

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-019

PROCEDURAL HISTORY

On March 3, 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 Federal Way 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 March 4, 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 March 22, 2021, the District requested an extension of time to respond to the complaint. OSPI granted the extension to March 31, 2021.

On March 31, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on April 1, 2021. OSPI invited the Parent to reply. The Parent did not reply.

On April 21, 2021, OSPI requested additional information from the Parent. OSPI received the information on April 23, 2021, and forwarded the information to the District on April 27, 2021.

On April 23, 2021, the District provided OSPI with additional information and OSPI provided the information to the Parent on April 26, 2021.

On April 23, 2021, the OSPI complaint investigator conducted interviews with the Student's special education teacher and speech/language therapist.

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 special education services in conformity with the Student's individualized education program (IEP) from September 2020 to March 2021?

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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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. "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).

Specially Designed Instruction: The purpose of the IDEA is to ensure that all students eligible for special education have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1; WAC 392-172A-01005. Special education includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

FINDINGS OF FACT

Background

1. On March 3, 2021, the Parent filed this complaint with OSPI. The Parent stated the District failed to provide specially designed instruction in communication, "transition related services," and accommodations for augmentative alternative communication (AAC) to the Student. In addition, the Parent alleged the Student did not work on the individualized education program (IEP) goals involving adaptive behavior, social/emotional/behavioral, and transition services, including employment opportunities, daily living skills, and community experience. As a result of not receiving services, the Student had a "massive increase in her aggressive behaviors and significant regression in her communication, independent skills, social/emotional and adaptive behavior..."

OSPI asked the Parent to clarify what specific services were not provided, but the Parent did not elaborate.

2. The District denied the Parent's allegations. The District stated: "...The services in Student's IEP were delivered remotely via full school days of synchronous and asynchronous instruction. These services have enabled Student to make progress toward her IEP goals, as documented in the District's progress reporting."

2019-2020 School Year

1. During the 2019-2020 school year, the Student attended a District high school, was in the eleventh grade, and was eligible for special education services under the category other health impairment.
2. On October 14, 2019, the Student's IEP team met to conduct an annual review of the IEP. The IEP provided a secondary transition plan that included goals in training/education, employment, and independent living skills. The transition services listed to meet those goals were as follows:
 - Instruction: School vocational activity, community engagement, and inclusion
 - Related Services: not applicable
 - Development of employment opportunities: School vocational activities
 - Community Experience: Twice weekly shopping, community recreational activities, eating in the community
 - Adult living: Practice in self-care (including restroom training)
 - Daily living skills: Practice towards restroom independence

The IEP also provided for annual goals in the areas of reading (cooking), community vocabulary, math, written language, adaptive behavior (restroom), social/emotional behavioral (making requests), communication (vocabulary on iPad), and adapted physical education (planks and swimming).

Under special factors, the IEP documented that the Student had special oral and/or written communication needs that were addressed in the Student's present levels and annual goals and the Student needed assistive technology that included "a variety of alternative communication devices; speech-generating devices (SGD) AND/OR pictures need to be available to [Student] in the classroom and other appropriate settings. [Student] uses a school district iPad with Proloquo at school."¹ The special factor for behavior was not checked, indicating there was no concern about the Student's behavior impeding her learning or the learning of others.

The IEP included "Curricular Adaptations" or accommodations as follows:

- Behavioral cues.
- Edmark level 1 for reading.
- Math, writing, and social skills is teacher-designed.
- LINKS curriculum for adaptive skills.
- Needs iPad to demonstrate learning. She also responds by pointing.

¹ Proloquo is communication application designed to assist individuals who have difficulty communicating with others.

- Student uses an iPad with Prologuo2Go, task specific communication boards, and picture exchange communication system, as well as gestures and facial expressions. In addition, she nods her head yes/no reliably. Speaks occasionally at home.
- Student needs a small and structured environment to learn best.
- Student works best one-on-one or in small groups of three or less.
- Student should be provided inclusion opportunities throughout the school.
- Student needs assignments in short chunks of no more than 15 minutes.
- Assignments should be at her level and include visual aids and manipulatives.
- Student needs easy access to her communication tools at all times.
- When participating in groups, Student needs her communication tools setup with icons, boards, and/or pages in her iPad that allow her to participate.
- Student needs visual materials and communication boards for expressive demonstration of skills.

