

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-63**

### **PROCEDURAL HISTORY**

On August 9, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the McCleary School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On August 10, 2021, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On August 30, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on August 31, 2021. OSPI invited the Parent to reply.

On September 14, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on September 15, 2021.

On September 29, 2021, OSPI interviewed the Parent.

On September 29, 2021, OSPI requested additional information from the District. The District provided the requested information on October 4, 2021. OSPI forwarded the additional information to the Parent on October 5, 2021.

On October 6, 2021, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on October 7, 2021.

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

### **ISSUE**

1. Did the District implement the Student's individualized education program (IEP), including math and social emotional specially designed instruction, and all accommodations, during the 2020–2021 school year?

### **LEGAL STANDARDS**

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also

ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. The initial IEP must be implemented as soon as possible after it is developed. 34 CFR §300.323(c); WAC 392-172A-03105(2). Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105(3)(a).

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

### **FINDINGS OF FACT**

1. The first day of the 2020–2021 school year was September 1, 2020. The District began the school year in a fully remote setting for all students.
2. At the commencement of the 2020–2021 school year, the Student was eligible for special education services under the category of specific learning disability, was in the seventh grade, attended a District middle school, and her May 28, 2020 individualized education program (IEP) was in effect.
3. The Student's May 2020 IEP stated the Student would spend approximately 76% of her time in the general education setting, included measurable annual goals in math (solving equations with variables) and social/emotional (participation in collaborative discussions)<sup>1</sup> and provided the Student with the following specially designed instruction:
  - Math, 55 minutes, 5 times weekly, to be provided by a paraeducator, in the *special education* setting; and,
  - Social/emotional, 30 minutes 5 times weekly, to be provided by a paraeducator, in the *special education* setting.

The Student's IEP included several accommodations in "class"<sup>2</sup> settings, including, 1:1 teacher assistance, acceptance of oral responses, additional time, adult proximity to support focus/attention, breaking of material into manageable parts, checking frequently for understanding, providing a copy of notes/study guides, provision of a different setting while

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<sup>1</sup> The Student's IEP noted the Student experienced significant anxiety that interfered with her academic performance and could result in depression, anxiety, and interfered with leadership and functional communication. It particularly noted the Student required specially designed instruction in this area to ensure the Student completed work.

<sup>2</sup> The Student's IEP did not distinguish between classes provided in special education and general education settings. During an interview with the Parent, the Parent relayed to the OSPI investigator that the accommodations in the IEP were intended to be provided across all class settings, including general education and special education settings.

taking a test, extended time of two days to complete assignments, frequent breaks, graphic organizer, manipulative materials number line, and preferential seating.

4. In its response to the Parent's allegations, the District stated that from September 2020 to March 2021, the Student was provided the following special education services and supports:

- **Daily Zoom "drop-in" support, from 8:30 am to 2:30 pm:**
  - The District reported that Zoom "drop-in" support was offered to the Student to support asynchronous math specially designed instruction. It relayed that during this optional time, the Student was provided with "individualized math [specially designed instruction] to support work with [IEP] goals and application to real life."
  - The Parent told the OSPI complaint investigator that she was not aware prior to receiving the District's response to this complaint that the special education teacher had made "drop-in" support available during the school year. She reported that she had not received a schedule with this information and noted that it was not relayed to her by phone or email, and that she accordingly was unable to monitor whether the Student accessed drop-in support.
  - The District maintained that all students were sent a copy of their general education schedules and that the special education teacher reported sending special education schedules out via email. A review of the documentation provided showed that while District provided a copy of the email sent to all families with the general education schedule, it was not clear the family received it. There also was not clear documentation in the emails provided by the District regarding the special education teacher's availability on Zoom during this time.<sup>3</sup>
  
