

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-39**

### **PROCEDURAL HISTORY**

On May 11, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the attorney (Complainant) representing a student (Student) attending the Seattle School District (District) and the Student's parents (Parents). The Complainant 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 May 12, 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 May 25, 2021, the District requested an extension to submit its response. On May 26, 2021, OSPI granted the District's request and requested the District submit its response no later than June 8, 2021.

On June 8, 2021, OSPI received the District's response to the complaint and forwarded it to the Complainant on June 9, 2021. OSPI invited the Complainant to reply.

On June 23, 2021, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on June 24, 2021.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on May 12, 2020. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUE**

1. Did the District implement the Student's individualized education program (IEP) from May 12, 2020 through May 12, 2021, including the October 2020 and March 2021 amendments?<sup>1</sup>

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<sup>1</sup> In her reply to the District's response, the Complainant clarified that the Parents' concerns raised regarding implementation during the time period within which this complaint was opened were for the specific periods of September 9, 2020 through November 30, 2020, when special education teacher 1 was the Student's special education teacher and case manager, and March 19, 2021 through the April 19, 2021 IEP meeting, when the Complainant alleged the "District failed to provide the Student the services as agreed to during the March 19, 2021 IEP meeting."

## LEGAL STANDARD

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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. "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

### Background

1. At the commencement of the 2019–2020 school year, the Student was eligible for special education services under the category of other health impairments, was in eighth grade, and attended a K–8 Science, Technology, Engineering and Mathematics (S.T.E.M.) school. The Student's May 2019 individualized education program (IEP) was in effect and included the following specially designed instruction, to be provided in the *special education* setting:
  - Math: 20 minutes, five times weekly;
  - Social/behavior, 10 minutes, five times weekly; and,
  - Written language, 20 minutes, three times weekly.

The Student's IEP provided that he would be in a general education setting for approximately 88% of his time at school.

### **The timeline for this complaint begins on May 12, 2020**

2. According to the District's response, from May 12 through June 18, 2020, due to the COVID-19 pandemic, the District implemented the Student's IEP through a remote learning model using small group or individual video conference meetings, independent and supported completion of instructional materials, and online resources or support. The District asserted the Student "participated in his general education remote classes and performed well with the supports and accommodations provided" and "denies that it failed to comply with its service obligations" during this time. According to the Complainant's reply, the Parents' allegations regarding the failure to implement the Student's IEP did not pertain to this period of time.
3. On June 16, 2020, the District completed a reevaluation of the Student. The evaluation team found the Student continued to qualify for special education services under the category of

other health impairments due to his diagnoses of Attention Deficit Hyperactivity Disorder (“ADHD”) and Anxiety Disorder. The team recommended the Student continue to receive specially designed instruction in math (to support development and application of calculation skills), written language (to support organization of essays), and social/behavior (to support implementing strategies to manage anxiety-inducing situations, including seeking assistance for outlining a plan to move forward). The evaluation team additionally recommended the addition of specially designed instruction in the area of study/organization skills to support the Student in developing organizational strategies.

4. On June 18, 2020, the Student’s IEP team agreed to hold the Student’s annual IEP meeting at the beginning of the 2020–2021 school year.
5. June 18, 2020 was the last day of the 2019–2020 school year.
6. On August 12, 2020, the Parent emailed the special education supervisor (supervisor) regarding her concerns that the Student was unable to benefit from remote learning, even with the support of a paraeducator. In her email, the Parent specifically noted concerns that the Student was significantly behind in the amount of assignments he had turned in compared to his general education peers, and expressed that the Student’s difficulty with online learning compared to his general education peers was “rather humiliating” for the Student and contributing to significant mental health issues. The Parent requested the District discuss in-person learning at the upcoming IEP meeting scheduled for August 28, 2020, and that if the District was unable to provide in-person learning, that the District reimburse her for enrollment of the Student in a nonpublic agency (NPA). That same day, the school principal and District’s special education supervisor (supervisor) responded to the Parent. Both the principal and supervisor explained that they were unsure when in-person learning would resume in the building; however, the supervisor told the Parent that when the IEP team met, that “discussing modifications and accommodations that may address [Student’s] access issues would be of primary focus, as well as looking closely at the services he needs to access learning and make progress.” The supervisor further agreed to discuss the Parent’s request to consider the Student’s need to attend an NPA as an alternative educational setting, adding that “it will be important to review relevant data related to [Student’s] challenges with remote learning, perhaps taking a dive into his work production at [school] and during this summer.”

