction resulted in them receiving instruction through a service model that was different from the service model in their IEPs.

Specifically, ██████’s November 6, 2019 IEP required him to receive collaborative instruction for ELA, Reading, and Math, but the record reflects that, during distance/remote instruction, ██████ received supportive services for Reading and Math. This was a difference in the service model provided during in-person learning (collaborative instruction with a special education teacher) versus the service model provided during distance/remote instruction (supportive services with a paraprofessional). Similarly, for ██████ his February 6, 2020 IEP required him to receive collaborative instruction for ELA and Science, but the record reflects that, during distance/remote instruction, ██████ did not take a ELA or Science course, and in the two courses that he did take, he received collaborative instruction in one but only supportive services in the other.

For [REDACTED], his April 28, 2020 IEP required him to receive co-teaching instruction in Reading, Science, and Social Studies, but the record reflects that, during distance/remote instruction, [REDACTED] received co-teaching in Math (an area not included in the IEP) and no support in Science and Social Studies. Additionally, for [REDACTED], his December 9, 2020 IEP required him to receive collaborative instruction for Social Studies, Math, ELA, and Science, but the record reflects that, during distance/remote instruction, [REDACTED] only received collaborative instruction in ELA and no supports in Math, Science or Social Studies. Lastly, [REDACTED]'s January 13, 2020 IEP required her to receive collaborative instruction in ELA and Math and supportive instruction in Science and Social Studies, but the record reflects that, during distance/remote instruction, [REDACTED] did not receive any supports in academic classes. Specifically, [REDACTED] did not receive collaborative instruction in ELA and Math and did not receive supportive services in Science and Social Studies. This was not the same option on the continuum of alternative placements for [REDACTED] as provided in her IEP.

On whole, based on the *Letter to Fisher* case-by-case analysis, as applied to the 57 referenced students and the factors viewed in totality, the effect of distance/remote learning substantially or materially altered the educational program of [REDACTED] and [REDACTED]. Thus, the move from in-person to distance/remote learning for those individual students was a change of placement under IDEA.

The district is not in compliance with regard to Placements (34 C.F.R. § 300.116).

2. Prior notice by public agency; Content of notice (34 C.F.R. § 300.503)

Under the IDEA, the parents of a student with a disability shall be provided written notice a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education (FAPE) to the child. 34 C.F.R. § 300.503(a).

The written notice must include: (1) a description of the action proposed or refused by the agency; (2) an explanation of why the agency proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) a statement that the parents of a student with a disability have protection under the procedural safeguards of Part B of IDEA and if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding the provisions of the Part B of the IDEA; (6) a description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) a description of other factors that are relevant to the agency's proposal or refusal. 34 C.F.R. § 300.503(b).

Under the GaDOE Special Education Rules, in most cases, the above Notice requirements can be addressed by providing the parents(s) with a copy of documents such as the consent to evaluate, consent for placement, evaluation report, eligibility report, invitation to a meeting, the full individualized education program (IEP) (with minutes, if taken), and/or relevant documents, as appropriate. Ga. Bd. of Educ. R. 160-4-7-.09(5)(c).

Here, the complainants assert, within the formal complaint, “SCCPSS failed to provide Prior Written Notice describing and explaining these universally applied policy decisions in the context of the IDEA.” Moreover, the complainants assert that SCCPSS “predetermined a placement change for all 4,000 (+/-) students with an IEP” and “did not provide Prior Written Notice for these unilateral and systemically implemented changes.”

The complainants’ assertions related to Prior Written Notice requirements are reliant on the viewpoint that the district-wide decision to provide education for all students in a distance/remote learning environment automatically resulted in a change in placement for all students with disabilities in the district. However, as stated in Finding One above, the district’s provision of full distance/remote instruction for all students with disabilities was not a *per se* “change of placement” for all students.