The IEP provided for the following special designed instruction:

Specially Designed Instruction

Service Area	Provider	Monitored by	Instructional Setting	Amount of Time			Start Date	End Date
				Minutes	# of Times	Frequency		
Written Language	Special Ed Teacher	Special Ed Teacher	SE Classroom	25	1	Daily	10/17/2019	10/13/2020
Mathematics	Special Ed Teacher	Special Ed Teacher	SE Classroom	20	2	Daily	10/17/2019	10/13/2020
Social Skills	Special Ed Teacher	Special Ed Teacher	SE Classroom	95	1	Daily	10/17/2019	10/13/2020
Communication	Speech/Language Pathologist	Special Ed Teacher	SE Classroom	30	1	Weekly	10/17/2019	10/13/2020
Adaptive Behavior	Special Ed Teacher	Special Ed Teacher	SE Classroom	90	1	Daily	10/17/2019	10/13/2020
Reading	Special Ed Teacher	Special Ed Teacher	SE Classroom	18	2	Daily	10/17/2019	10/13/2020
Adapted Physical Education	Adapted PE Teacher	Special Ed Teacher	SE Classroom	60	3	Weekly	10/17/2019	10/13/2020

The IEP also noted that the Student received transportation as a related service and needed a paraeducator if she “chooses to participate in a sport that does not need to be fundamentally altered in order to for [sic] her to participate.”

3. On August 18, 2020, the Parent emailed the Student’s special education teacher, asking about the upcoming school year. The Parent was concerned that services provided 30 minutes a day, three days a week “will not help her to achieve any of her IEP goals.” On August 20, 2020, the special education teacher replied and sent the Parent the following schedule:

HIGH SCHOOL SCHEDULE (GRADES 9-12)

- There will be a 4 x 4 schedule, which means high school students will take 4 courses in a quarter.
- In quarters 1 & 3, scholars will take their classes scheduled in periods 1, 3, 5, and 7. In quarters 2 & 4, scholars will take their classes scheduled in periods 2, 4, 6, and 8. Scholars will have 4 synchronous (live) lessons with their teachers 4 days a week for a total of 18 hours per week of synchronous (live) instruction.

- Scholars will engage in daily asynchronous (independent) lessons.
- On Wednesdays, Scholars will engage in asynchronous (independent) learning tasks. Some scholars will participate in synchronous (live) small group instruction.

Monday, Tuesday, Thursday, and Friday:

- Synchronous Instruction: Live instruction with their teacher
- 8:00-8:55 am Period 1
- 9:00-9:55 am Period 3
- 10:00-10:30 am Social Emotional Learning/College and Career Readiness (CCR)
- 10:35-11:30 am Period 5
- 11:35 am-12:30 pm Period 7
- 12:30-1 :00 pm: Student lunch on their own

Asynchronous (independent) learning for all high school students. Small group instruction for identified students.

- 1:00-2:30 pm

Wednesday:

- All scholars will engage in asynchronous (independent) learning.
- Small group instruction, for identified students, will be provided.

2020-2021 School Year

4. During the 2020-2021 school year, the Student attended a District high school and continued to be eligible for special education services under the category of other health impairment.
5. On September 9, 2020, the District's 2020-2021 school year began.
6. From September 2020 to April 2021 according to the Parent, the Student received 40 hours a week of personal care services from a private agency in the home.
7. On September 9, 2020, the Student's special education teacher emailed the Parent, asking to meet with the Parent to discuss how services would be provided to the Student. The special education teacher stated: "...I hope to meet with each student for at least one hour per day for four days of the week. We can talk about if that is too much, not enough, or whatever else we need to discuss." The Parent replied that she agreed to meet. The documentation provided in the complaint did not provide any further information about the meeting.
8. On September 13, 2020, the Parent emailed the Student's special education teacher regarding the Student's schedule. The Parent stated that when she was working, she could not support the Student at the same time because "[the Student] needs someone by her side all the time to be able to participate in the classes." The Parent described her availability as follows:
 - Mondays: Period 1 and Period 7
 - Tuesdays: Probably all day.
 - Wednesday: From 9am to 10:30am we can connect with [speech therapist] for Speech, if she is available
 - Thursdays: Period 1 and Period 7
 - Fridays: Probably all day until lunch.