- **Daily "home-based [specially designed instruction]" in math and social/emotional with synchronous math instruction via Zoom from 10:15 a.m. to 11:15 a.m. every Wednesday, and a social google classroom offered on Thursdays from September through November 2020:**
  - According to the District, the asynchronous "home-based" instruction in math included "weekly web-based asynchronous" instruction (e.g., "Braining Camp" and "Khan Academy web-based mathematics skills work") and "daily [specially designed instruction]" consisting of "iReady independent work and diagnostic tests." The District added that the Student was supported in this work by the provision of math manipulatives, such as foam numbers.
  - During an interview with the Parent, the Parent told the OSPI complaint investigator that she never received a schedule from the District during the first or second trimester and thus was not aware there was a regularly scheduled Wednesday synchronous Zoom math lesson. She reported that she found the Zoom lessons to be "unpredictable," and that the special education teacher would often send a zoom link a few minutes prior to the start of a lesson or the night before and then would arrive late to the scheduled Zooms. The Parent also stated that she observed what she characterized as minimal math instruction during the Student's interaction with the special education teacher on Zoom. She noted that while she "appreciated [the teacher's] efforts to build a relationship with [Student]," it was unclear how the time related to making progress on the Student's IEP goals. When asked about

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<sup>3</sup> On January 7, 2021, the special education teacher emailed the Student and reminded her that she had her Zoom open "every afternoon (M-Th) and you [Student] can always just stop by." This was the first mention of the Zoom room in the emails and documentation provided by the District in response to this complaint. The Parent was not copied on the email and a Zoom link was not included in the email.

the asynchronous web-based work (e.g., iReady, Khan Academy), the Parent explained that the Student reported to her that she had been told she could select which modules in iReady she wanted to do, and that the Parent observed the Student choosing lessons on topics that were "too easy," including modules on "identifying shapes," which the Parent relayed the Student already knew. The Parent also reported the Student would often spend a few minutes on a lesson and then would be finished for the day and that the time spent on activities was much less than provided for on the Student's IEP.

- When asked how the special education teacher modified or adapted the content provided through asynchronous work to meet the Student's individual needs,<sup>4</sup> the District relayed that the special education teacher reported she "guided parent and family on options for independent practice at home utilizing real life scenarios," and that due to Student needs, the online and synchronous instruction provided were "constantly assigned and available throughout the school year, with paper packets assigned periodically throughout the year." The special education teacher further reported that she offered to meet with the Student in person and to provide semi-private lessons, but that the Student "attended for a period of time, then absenteeism increased over the course of the year and most notably during the second semester." The special education teacher reported that, "Time for tutoring was consistently available and [S]tudent chose not to participate."
- The District provided data on the Student's iReady participation, which the special education teacher explained was created for the Student based on the Student's performance on a diagnostic test taken at the beginning of each trimester. The special education teacher further explained that instruction was provided through "screen share and individually designed lessons," as well as through hard copy packets.
- The iReady data provided showed the Student participated and completed a total of 2 hours and 42 minutes of work for the entire school year.<sup>5</sup> The special education teacher reported that "iReady was available for independent practice aligned to the Student's minutes. This was available weekly and assigned by teacher."
- Regarding the provision of other activities on web-based platforms, the special education teacher reported that, "Web based platforms were used for individualized practice and instruction at student's convenience,"<sup>6</sup> and to "practice sessions of fact skills."
- The District stated the Student was provided weekly pre-recorded modules on Google classroom in September on topics including growth mindset, relationships, bullying, shyness, and others. The special education teacher reported that she made this content available for students to use alone or to view with families. According to the District, during optional Zoom drop-in time, the Student was offered "small group social emotional check-ins" with "instruction in strategies for appropriate engagement, feelings, mindset and relationships," which also targeted the Student's social/emotional goals. The Parent replied

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<sup>4</sup> The Student's math IEP goal included using variables in equations to represent real-life situations.

<sup>5</sup> OSPI confirmed with the District that this was the total amount of instructional time the Student received in iReady for the 2020–2021 school year.

<sup>6</sup> The District specified that "Khan Academy was set up for an all-grade review, iReady was incorporated into personal instruction. BrainingCamp was used along with manipulatives as a way for student to 'see' math." The special education teacher reported the Student had an "'individualized pathway' on Education.com;" however, it was unclear from the documentation provided how the Student utilized this web-based platform.

that although there was a Google classroom for a social group, the students “were not required to participate, and there was no activity in the group other than the teachers posting videos.” The Parent further added that “there were never any emails or announcement to watch or participate in the google classroom,” and that she did not believe the Student regularly engaged in group activities during this time.