According to an OSEP’s Letter to Fisher, “[i]n determining whether a ‘change in educational placement’ has occurred, the public agency responsible for educating the child must determine whether the proposed change would substantially or materially alter the child’s educational program. In making such a determination, the effect on the change in location on the following factors must be examined: whether the educational program set out in the child’s IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements. If this inquiry leads to the conclusion that a substantial or material change in the child’s educational program has occurred, the public agency must provide prior written notice that meets the content requirements of [34 C.F.R. § 300.503]. . . [however] [i]f it is determined that the no change in educational placement has occurred, we assume the District would utilize its normal procedures to notify parents of the proposed change in location of their child’s program. In such a communication, the District may wish to provide the parents with an explanation of why in its view the change in location would not substantially or materially alter the student’s educational program. In either case, the parent always has an opportunity to initiate a due process hearing regarding any matter relating to the identification, evaluation, or educational placement of this child or the provision of FAPE to their child. . .” *Letter to Fisher*, 21 IDELR 992, OSEP (July 6, 1994).

Although the district states that “the issuance of a prior written notice at the time that services were shifted from in-person to virtual delivery was neither necessary nor appropriate,” based on the OSEP guidance above, if the shift from in-person to distance/remote learning resulted in a “change of placement” for a student, then prior written notice was required. If the shift from in-person to distance/remote learning did not result in a change of placement, then prior written notice was not required, and at most, the district should have informed the parent about the change in location. With regard to the latter, the record shows that the district communicated school opening procedures for the 2020-2021 school year to parents through multiple mediums such as local media, email, social media, virtual forums, and printed booklets. An email from the district to the investigators dated November 10, 2020 states, in part, “The district recognizes that all

students with disabilities are General Education students first. All students and families were notified by the communications team through the district's communication system, Bright Arrow. Bright Arrow contacts parents by phone and/or email."

Based on Finding One above, for [REDACTED], the district's change from in-person to distance/remote learning, as applied to those students, resulted in a material and substantial change to their educational program. Therefore, the district was required to provide prior written notice to these students as the move from in-person to distance/remote learning constituted a change in placement for these students. However, the record reflects that the district only provided prior written notice to two families during the first semester of the 2020-2021 school. One was regarding specific requests for in-person instruction and/or contracting with a private provider and the other was regarding a request for private school education at public cost.

The district is not in compliance with Prior notice by public agency; Content of notice (34 C.F.R. § 300.503).

3. Provision of Free Appropriate Public Education (FAPE) (34 C.F.R. §§ 300.101 and 300.17)

Under the IDEA, a FAPE must be available to all children residing in the state between the ages of 3 and 21. 34 C.F.R. § 300.101(a). A FAPE means special education and related services that: (1) are provided at public expense under public supervision and direction and without charge; (2) meet the standards of the state educational agency; (3) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (4) are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§ 300.320-300.324. 34 C.F.R. § 300.17.

According to the U.S. Department of Education, "no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities. If State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, SEAs, LEAs, and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA." OSEP QA 20-01 (September 28, 2020).

Here, the complainants assert, within the formal complaint, "Since resuming formal instruction on August 19, 2020, the Savannah-Chatham County Public School System (SCCPSS) has systemically violated the Educational and Civil Rights of its nearly 4,000 students with disabilities who are eligible for special education under the Individuals with Disabilities Education Act (IDEA)". Specifically, the complainants assert that the district's refusal to consider or provide any in-person instruction, services, or supports to students with disabilities, irrespective of a student's ability to access instruction in the virtual environment, denied a FAPE to those students.

As an initial matter, the GaDOE's jurisdiction in formal complaint investigations extends only to alleged violations of Part B of the IDEA in accordance with 34 C.F.R. § 300.151. See 34 C.F.R. § 300.153(b)(1).