9. As part of this investigation, OSPI asked the Parent if the District asked the Parent to assist in providing services to the Student. The Parent stated:

They didn't ask me, but I had no other option than assist in providing services to the student because of her learning needs: student is nonverbal, she is not able to turn the laptop on and connect to the Zoom classes by herself, student is not able to understand all the directions and work on remote learning without the support of an adult. Student needs adult guidance and support using and navigating her AAC to answer questions. I had to program words and information in her AAC for her to be able to use it during remote learning. I had to support the student to fill personal information questionnaires.

Another reason I was not able sometimes to assist in providing services is because of the lack of support with my daughter's behaviors. These aggressive behaviors intensified during the remote learning for the lack of structure, routine and social interaction that the student received when she was going to the school in person.

The Parent also stated she was sometimes unable to provide the Student with assistance because she was working full-time from home.

10. Also, on September 13, 2020, the Parent emailed the Student's general education teacher. The Parent asked if there was a plan for the Student participating in class, given her needs and that the Parent would not be able to assist the Student each day. On September 14, 2020, the general education teacher responded and asked if the Student and Parent were successful with interacting with the class lesson and if a printer was available to provide worksheets. The general education teacher inquired about how independent the Student could draw, color, and write. The Parent replied there have been difficulties connecting with the Zoom meeting. The Parent also stated the Student has a short attention span and it is difficult to stay on task for five or ten minutes. The Parent noted the worksheets were a good idea. The Parent stated the Student could not read or write, but she could respond if given two or three choices.
11. On September 14, 2020, the special education teacher replied to the Parent's September 13, 2020 email and stated:

Thank you for communicating this to us. I will get clarification from administration on this as I am sure this is not a unique situation. For now, please join us when you can. I think at worst you will simply need to notify attendance that the absence is excused for the periods [Student] has to miss. My understanding is that you can do that through ParentVUE.
12. From September 15, 2020 through January 5, 2021, the date of the complaint, the Parent exchanged emails with the special education teacher about accessing email, scheduling the evaluation and IEP meeting, Student appointments, and connecting with Zoom.
13. On September 16, 2020, the speech language pathologist (SLP) emailed the Parent, asking about the Parent's work schedule. The Parent replied she was available on Wednesdays.
14. Beginning the week of September 21, 2020 through the week of March 1, 2021, the SLP documented the weekly remote support she provided the Student in the Wednesday class with the special education teacher. According to the SLP, she gave the Parent the option to have the Student receive 1:1 communication services, or have the communication services

provided together with the special education teacher's academic instruction. The SLP stated the Parent chose the instructional session with the special education teacher. The Parent told OSPI she was not given the option of 1:1 communication services, but 1:1 was what she expected the SLP would provide. The Parent stated:

The communication service was going to be provided once a week (Wednesdays) for 30 minutes, but those 30 minutes were used instead by the school to work with the student on reading (with one paraeducator) and math (with another paraeducator). The teacher was usually logged in, but with his Zoom camera off; the Speech therapist joined these meetings, but her participation and work with the student was limited to greeting her, asking her how she was feeling and, sometimes, one or two more questions. There was no systematic work on her part to provide the communication services established in the student's IEP or work on the IEP communication goals. After these brief interactions, the Speech therapist usually turned off her Zoom camera and, the rest of the time (25 minutes) the student worked with the paraeducators. The Speech therapist and the teacher turned their Zoom cameras back on at the end of the 30 minutes sessions to say goodbye. It was only after the school district received my OSPI Citizen Complaint that the Speech therapist contacted me by email (March 18th) to offer my daughter 30 minutes per week of speech therapy (1-1). The sessions started on March 24th, 2021.