- The District reported that despite the Parent’s perception, the special education teacher reported that the “Student met several times with zoom groups and had lengthy conversations” with her through Zoom.
- **Accommodations and modifications during daily general education asynchronous and synchronous instruction,<sup>7</sup> 140 minutes, daily, and general education staff to support the Student in the general education classroom from September to June:**
  - The Parent reported the Student’s general education teachers would reach out to the Student 1:1 to periodically “check in” but stated the Student did not receive copies of study notes or guides. The District reported that all general education teachers posted class materials online on Google classrooms, as well as recordings of Zoom sessions. It was not clear from the documentation provided if the Student received copies of outlines or notes to use during class, or if the Student accessed all class materials provided through Google classroom.
  - Upon review of the Student’s attendance records, it was noted that the Student had a significant number of unexcused absences<sup>8</sup> reported. Absences were recorded when a Student did not log onto Zoom and had not notified the teacher in advance.<sup>9</sup> The Parent explained that prior to receiving the District’s response, she was not aware that the Student was being marked as having an unexcused absence if she was not logging on to a scheduled general education Zoom class, and that no one had informed her the Student was not always logging or attending to her general education classes. The Parent added that the Student could at times sleep through class. The Student’s IEP notes that: “She struggles to focus on work using technology and needs to be checked in on to make sure she is not drawing...”
  - The special education teacher reported that the Student’s notes were reviewed during online screen sharing through some of the web-based platforms. The special education teacher additionally reported that when providing math instruction, she would show a math prompt on the screen and was able to model the math problem-solving strategy for the Student.

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<sup>7</sup> According to the schedule provided by the District, the Student received asynchronous instruction and Zoom synchronous (on alternating days Monday through Thursday) in English language arts, social studies, and general education math.

<sup>8</sup> The Student received unexcused absences (either for the entire day or partially) during 55 days during the 2020–2021 school year. The District reported that the Student’s absences impacted their ability to deliver special education services and the Student’s access to her general education instruction.

<sup>9</sup> The District provided OSPI a copy of an email sent to all parents in the District at the beginning of the school year, explaining that students would be marked absent if they did not sign onto Zoom and had not contacted the school in advance to notify the District. The Parent reported that she did not receive this communication and was not aware of the policy.

5. On September 1, 2020, the special education teacher emailed the Student and Parent and apologized for miscommunication that day regarding the Student's math class.<sup>10</sup> The special education teacher explained the Student should log into iReady math, where she was to take a diagnostic exam, after which iReady would "provide [Student] with [her] individualized pathway" where the Student would be able to complete iReady math. The special education teacher also attached to the email a list of codes for the Student to use on a math website. She stated that the Student should begin by using iReady math and the website provided and "see how it goes."
6. During September 2020, the Student received links to attend a Zoom classroom on the following dates:
  - Sunday, September 13, 2020<sup>11</sup>
  - Monday, September 21, 2020<sup>12</sup>
  - Wednesday, September 23, 2020<sup>13</sup>
  - Sunday, September 27, 2020<sup>14</sup>
  - Monday, September 28, 2020<sup>15</sup>
  - On September 30, 2020<sup>16</sup>

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<sup>10</sup> On the first day of school (September 1, 2020), there was miscommunication between the principal and the Parent, whereby the Student was only provided a link to general education seventh grade math and not to special education math. The principal told the Parent in an email that the Student should "try out" general education math to see if she "liked it." The principal later reached out to the Parent and explained this was a misunderstanding, and that the Student should log into iReady math to complete a diagnostic, and that the Student's math would "likely be something like google docs and khan academy."

<sup>11</sup> The special education teacher emailed the Student with Zoom link Sunday evening to request the Student join a scheduled Zoom meeting the next day, Monday, September 14, 2020 at 10:15 am.

<sup>12</sup> The special education teacher emailed the Student at 10:01 am with a Zoom link, requesting the Student join a meeting scheduled for 10 am that day.

<sup>13</sup> The special education teacher emailed the Student a Zoom link at 1:55 pm, requesting the Student join a meeting at 2 pm that afternoon.

<sup>14</sup> The special education teacher emailed the Student a Zoom a link to join a Zoom meeting scheduled for the next morning at 10:15 am.