As discussed in Finding One above, during the time period of August 19, 2020 through October 3, 2020, when IEP Teams in the district were not permitted to consider all placement options, including the location of the student's educational services and whether the change in location from in-person to distance/remote learning substantially or materially altered the educational programs of students, this practice violated IDEA's Placements regulation, 34 C.F.R. § 300.116. However, whether the effect of this practice resulted in a change of placement or denied a FAPE to students is an individualized determination.

As shown in Findings One and Two above, the district changed the placement of 7 students () when it moved from in-person to distance/remote instruction and failed to provide prior written notice to the parents of those 7 students. For the other 50 students, distance/remote instruction did not substantially or materially alter their educational program and the move from in-person to distance/remote instruction was a change in location only. Under the facts of this case, the failure of their IEP Teams to consider in-person instruction when all students were participating in distance/remote instruction did not necessarily result in a denial of a FAPE to those students. This does not mean that such failure did not result in a denial of a FAPE for other students in the district.

Moreover, a review of the records for the 57 referenced students revealed that 10 students' special education and related services were not provided in conformity with 34 C.F.R. §§ 300.320-300.324. Thus, those students were denied a FAPE during the first semester of the 2020-2021 school year.

The first set of students are the 7 students () where the determination was made in Finding One above that the district's move to distance/remote instruction resulted in a change of placement for them.

For ■, the district's failure to include the necessary supports for him during distance/remote instruction violated the Development, Review, and Revision procedures under IDEA. See 34 C.F.R. § 300.324. Specifically, the district failed to review and revise the student's IEP and/or DLP, as appropriate, to address ■'s anticipated needs. Despite this procedural violation, the record reflects that ■ continued to progress on his annual goals and in the general education curriculum during the first semester of the 2020-2021 school year.

For ■, the district's failure to provide collaborative instruction in ELA/Reading and Math during distance/remote instruction violated the Implementation of IEP procedures under IDEA. See 34 C.F.R. §§ 300.320(a)(7), 300.323(c)(2). Despite this procedural violation, the record reflects that ■ continued to progress on his annual goals and in the general education curriculum during the first semester of the 2020-2021 school year.

For ■, the district's failure to provide collaborative instruction in ELA and Science during distance/remote instruction violated the Implementation of IEP procedures under IDEA. See *id.* Despite this procedural violation, the record reflects that ■ continued to progress

on his annual goals and in the general education curriculum during the first semester of the 2020-2021 school year. Specifically, ■ received passing grades in the two courses he completed with the collaborative instruction and supportive services that were provided.

For ■, the district's failure to provide co-teaching instruction in Science and Social Studies and any speech services during the first semester of the 2020-2021 school year violated the Implementation of IEP procedures under IDEA. See *id.* The record reflects that, although ■ passed his academic courses in the second quarter with the supports that were in place, ■'s inability to login for a month caused him to fail all his courses in the first quarter and the failure to provide speech services for a semester resulted in him not progressing on his speech goals.

For ■, the district's failure to provide collaborative instruction in Math, Science, and Social Studies violated the Implementation of IEP procedures under IDEA. See *id.* The record reflects that this violation resulted in the student not making progress on his goals and not progressing in the general education curriculum. Specifically, ■'s progress monitoring data showed that ■ neither progressed nor regressed but essentially remained the same during the first semester of the 2020-2021 school year. Also, ■ failed all of his classes in the first and second quarter of the 2020-2021 school year.

For ■, the district's failure to provide an amount of instruction during distance/remote instruction that was commensurate with the amount of instruction during in-person learning and with ■'s non-disabled peers violated the Implementation of IEP and Development, Review, and Revision procedures under IDEA. See 34 C.F.R. §§ 300.320(a)(7), 300.323(c)(2), 300.324. In the distance/remote learning environment, the district was required to provide the student's special education services in ■'s IEP in an amount that was proportionate to the instruction provided to ■'s non-disabled peers. To the extent that ■'s needs that result from his ability necessitated a decrease in the amount of instruction, the district was required to document that need through the IEP and/or DLP process. Despite this procedural violation, the record reflects that ■ continued to progress on his annual goals and in the general education curriculum during the first semester of the 2020-2021 school year.