15. In October 2020, the Student was reevaluated, and the evaluation group met on October 13, 2020 to review the results. The evaluation results showed the Student's social/emotional behavior at school to be average for hyperactivity, aggression, and conduct problems; at-risk for aggression; and, clinically significant for hyperactivity. The results also indicated that the Student demonstrated difficulty in understanding and completing academic tasks, would get easily distracted, and was unable to concentrate for extended periods of time. At home, the results indicated that the Student tended to be overly active, rush through tasks, or act without thinking, sometimes in a hostile manner.

The Student continued to be eligible for special education services under the category of other health impairment.

16. Also, on October 13, 2020, the Student's IEP team met and developed a new annual IEP. The IEP provided for the following transition services:
 - Instruction: Specially designed instruction in reading, written language, math, adaptive physical education, adaptive behavior, and social/emotional/behavioral
 - Related Services: Speech/language services
 - Development of Employment opportunities: Supervised on-campus jobs such as filling copy machines and delivering mail
 - Community experience: Twice weekly shopping, community recreational activities, eating in the community
 - Adult living: Prior to graduation, Student will meet with a social security income representative to determine possible financial benefits. A Department of Vocational Rehabilitation representative will provide an orientation and referral during senior year.
 - Daily living skills: Education program will include cooking, cleaning, communicating, money skills, personal hygiene, safety, and nutrition.

The Student's IEP (effective from October 16, 2020 through October 12, 2021) identified communication and assistive technology as special factors and provided for annual goals in the areas of reading, math, written language, adaptive behavior, social/emotional behavioral, communication, and adapted physical education. The annual goal for swimming was dropped because the Student had met the goal last May.

The IEP provided for the same accommodations as the previous IEP that included using an iPad with Proloquo2Go, task specific communication boards, and picture exchange communication system to communicate.

The IEP provided for the following specially designed instruction:

Specially Designed Instruction

Service Area	Provider	Monitored by	Instructional Setting	Amount of Time			Start Date	End Date
				Minutes	# of Times	Frequency		
Social Emotional/Behavioral	Special Ed Teacher	Special Ed Teacher	SE Classroom	300	1	Weekly	10/16/2020	10/12/2021
Written Language	Special Ed Teacher	Special Ed Teacher	SE Classroom	200	1	Weekly	10/16/2020	10/12/2021
Mathematics	Special Ed Teacher	Special Ed Teacher	SE Classroom	200	2	Weekly	10/16/2020	10/12/2021
Communication	Speech/Language Pathologist	Special Ed Teacher	SE Classroom	30	1	Weekly	10/16/2020	10/12/2021
Adaptive Behavior	Special Ed Teacher	Special Ed Teacher	SE Classroom	300	1	Weekly	10/16/2020	10/12/2021
Reading	Special Ed Teacher	Special Ed Teacher	SE Classroom	200	1	Weekly	10/16/2020	10/12/2021
Adapted Physical Education	Adapted PE Teacher	Adapted PE Teacher	SE Classroom	60	3	Weekly	10/16/2020	10/12/2021

The IEP also noted that the Student received transportation as a related service and needed a paraeducator if she "chooses to participate in a sport that does not need to be fundamentally altered in order to for [sic] her to participate."

Under "Parent Input for Enhancing the Student's Education," the IEP stated, "[Parent] will provide a place for [Student] to work and update her iPad as needed in include icons for wants, needs, and typical responses."

17. According to the District, the Student's schedule was as follows:

HIGH SCHOOL STUDENT 100% REMOTE SCHEDULE										
Quarters 1 and 3										
Minute	Time (TBD)	Monday		Tuesday		Wednesday	Thursday		Friday	
60 min		Period 1	Group A	Period 1	Group A	Small Group Lessons	Period 1	Group A	Period 1	Group A
	Group B		Group B		Group B					
60 min		Period 3	Group A	Period 3	Group A		Period 3	Group A	Period 3	Group A
	Group B		Group B		Group B					
30 min		SEL/CCR Focus		SEL/CCR Focus			SEL/CCR Focus		SEL/CCR Focus	
60 min		Period 5	Group A	Period 5	Group A		Asynchronous Lessons	Period 5	Group A	Period 5
	Group B		Group B		Group B					
60 min		Period 7	Group A	Period 7	Group A	Period 7		Group A	Period 7	Group A
	Group B		Group B		Group B					
90 min		Asynchronous Lessons		Asynchronous Lessons		Asynchronous Lessons	Asynchronous Lessons		Asynchronous Lessons	