<sup>15</sup> The special education teacher emailed the Student a Zoom link at 10:08 am, requesting the Student join a meeting that was scheduled for 10 am that morning.

<sup>16</sup> The special education teacher emailed the Student a Zoom link at 2:08 pm, requesting the Student join a social group meeting.

7. On September 28, 2020, the District sent the Parent a meeting notice for September 30, 2020 for the purpose of reviewing evaluation results and determining the Student's continued eligibility for special education services.<sup>17</sup>
8. Around noon on Tuesday, September 29, 2020, the special education teacher emailed the Student, saying she had noticed the Student had completed "some iReady minutes" and that she was hoping the Student would complete seven more minutes that day, preferably in the area of measurements. She asked the Student to let her know when she was finished because she had some questions for her. At 2:22 p.m. the Student emailed the special education teacher and informed her that she had "finished the 7 minutes" and asked what questions the teacher had for her. Around 2:30 p.m., the teacher responded that she was in a Zoom meeting and would respond when it was over. The teacher did not respond that day.
9. At 8:33 a.m. on Friday, October 9, 2020, the special education teacher sent an invite to the Student for a Zoom Halloween party for her class. Other than the Zoom link for the Halloween party, there was no documentation of Zoom links sent to the Student or documentation of synchronous instruction accessed by the Student during October 2020.
10. On Tuesday, October 13, 2020, the Parent and special education teacher exchanged emails regarding scheduling an IEP meeting and the Student's use of foam numbers provided for math. The District sent the Parent an invitation later that week on October 15, 2020 for an IEP meeting on October 21, 2020 to review the Student's current IEP.
11. On October 21, 2020, the Student's IEP team met to review the Student's IEP. Following the meeting, the District sent prior written notice (PWN) that the IEP team was proposing to continue the Student's IEP with updated goals and present levels of performance in social/emotional and math. Following the IEP meeting, the Parent emailed the special education teacher and requested that use of a calculator and permission to respond orally during tests be added to the Student's IEP. The special education teacher responded that she would add these accommodations to the IEP before sending a copy to the Parent to review.
12. During November 2020, the special education teacher emailed the Student invitations to join Zoom meetings on the following dates:
  - Thursday, November 5, 2020<sup>18</sup>
  - Monday, November 16, 2020<sup>19</sup>
  - Thursday November 19, 2020<sup>20</sup>

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<sup>17</sup> There is no documentation the Student's IEP team met in September. It appears the meeting was rescheduled for October 21, 2020.

<sup>18</sup> The teacher sent an email with the link at 1:49 pm, to request the Student join at 2 pm.

<sup>19</sup> The teacher sent a link to general Zoom room.

<sup>20</sup> The teacher sent an email with the link at 1:57 pm, to request the Student join at 2 pm.

13. November 30, 2021 was the first day of the second trimester.
14. On December 1, 2021, the District issued a progress report for the Student. It stated that during the first trimester, the Student made sufficient progress and was on track to meet her annual goal within the duration of the IEP, on both her math and social emotional goals. The progress report noted that the Student's first math goal (using variables and constructing simple equations)<sup>21</sup> was a new goal, and that regarding her social/emotional goal,<sup>22</sup> the Student was "doing very well during Covid-19 school closure" and noted that this goal was also new.
15. During December 2020, the special education teacher emailed the Student Zoom links to join meetings on the following dates:
- Wednesday, December 9, 2020 at 10:20 am
  - Wednesday, December 16, 2020 at 10:19 am
16. At 3:51 pm on Wednesday, January 5, 2021, the special education teacher emailed the Student a link to a Zoom meeting scheduled for the next day (Thursday) at 10:15 am. The next evening, the Student emailed the special education teacher, apologizing for missing the morning class, writing that she had slept half the day. The special education teacher responded on January 7, 2021, telling the Student not to worry about catching up on sleep and reminded the Student that she has her Zoom room every afternoon from Monday through Thursday, and that the Student could always "just stop by." The special education teacher also noted that she was looking forward to their Zoom and that the Student's math assignment that month would be a mid-year iReady diagnostic. The special education teacher told the Student it would be a good time to put in some iReady time, and wrote, "I am planning to do cuisinaire rods and variables with you, and hopefully meet again to count money."<sup>23</sup>
17. On Tuesday, January 12, 2021, the special education teacher wrote to her students that she was still out sick and that they should continue to work on their iReady work and other web-based asynchronous work.<sup>24</sup> The special education teacher was also sick the next day and