For ■, the district's failure to provide collaborative instruction in any academic classes violated the Implementation of IEP procedures under IDEA. Despite this procedural violation, the record reflects that ■ continued to progress on her annual goals and in the general education curriculum during the first semester of the 2020-2021 school year.

Moreover, the review of the records of the 57 referenced students also revealed other denials of a FAPE under the IDEA during the first semester of the 2020-2021 school year. Specifically, ■'s April 24, 2020 IEP indicates that he receives the following instruction inside the general education classroom: Collaborative instruction with Special Education Teacher for 15 hours per week in all academic areas. ■'s August 12, 2020 IEP Amendment indicated that he will receive the following instruction inside the general education classroom: Collaborative instruction with Special Education Teacher for 22.5 hours per week in ELA/Biology/History. The start and end date for the collaborative instruction was August 12, 2020 through January 5, 2021. The amendment increased his

special education supports and according to the amendment, the changes in services were to get him “on track for graduation in 2021.” ■■■’s August 12, 2020 DLP includes the content areas of ELA and Social Studies and a general education teacher and special education teacher are listed. The DLP also includes the content areas of Health and Specials/Connections and a general education teacher is listed. Therefore, even though ■■■’s IEP amendment and DLP were written on the same day, they reflect a different amount of instruction. The IEP includes three academic courses to provide collaborative instruction, while the DLP only includes two academic courses. Based on ■■■’s schedule, his first semester grades, and his teachers’ schedules, as stated in the DLP, ■■■ received collaborative instruction in ELA and History, but not Biology or other science course. While the record reflects that ■■■ was on block scheduling and his first semester schedule was limited to four courses, it is unclear why the Team created an IEP amendment and DLP on the same day that reflected a different amount of instruction to be provided to the student during the first semester of the 2020-2021 school year. Therefore, the failure to provide collaborative instruction in Biology or another science course, absent any explanation or clarification otherwise, violated the Implementation of IEP Procedures under IDEA. See 34 C.F.R. §§ 300.320(a)(7), 300.323(c)(2).

Additionally, the IEPs and/or DLPs of 3 students (■■■■■■■■■■) were not implemented when the district did not have a SLP to provide speech services to the students for an extended period of time. For ■■■, she went without speech services until November 3, 2020, and for ■■■, he went without speech services for the entire first semester of the 2020-2021 school year. As stated above, ■■■ also went without speech services for the entire first semester of the 2020-2021 school year. It is worth noting that the district has hired a SLP to provide services to these students and services are being provided, including the provision of compensatory services.

The district is not in compliance with regard to Provision of Free Appropriate Public Education (FAPE) (34 C.F.R. §§ 300.101 and 300.17).

The resolutions are as follows:

Since the district’s IEP Teams were not permitted to consider all components of an educational placement determination when the district provided full distance/remote instruction, including the location of the student’s educational services, in violation of IDEA’s Placement regulation, the district shall provide written notification to all parents of students with disabilities under IDEA in the district to inform them that the district was found to be out of compliance with federal and state special education rules and regulations and to offer the parents the opportunity to request an IEP Team meeting to review and revise their student’s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324. The district submit a copy of the written notification to the GaDOE for approval **before** the written notification is provided to parents of students with disabilities in the district. The district shall provide the written notification to the GaDOE for approval no later than February 19, 2021. Upon approval, the district shall provide the written notification to all parents of students with disabilities and provide a written assurance to the GaDOE that the written notification was provided no later than February 26, 2021.

In coordination with the district, the GaDOE shall host a training for the district regarding the issues discussed in this resolution letter, including but not limited to, the *Letter to Fisher* analysis regarding a change of placement versus a change of location no later than March 5, 2021. The training will be conducted virtually and archived and must be made available to all special education teachers/providers and administrators in the district. The district shall provide documentation to the GaDOE of required personnel participation in, or viewing of, the referenced GaDOE training no later than May 30, 2021.