18. On January 11, 2021, the special education teacher emailed the Parent about the “High School and Beyond Plan” and the “Free Application for Federal Student Aid” form.
19. On January 20, 2021, the District issued the Student’s special education progress report based on the October 2020 IEP. The progress was reported as follows:
- Reading: Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. (Comment – “[Student] typically needs prompting to begin filling in the form, but only once.”)
 - Math: Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. (Comment – “Done with some prompting/counting from Parent.”)
 - Written Language: Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. (Comment – “Parent is present while she fills out the form.”)
 - Social/Emotional/Behavioral: Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. (Comment – “Needs a prompt to begin and complete.”)
 - Communication: Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. (Comment – “Parent is assisting Student in putting 3+ symbols together on her iPad.”)
 - Adapted Physical Education (planks): Progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed. (Comment – “[Student] is working on this skill daily now and we should see some big improvements soon.”)
 - Adapted Physical Education (swimming) (Comment – “Due to remote learning, this goal has not been worked on this school year.”)
20. On February 25, 2021, the school psychologist emailed the Parent, asking if the Student would participate in hybrid services. The Parent replied the Student would not be participating.
21. On April 23, 2021, OSPI conducted interviews with the Student’s 2020-2021 special education teacher and SLP. The information provided in the interviews was as follows:
- SLP
- Student has very limited expressive communication skills and used an iPad with a communication application. Student appeared to understand more than she could express even using the iPad.

- The District gave the Parent a choice between 1:1 communication services or communication services during academic time on Wednesdays for 30 minutes. The Parent chose the academic time.
- The therapist consistently provided communication support once a week. The therapist would assist the Student in following along in her instruction, asking multiple choice questions to get a response, and engage in conversation with the Student.
- Student used the iPad as an augmentative alternative communication device. The Student previously had one at school and one at home. The Student used the home iPad for schoolwork although it was not programmed the same as the school iPad. The Parent seemed to have difficulty programming the iPad with the vocabulary words the Student needed.
- There was no decrease in the Student's communication skills going from in-person services to remote services.
- The therapist did not see any problems with the Student's behaviors.

Special Education Teacher

- The Student does not communicate with words; she uses the iPad, gestures, and pointing to pictures. Student needed help with pulling up pages to communicate. The Student has much more behavioral problems at home than at school.
- Transition services could not be implemented in-person, so they were implemented remotely. For example, she would be given a list of chores to pick from and do them at them at home. Once completed, she would return online. For shopping, the Student would watch a powerpoint presentation of a grocery store and was asked: "Which is the dairy section?"
- Learning activities required the Student to answer multiple choice questions such as in math or filling out forms for written language.
- Regarding the iPad, the Student should have received the school iPad because it was programmed with the necessary information for the Student. It was unclear why Student did not receive it. The Parent sometimes had difficulty programming the iPad for instruction, but she received help from the District.
- When the Student was online, the Parent had to be there to assist. Most days, the Student would not attend until second period and attend one class while missing the remaining classes. She also missed asynchronous time during the afternoon. On Wednesdays, the teacher would meet with the Parent, SLP, and paraeducators to work on academics with the Student. Although the teacher did not observe any behavioral difficulties, the absences might have been due to behavioral problems or the Parent working.
- The teacher had no difficulty working with the Student. The Student needed occasional prompting, but no aggressive behavior was observed.
- Teacher stated the Parent never asked for support to address behavioral problems during remote instruction.
- The teacher stated in-person services would have been more beneficial to the Student, especially for socialization, but the Student did receive some benefit from remote services.
- In adaptive physical education, the adaptive physical education teacher showed videos of workouts and students would do them. The Student participated and seemed to enjoy the workouts.
- When asked if the Student received her special education service in conformity with the IEP, the teacher stated the amount of services in the Student's IEP were offered through synchronous and asynchronous instruction.