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<sup>21</sup> The Student's math goal stated: "By 10/21/2021, when given math equations [STUDENT] will use variables to represent quantities in a real-world or mathematical problem, and construct simple equations and inequalities to solve problems by reasoning about the quantities, improving solving equations with variables from 5/5 on level 3 mathematics equations with variables to 5/5 on level 4 mathematic equations with variables as measured by work product."

<sup>22</sup> The Student's social/emotional goal stated: "By 10/21/2021, when given collaborative discussions (one-on-one, in groups, and teacher led) and group activities STUDENT will engage effectively improving participation in a range of collaborative discussions from 30% participation to 60% participation as measured by teacher observations and data collection."

<sup>23</sup> The January 5, 2021 email from the special education teacher to the Student was the only email containing a link to a synchronous Zoom meeting for the month of January 2021.

<sup>24</sup> The District reported the special education teacher was out sick for two weeks, and that during this time, a substitute teacher provided case management services and specially designed instruction to eligible



emailed her students to ask that they continue working on their iReady assignments and to practice for their upcoming diagnostics.

18. On Monday, February 1, 2021, the special education teacher sent the Student an email with the subject line, "Long time no see!" and told the Student she "did great on the reading diagnostic now there is math." She asked if the Student could come to her Zoom room and to "pick a time."
19. At 9:43 am on Wednesday, February 3, 2021, the special education teacher sent the Student an email with a link to join a Zoom meeting.<sup>25</sup>
20. On Friday, February 19, 2021, the special education teacher wrote to the Student to ask how she was doing and added, "It seems like ages since we last spoke. Send me an email with a good time to Zoom. I would like to meet you up on campus now that I am here every day...Call me at school if you want or just stop by."
21. The District reported that at the end of February, it began offering in-person services to students whose families wanted in-person services and continued offering hybrid or remote services to families who choose to access those models of instructions. The District reported that the email sent by the special education teacher on February 19, 2021 was a "follow up document" to a phone conversation between the special education teacher and Parent, during which the special education teacher offered daily in-person services to the Parent and the Parent "chose to access services in person once per week on Wednesdays." The special education teacher reported that she "offered up to daily in person supports and services as outlined in the IEP...and continued to offer supports and prompted independent work completion through individualized online resources." The Parent denied having been offered full-time in person services for the Student in a phone call and told the complaint investigator that the calls to discuss the Student receiving in-person services were "sporadic."<sup>26</sup>

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students. There is no documentation of the Student receiving synchronous instruction or any Zoom instruction during January 2021.

<sup>25</sup> According to the documentation provided, during February 2021, there was only one scheduled Zoom call between the special education teacher and the Student. It is unclear if the Student "dropped in" on any of the special education teacher's "drop-in" Zoom hours.

<sup>26</sup> OSPI requested additional documentation from the District to show the District's offering of in-person instruction or a changed schedule that was sent to the Parent or all families. Other than the special education teacher's recollection of phone calls with the Parent, the District was unable to provide documentation of communication with the Parent regarding the schedule change, offer of in-person and hybrid services, or of the Parent's decision to decline in-person services. The District additionally confirmed there was no in-person meeting or IEP meeting to discuss the provision of services to the Student in the remote setting should the Parent have declined in-person services, but instead reported the special education teacher developed a plan with the Parent during monthly or more frequent phone calls.

22. Beginning in March, the District reported the Student was scheduled to receive in-person specially designed instruction on Wednesdays from 12–2 pm (math) and 2–2:30 pm (social/emotional learning). It added that it continued to make drop-in special education support available on Zoom from 8:30 am to 2:30 pm from Monday through Thursday and that the Student received asynchronous specially designed instruction when not receiving instruction in-person.