#### **2020-2021 School Year**

7. September 4, 2020 was the first day of the 2020–2021 school year.
8. At the commencement of the 2020–2021 school year, the Student was in ninth grade, attended a high school in the District, and continued to be eligible for special education services under the category of other health impairments. The Student’s May 2019 IEP remained in effect.
9. The District began the 2020–2021 school year in a primarily remote learning model.
10. On September 19, 2020, the Parent emailed the Student’s general education teacher to inform him that during the previous week, the Student did not see the class times listed for his second

block of classes on Mondays and Thursdays because of how the Student's schedule appeared online. The Parent requested the Student's classes and login information all be listed in a single location online to accommodate the Student's organizational challenges. The Parent provided input that the Student did well in small groups, with personal contact, positive support, and feedback. She further noted that the Student's disabilities made it "difficult for him to manage a lot of expectations, criticism, and overdue work." That same day, the general education teacher responded to the Parent's email with suggestions regarding how the Student could more easily locate and navigate his schedule using OneNote as the primary online platform. The general education teacher added that he was happy to speak with the Parent and/or the Student by telephone, videoconference, or by text to discuss concerns or to provide assistance with navigating the online platform. The general education teacher also offered to provide 1:1 support to the Student to go over missed assignments together or to assist with current work.

11. On September 30, 2020, the Student's IEP team met to develop a new annual IEP for the Student. The Parent provided input, including her observation that the Student required "clear instructions, divided into parts," both during class activities and on assignments, and that he needs help organizing himself to know "what to do when and what is next." The Parent also reported that online schooling had been difficult for the Student. In particular, the Parent reported the Student did not know where assignments were written, was not using his planner effectively to help keep track of assignments, and that the Student thought asynchronous time was optional. The Parent emphasized that working in small groups had been beneficial to the Student. During the meeting, the team identified the Student's present levels of performance and developed new IEP goals.

In **social/behavior**, the team decided the Student needed specially designed instruction to support learning and implementing strategies to manage anxiety-inducing situations, including asking for help and learning how to break down large tasks or projects. The team developed an annual goal for social/behavior that focused on asking for assistance to improve the Student's independent problem solving skills. The IEP provided progress would be reported monthly. The IEP team also documented in the IEP that this would require adult support. In the online setting to help understand asynchronous time and how to use it appropriately to prevent the Student from getting behind on work. The IEP team agreed an adult would check in with the Student on assignments and deadlines to make sure the Student was writing in a planner. The team also agreed an adult would discuss the Student's assignments with him, ideally first in the morning and again in the afternoon.

In **study/organizational skills**, the team determined the Student required specially designed instruction to support development of organizational strategies. The team reported the Student needed a schedule for each subject that was easily accessible<sup>2</sup> and links to class meetings; clear expectations for attendance; and classes that were engaging and had instruction provided in short segments or recordings. The team developed an annual goal in

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<sup>2</sup> The Student's IEP noted that "To prevent [Student's] anxiety, [Student] needs to have his schedule for each subject somewhere he can see it easily. Before the beginning of class, have his Schoology and OneNote open and ready knowing what will happen during that period with the help of an adult."

study/organization for the Student to independently record the steps, including due dates needed to complete an assignment on time. The IEP provided progress would be reported quarterly.

In **written language**, the team reported the Student required specially designed instruction to support his ability to organize essays and elaborate on written assignments when prompted. The team reported that during remote instruction, the Student had not participated in class discussions about writing and had not produced any written work. The team developed an annual goal that focused on the Student's independent use of generating/planning strategies to improve the elaboration of ideas when writing. The IEP provided that progress would be reported quarterly.

In **math**, the Parent reported the Student had success with one-on-one math instruction and required manipulatives, tools, calculator, and a notebook for assignments. The team developed an annual goal that focused on identifying necessary information to answer questions required to interpret a graph. The IEP provided progress would be reported quarterly.

The September 2020 IEP provided the Student would spend 78% of his time in the general education setting, and provided the following specially designed instruction to be delivered in the *special education* setting:

- Math: 120 minutes, twice weekly
- Social/behavior: 40 minutes, twice weekly
- Study/organization skills: 40 minutes, twice weekly
- Written language: 40 minutes, twice weekly

The September 2020 IEP also provided for numerous accommodations for when the Student was in the *general education* setting, including: access to verbal and written directions; access to follow-up practice time; access to a visual schedule; large assignments broken into smaller parts; extra time to complete assignments; frequent checks for understanding; assignments posted visually; copies of notes and/or study guides; directions repeated and checks for understanding; and, use of a graphic organizer.

The team also agreed the Student would meet with a special education staff member at the beginning and end of each day to review the Student's assignment expectations and schedule for the following day.