For ■■■, the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■'s IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in distance/remote instruction including the discussion and consideration, as appropriate, of all placement options as explained in this letter. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable, to the GaDOE no later than April 2, 2021.

For ■■■, the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■'s IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in distance/remote instruction. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable, to the GaDOE no later than April 2, 2021. The district shall also provide quarterly documentation of the provision of special education services to ■■■, including a copy of the current schedules of ■■■ and ■■■'s teachers. The documentation shall be submitted to the GaDOE no later than April 16, 2021, August 13, 2021, and November 5, 2021.

For ■■■, the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■'s IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in distance/remote instruction. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable, to the GaDOE no later than April 2, 2021. The district shall also provide quarterly documentation of the provision of special education services to ■■■, including a copy of the current schedules of ■■■ and ■■■'s teachers. The documentation shall be submitted to the GaDOE no later than April 16, 2021, August 13, 2021, and November 5, 2021.

For ■■■ the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■'s IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in distance/remote instruction. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable, to the GaDOE no later than April 2, 2021. The district shall also provide quarterly documentation of the provision of special education services to ■■■, including a copy of the current schedules of ■■■ and ■■■'s teachers. The documentation shall be submitted to the GaDOE no later than April 16, 2021, August 13, 2021, and November 5, 2021.

For ■■■, the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■'s IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in

distance/remote instruction. Additionally, during the IEP Team meeting, the Team shall consider a reasonable schedule and delivery method to provide 12 total hours of compensatory services to the student in the areas of Reading, Science, and/or Social Studies and 2 hours of compensatory services to the student in the area of speech-language therapy. The compensatory hours shall be provided in addition to the services required in the student's IEP. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable, and provide a compensatory education plan to the GaDOE no later than April 2, 2021, advising how the compensatory hours will be delivered. Documentation of the completion of these services should be submitted to the GaDOE no later than September 3, 2021. The district shall also provide quarterly documentation of the provision of special education services to ■■■, including a copy of the current schedules of ■■■ and ■■■'s teachers. The documentation shall be submitted to the GaDOE no later than April 16, 2021, August 13, 2021, and November 5, 2021.

For ■■■, the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■'s IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in distance/remote instruction. Additionally, during the IEP Team meeting, the Team shall consider a reasonable schedule and delivery method to provide 24 total hours of compensatory services to the student in the areas of Math, Science, and/or Social Studies. The compensatory hours shall be provided in addition to the services required in the student's IEP. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable and provide a compensatory education plan to the GaDOE no later than April 2, 2021, advising how the compensatory hours will be delivered. Documentation of the completion of these services should be submitted to the GaDOE no later than December 17, 2021. The district shall also provide quarterly documentation of the provision of special education services to ■■■, including a copy of the current schedules of ■■■ and ■■■'s teachers, and quarterly documentation of the provision of periodic progress reports on ■■■'s annual goals. The documentation shall be submitted to the GaDOE no later than April 16, 2021, August 13, 2021, and November 5, 2021.

For ■■■, the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■ IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in distance/remote instruction. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable, to the GaDOE no later than April 2, 2021. The district shall also provide quarterly documentation of the provision of special education services to ■■■, including a copy of the current schedules of ■■■ and ■■■'s teachers. The documentation shall be submitted to the GaDOE no later than April 16, 2021, August 13, 2021, and November 5, 2021.

For ■■■, the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■'s IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in distance/remote instruction. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable, to the GaDOE no later than April 2, 2021. The district shall also

provide quarterly documentation of the provision of special education services to ■■■, including a copy of the current schedules of ■■■ and ■■■'s teachers and schedules of a general education student in ■■■'s grade and school. The documentation shall be submitted to the GaDOE no later than April 16, 2021, August 13, 2021, and November 5, 2021.