In her reply to the District’s response, and when being interviewed by the complaint investigator, the Parent reported that because communication regarding the Student’s math instruction was inconsistent and infrequent, and because she had not received a copy of the Student’s schedule and was unaware of the additional Zoom drop-in time, that she did not believe the Student received her specially designed instruction in math during this time. The Parent reported similar concerns for the Student’s social/emotional specially designed instruction.<sup>27</sup>

23. On Wednesday, March 10, and Tuesday, March 16, 2021, the Parent confirmed the Student attended school in person. According to the Parent, the special education teacher called her and told her she would like to set up time to see the Student again after these sessions.

24. On March 24, 2021, the District provided the Parent a progress report, indicating the Student had made sufficient progress during the second trimester on both math and social emotional goals. However, in the notes section for each goal, it was noted that “Due to Covid-19 school closure, this goal is difficult to accurately be assessed.” For the Student’s social/emotional goal, it was added that the Student’s general education teachers reported “good participation.”

25. On April 23, 2021, the special education teacher and the Student emailed about seeing each other for math. It was unclear from the documentation provided if the Student and teacher met for math; however, the special education teacher reported that she spoke with the Parent and arranged for the Student to come in on occasion to receive math specially designed instruction.

26. According to the District’s response, the Student continued to be provided with asynchronous specially designed instruction during May 2020 and was scheduled to receive specially designed instruction in-person once a week.

27. On June 11, 2021, the District issued a progress report to the Parent for the third trimester, which stated “[Student] is being homeschooled,” and indicated the Student was not provided instruction on any of her goals. The Parent reported that she never submitted a declaration of

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<sup>27</sup> The Parent told the complaint investigator that she did recall speaking to the special education teacher by phone, but said she was told the special education teacher wanted “to set up more in person meetings with [Student] eventually,” and not that there was a scheduled date and time for the Student and teacher to regularly meet at school. The Parent reported that she found the communication from the District regarding sending the Student to school in-person to be infrequent, and that she did send the Student when she was asked. The Parent noted this happened “a total of 3-4 times,” but described the calls as being received the day before the Student was asked to come to school.

intent to homeschool the Student full time or agreed to provide home based instruction. The Parent also noted that the Student's report card contradicts the Student's IEP progress report by reporting the Student has "a satisfactory grade in math." According to the Parent, she was "never asked to provide homeschool instruction, and was never asked for updates on how [Student's] math instruction was going." The Parent also wrote that the Student was never assigned an end-of-the-year iReady diagnostic test to measure her progress, despite having taken it in September 2020, and although the iReady diagnostic had been used previously to help measure progress on IEP goal.

28. The District's response did not address the Parent's questions as to why the Student was documented as being homeschooled. It also did not contain any documentation showing the Parent had expressed an intent to homeschool the Student. OSPI's records indicate the Student continued to be enrolled in the District throughout the third trimester and continues to be enrolled.
29. The District reported that "due to attendance and lack of data on student progress, there was no additional progress to report for third trimester beyond what was included in progress report. Special education and general education teacher reports that student was making progress; however, student absences increased during the weeks prior to the end of the school year which impacted progress."
30. June 15, 2021 was the last day of school in the District.

## **CONCLUSIONS**

**IEP Implementation:** The Parent alleged the District did not implement the Student's specially designed instruction and accommodations during the 2020–2021 school year. At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP."

The Student's IEP provided the Student with 55 minutes daily (approximately 4.5 hours per week) of specially designed instruction in math, and 30 minutes daily (approximately 2.5 hours per week) in social/emotional. Although the District reported the special education teacher recalled providing specially designed instruction and supporting the family, there was insufficient documentation to support that specially designed instruction was consistently provided, and the District did not have data showing the Student made progress by the end of the school year on her IEP goals. The District provided documentation showing the Student received some synchronous instruction via Zoom (approximately 13 Zoom meetings during the 2020–2021 school year), some (at least two days) in-person services, and access to web-based activities (e.g., iReady math). However, access to synchronous instruction was on inconsistent days and times and

the District was unable to show the Parent received a clear schedule so she could make the Student available. Absent a schedule, links to Zoom meetings were often provided only minutes before a Zoom or after a scheduled Zoom was supposed to start, which made it confusing for the Parent and difficult to determine if the Student was able to access all of the Zoom meetings. The District was further unable to provide documentation to show the web-based activities included content that had been modified and adapted to meet the Student's needs as indicated in the IEP—including for the amount of specially designed instruction the Student was entitled to receive. With the exception of the Student's instruction time on iReady—which totaled 2 hours and 42 minutes for the entire 2020–2021 school year, the District also did not have data to show how it measured the Student's progress on IEP goals.