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged the District failed to provide the special education services according to the Student’s individualized education program (IEP). As a result, the Parent stated the Student regressed in her skills and her behavior at home deteriorated.

A district is required to implement a student’s special education services in conformity with the IEP. Deviations from the IEP are not necessarily a violation unless they are material, meaning they are significant departures from what is required by the IEP.

Here, the Student’s October 2019 and 2020 IEPs provided for special education services in the areas of written language, math, communication, adaptive behavior, reading, social, and adapted physical education. The IEP stated the Student’s behavior did not impede her learning, although the October 2020 evaluation results indicated some behavioral problems were demonstrated by the Student. During the period from September 2020 to March 2021, the Student received only remote instruction.

Specially Designed Instruction

The District stated in its response that all services were provided to the Student. At the same time, the Student’s special education teacher stated some services were not provided because the Student sometimes did not participate in instruction, even though it was available. Although the District only provided documentation of communication services provided to the Student, the special education teacher was able to explain how the specially designed instruction in each area and transition services were provided remotely to the Student. And, despite the Student’s inconsistent attendance, the special education progress reports showed the Student was making progress towards her goals.

It was clear from the documentation the Student needed considerable adult assistance to access her instruction. The special education teacher readily admitted that instruction could not have been done without assistance from the Parent. The Parent undertook the role of assisting the Student, although she expressed concerns about providing instructional support because it interfered with her work (the Parent stated she worked from home). The District accepted the Parent’s assistance apparently without consideration of what additional support the Parent may have needed. It was unclear whether the District knew the Student was receiving 40 hours of personal care services from a private agency, or if that support was taken into account by the District. Based on the contemporaneous documentation—the October 2020 reevaluation, the October 2020 IEP, and emails from the Parent to the District—prior to the complaint, the Parent did not express concern about services not being provided or that she was unable to effectively assist the Student in accessing her instruction, except for noting the Student had some difficulty with her attention span and staying on task. The Parent also mentioned an occasional technology problem, which the District appears to have addressed when raised. There was no documentation from September 2020 to March 2021 that the Parent informed the District the Student was engaging in aggressive behavior during instruction. The teacher stated the Student did not attend some instructional sessions that were available to the Student, although it was not clear why. The

special education teacher stated the Student's absences may have been due to the Student's behavioral difficulties, but that there was not a sufficient basis for the District to suspect a problem. Further, OSPI notes that the Parent notified the District about her challenges supporting the Student while working from home, which could also account for the Student missing some instructional sessions. It appears the complaint was the first time the Parent raised many of these concerns with the District.

In addition, the District offered hybrid instruction beginning in February 2021, which would have given the Student the opportunity to receive, in part, in-person instruction that would address some of the difficulties with remote instruction. In-person instruction would have lessened the reliance on the Parent's availability to assist the Student and addressed the Student's need for individualized or small group instruction. But the Parent declined the option for hybrid instruction. Overall, based on the documentation, the District substantially provided the specially designed instruction according to the Student's IEP, and no violation is found.

Communication

The Parent alleged the speech language pathologist (SLP) failed to provide any service or instruction directly to the Student during the weekly asynchronous time with the special education teacher and SLP. According to the Parent, the Student should have received 1:1 communication services. The District stated the Parent was offered 1:1 services or services during the asynchronous time and the Parent chose the asynchronous time. The Parent disputed this account. From the September 16, 2020 email from the SLP to the Parent, it was not clear the Parent was offered 1:1 service for the Student. However, the IEP did not indicate how the communication services would be provided, except that the Student would be provided 30 minutes once a week by an SLP. Although the SLP's instruction in the classroom was not the methodology the Parent wanted, the documentation indicates the Student was provided instruction in communication. Further, the progress report indicates the Student was making progress towards her communication goal, which indicates she was provided communication instruction. Finally, once the Parent raised this concern in her complaint, the SLP began providing direct, 1:1 instruction per the Parent's preference. Overall, OSPI finds communication instruction was provided and finds no violation.