For ■■■, the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■'s IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in distance/remote instruction. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable, to the GaDOE no later than April 2, 2021. The district shall also provide quarterly documentation of the provision of special education services to ■■■, including a copy of the current schedules of ■■■ and ■■■'s teachers. The documentation shall be submitted to the GaDOE no later than April 16, 2021, August 13, 2021, and November 5, 2021.

For ■■■, the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■'s IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in distance/remote instruction. Additionally, during the IEP Team meeting, the Team shall consider a reasonable schedule and delivery method to provide 5 total hours of compensatory services to the student in the area of speech-language therapy. The compensatory hours shall be provided in addition to the services required in the student's IEP. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable and provide a compensatory education plan to the GaDOE no later than April 2, 2021, advising how the compensatory hours will be delivered. Documentation of the completion of these services should be submitted to the GaDOE no later than May 21, 2021.

For ■■■, the district shall schedule an IEP Team meeting with ■■■'s parent to review and revise ■■■'s IEP and/or DLP, as appropriate, in accordance with 34 C.F.R. § 300.324 and ensure that ■■■'s IEP and/or DLP, among other things, addresses ■■■'s anticipated needs in distance/remote instruction. Additionally, during the IEP Team meeting, the Team shall consider a reasonable schedule and delivery method to provide 9 total hours of compensatory services to the student in the area of speech-language therapy. The compensatory hours shall be provided in addition to the services required in the student's IEP. The district must provide a copy of the amended IEP and/or DLP and any minutes, if applicable and provide a compensatory education plan to the GaDOE no later than March 19, 2021, advising how the compensatory hours will be delivered. Documentation of the completion of these services should be submitted to the GaDOE no later than May 21, 2021.

In coordination with the GaDOE, the district shall review and revise, as appropriate, its policies, practices, and procedures including, but not limited to, IDEA requirements regarding Placements (34 C.F.R. § 300.116), Prior Notice by the public agency; content of notice (34 C.F.R. § 300.503), and Provision of a FAPE (34 C.F.R. §§ 300.17, 300.101). Additionally, the district shall review and revise, as appropriate, its Restart Plan, Procedures, and Guidance in light of the findings in this investigation. The district shall provide its referenced IDEA procedures and Restart documents to the GaDOE for approval no later than March 19, 2021.

Dr. M. Ann Levett, Superintendent
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Upon approval of these procedures and Restart documents, the GaDOE shall work with the district in training all special education teachers/provider and all school and district administrators on how to implement these procedures through documented practices. The district shall provide documentation to the GaDOE of required personnel participation in, or viewing of, the referenced GaDOE training no later than May 30, 2021.

As needed, the GaDOE will provide professional learning and resources to the district.

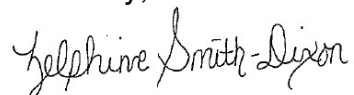
All required documentation should be sent to:

Jamila Pollard, Program Manager Senior/Legal Officer
Family Engagement and Dispute Resolution
Special Education Services and Supports
Georgia Department of Education
1562 Twin Towers East
Atlanta, Georgia 30334-5010

All decisions arising from this complaint process are final. There is no appeal or reconsideration process for formal complaint investigations. However, parties retain their right to utilize all dispute resolution processes. Failure of the Savannah-Chatham County School District to complete the required actions may result in the withholding of federal and/or state funds for special education.

If you should have any questions, please contact Jamila Pollard at jpollard@doe.k12.ga.us or 404-670-2683.

Sincerely,



Zephine Smith-Dixon, Ed.D., State Director
Division for Special Education Services and Supports

ZSD: jp

cc: Dr. Michelle Finch, Senior Director, Department for Specialized Instruction
Julia H. Sullivan, Esq., Complainant (redacted)
Erin O. Roma, Complainant (redacted)
Dr. Carol Nail, Investigator
Barbara Dartt, Investigator
Laurie Ponsell, GaDOE District Liaison