Further, while the District provided daily optional "drop-in" hours, this does not meet the Student's need for specially designed instruction—particularly in light of the Student's documented need for special education supports to ensure she is able to complete work and stay on task. The optional "drop-in" format inappropriately placed the burden for implementing the Student's IEP on the Student and family.

Finally, the District reported it was difficult to deliver services to the Student and measure progress on IEP goals during the third trimester due to the Student's increasing number of absences. The District added that the Student's absences impacted academic performance and progress. However, withdrawal and difficulties with work completion were described on the Student's IEP as reasons the Student required specially designed instruction and accommodations, including 1:1 teacher assistance. There is no documentation that the District attempted to address the Student's increasing absences either through connecting with the Parent specifically to address attendance, or scheduling an IEP meeting. Thus, the Student's demonstration of these behaviors and the failure of the District to attempt to address the attendance concerns support a finding that the Student's IEP was not implemented.

OSPI finds the District to be in violation. The District will be required to provide compensatory services in math and social/emotional in the amount of 75% of what was provided for in the Student's IEP.<sup>28</sup> This equals 124 hours of specially designed instruction in math and 67.5 hours of specially designed instruction in social/emotional behavior.

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<sup>28</sup> It was not clear from the documentation provided how much specially designed instruction was provided to the Student in math and social/emotional. However, it was evident the Student did receive some specially designed instruction, and that the Student made some progress early in the school year on both IEP goals. For this reason, compensatory services are awarded at 75% of what was provided for in the Student's IEP. According to the District's calendar, there were 179 school days during the 2020–2021 school year, or approximately 36 weeks. For math, the Student's IEP provided for 275 minutes per week of specially designed instruction in math (165 hours) and 150 minutes weekly of specially designed instruction in social/emotional (90 hours per year). 75% of the total amount of specially designed instruction provided for in the Student's IEP equates to approximately 124 hours of specially designed instruction in math, and 67.5 hours of specially designed instruction in social/emotional.

## CORRECTIVE ACTIONS

By or before **October 22, 2021, November 12, 2021, January 7, 2022, April 1, 2022, July 1, 2022,** and **September 9, 2022,** the District will provide documentation to OSPI that it has completed the following corrective actions.

### STUDENT SPECIFIC:

#### Compensatory Education

By or before **November 5, 2021,** the District and the Parent will develop a schedule for providing the following compensatory education to the Student: **124 hours** of specially designed instruction in math, and **67.5 hours** of specially designed instruction in social/emotional behavior.

The District will provide OSPI with documentation of the schedule for services by or before **November 12, 2021.**

The compensatory education in math will occur in a one-on-one setting and be provided by a certificated special education teacher. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **September 2, 2022,** including those needing to be rescheduled.*

The compensatory education in social/emotional may occur in a group setting and will be provided by a certificated special education teacher. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **September 2, 2022,** including those needing to be rescheduled.*

The District will provide OSPI with updates on its provision of compensatory education on the following dates: **January 7, 2022, April 1, 2022,** and **July 1, 2022.**

No later than **September 9, 2022,** the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **September 9, 2022.**

**DISTRICT SPECIFIC:**

**IEP Review for Recovery Services**

By **October 22, 2021**, for all students with IEPs in the District, provide documentation that IEP teams (including the Parent) have: (a) reviewed the impact of COVID during the 2020–2021 school year on each student’s progress; (b) identified students who have failed to make expected progress; and/or, (c) planned for the provision of, or have already implemented, recovery services. Some examples of documentation could include: IEP meeting notes, prior written notices, IEP or IEP amendments, recovery service schedules, other correspondence with the family regarding recovery services.

By November 5, 2021, OSPI will provide the District with any feedback it has on the documentation provided, including whether the District is required to provide any additional documentation or complete any additional corrective actions.

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

Dated this \_\_\_ day of October, 2021

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

**THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT**

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