Accommodations

The Parent alleged the District failed to implement the Student's accommodation for the alternative augmentative communication (AAC) device according to the IEP. The IEP provided for an iPad with a communication application that had to be programmed for the Student. The IEP also stated the Parent would update the Student's iPad as needed. There was some confusion over whether the Student would use the school iPad or the iPad used at home, and the Student ended up using the home iPad. There was no documentation that showed the Parent disagreed with the Student using the home iPad. The Parent apparently had some difficulty programming it at times, which the District assisted with. If the Parent wants the District to provide the "school" iPad for the Student to use at home and program it as needed, the Parent can request this and

OSPI encourages the District to promptly comply with the request. But, because the Student received the accommodation for the AAC device, there is no violation.

Transition Services

The Parent alleged the District failed to provide transition services to the Student. When asked what specific services the District did not provide, the Parent did not elaborate. The October 2019 IEP called for transition services that included school vocational activities, community experiences such as shopping, recreational activities, and eating out. Adult daily living skills consisted of self-care and restroom independence. The District acknowledged most of these activities could not be implemented in the community after the pandemic began or addressed during remote instruction. But the District was able to implement some transition services, such as shopping through remote instruction using pictures and presentations, which the District is commended for. Other services, such as eating out and community recreational activities, were not implemented because of the local and state health restrictions as a result of the pandemic, and the fact that the District initially only provided remote instruction during the 2020-2021 school year but no in-person services.

The October 2020 IEP provided for additional transition services and activities including on-campus jobs and meeting with a representative about supplemental security income (SSI) and the department of vocational rehabilitation. These activities have not yet been completed, but the District has until October 12, 2021 to provide those activities to the Student (the duration of the annual IEP). Other transition services were either modified for remote instruction (shopping, for example) or not provided (cooking and personal hygiene, for example). These transition services are important to help the Student learn to become more independent and self-sufficient and need to be a priority. Despite the pandemic and the remote instruction, the District continued to be responsible for implementing a free appropriate public education (FAPE) that the transition services were a part of. Although the pandemic is not the fault of the District, the Student did not receive all the transition services on the IEP. And because the District did not provide several portions of the Student's transition services, this amounts to a material failure to implement the transition plan in the Student's IEP. OSPI finds a violation related specifically to the implementation of the transition services. The District is required to develop a plan to make up for the missed services that included on-campus jobs, twice a week shopping trips, eating out, community recreational activities, and some of the daily living skills, including any behavior support the Student may need to participate once in-person begins.

Since the District is now providing hybrid instruction, the Student could receive in-person transition services that they were not able to implement through remote instruction. The District offered to provide the Student with in-person services along with remote services in a hybrid model beginning February 2021, which would have allowed the District to implement the transition services. But the Parent declined the in-person services that would have provided the Student with access to the transition services, at least at school. As part of the corrective action, the Student's IEP team will reconvene and discuss how to best implement the required IEP transition services, including the corrective action and the ongoing transition services, to address the Student's needs. And although the Parent declined hybrid services at school, there still may

be opportunities to provide the Student with services in the community or revisit whether hybrid or in-person services could now be provided at school.

CORRECTIVE ACTIONS

By or before **May 28, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **May 21, 2021**, the Student's IEP team must meet to discuss if there are other ways to provide transition services through remote instruction and in the community, if services can be provided safely. The IEP team will also revisit whether hybrid or in-person services could be provided at school, and the IEP team should discuss what concerns the Parent has about hybrid instruction and if these concerns can be addressed.

The District did not provide opportunities for on-campus jobs, twice a week shopping trips, eating out, community recreational activities, and some of the daily living skills. The District will provide OSPI with a plan that includes timelines to make up for the lost services once the Student begins in-person instruction. The plan must be approved by OSPI.

By **May 28, 2021**, the District will provide OSPI with a copy of the meeting notice, IEP amendment, if any, and prior written notice. The District will also provide OSPI with a copy of the proposed plan. OSPI will approve the plan or provide necessary modifications to it.

DISTRICT SPECIFIC:

None.

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 April, 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.)