Following the IEP meeting, the District provided the Parent with prior written notice (PWN),<sup>3</sup> documenting the IEP team's agreement that, "[Student] will meet with a special education staff at the beginning and the end of each day to review his assignment expectations and his schedule for the following day. The educational team believes his [specially designed

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<sup>3</sup> The PWN (erroneously dated September 24, 2020) stated, "Because the school is online, the team considered that [Student] needs more minutes one on one, in math support and Study skills support one on one twice a day," and "[Student] will meet with a special education staff at the beginning and the end of each day to review his assignment expectations and his schedule for the following day."

instruction] services in math, as outlined in his IEP (working in small groups) are appropriate for him to make progress on his goals.”<sup>4</sup>

12. During October 2020, the Parent exchanged several emails with the Student’s general education teachers and special education teacher 1 to check in on the Student’s assignments and to request information on the Student’s progress. In her emails, the Parent expressed concerns about the Student being overwhelmed and the nature of support the Student was receiving. For example, the Parent wrote that the Student “needs everything in writing, very clearly and with more support with a planner or calendar, written times for classes, asynch[ronous] check ins, help scheduling practice or reading/home study, check lists for completing assignments, mapping assignments over time, visually in writing. And one on one assistance to complete assignments.”<sup>5</sup>
13. On October 5, 2020, special education teacher 1 provided the Parent with a finalized version of the Student’s September 30, 2020 IEP. Special education teacher 1 explained that she was arranging for a paraeducator to meet with the Student to support him with organizing his class meetings and assignments.
14. On October 8, 2020, special education teacher 1 emailed the Student to remind the Student that the Student would be meeting with her every morning at 8:30 am and with the paraeducator every afternoon at 3:05 pm to provide support with organizing assignments. The Parent was copied on the email. Special education teacher 1 provided a link to the reoccurring meetings and a chart they would be completing during the meetings. The chart tracked whether the Student attended the meetings, found the assignments, downloaded the assignment, completed the assignment, and turned assignments. The Student’s schedule additionally showed the Student received special education support, including specially designed instruction, on Tuesdays and Fridays from 9:25–10:15 am (algebra) and 1:15–2:00 pm (algebra).

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<sup>4</sup> In the Complainant’s reply to the District’s response, the Complainant stated that “from September 9 through November 30<sup>th</sup> [special education teacher 1] was supposed to provide the Student with virtual support directly in the morning and with a para-educator in the afternoon.” The Complainant referenced the “September 9<sup>th</sup>” PWN to support their allegation. A PWN dated September 9, 2020 was not included with the District’s response or Complainant’s reply. There also is no documentation of an IEP meeting occurring on or around September 9, 2020, and this date appears to be in error. The Student’s IEP team did, however, meet on September 30, 2020, after which a PWN was issued, documenting the IEP team’s decision that the Student required additional special education staff support in the morning and afternoon. This additional special education support was not included on the Student’s IEP prior to the September 30, 2020 amendment. Prior to September 30, 2020, and dating back to September 9, 2020, the Parent and District did exchange several emails regarding concerns about the Student’s inability to access assignments and difficulties related to his difficulties in the area of study/organization skills; however, a review of the documentation show the “PWN” referenced by the Complainant was the PWN generated from the September 30, 2020 IEP meeting.

<sup>5</sup> The Parent exchanged emails with the District on October 5, 16, 19, 20, 21, 22, and 29, 2020.

15. Between October 8 and 19, 2020, the Parent communicated with special education teacher 1 that she would like the Student to receive more support in math, writing, and organizational skills in the morning and afternoon check in times and that she would like the activities completed with the Student during that time to align more with what she believed was agreed to during the September IEP meeting. In the Complainant's reply to the District's response, the Complainant additionally alleged that although Zoom links were sent to set up meetings, meetings were not consistently held.<sup>6</sup>
16. On October 19, 2020, the Student's IEP team met to amend the Student's IEP. The IEP team discussed the Parent's request and agreed that the Student should receive his specially designed instruction in math at a nonpublic agency (NPA) and amended the Student's IEP regarding the Student's check-in with special education staff. The team discussed the Parent's concern that the Student required a more explicit schedule that included the Student's expectations to attend asynchronous office hours and agreed that the special education teacher would coordinate a plan with the Student's general education teachers to make up missing assignments. The team discussed that the Student had not been consistently attending asynchronous sessions with teachers, and had been "ignoring requests" to join in sessions with his special education teacher every morning, and had "missed a number of assignments in nearly all his classes." To address this, the team changed the Student's afternoon check-in time to occur midday.

Following the IEP meeting, the District issued a PWN, documenting the team's decision to increase specially designed instruction in the area of study/organization to 25 minutes per week, ten times a week, and that the check-ins would occur in the morning and midday. It further documented that the intended purpose of the staff check-ins was to review the Student's asynchronous afternoon schedule with him and plan for assignment completion. The PWN stated the Student's general education teachers agreed the Student would make up work in manageable chunks.

17. Also, on October 19, 2020, special education teacher 1 emailed the Student's general education teachers a reminder to have the Student's IEP modifications made to assignments by that Wednesday and requested they find time to meet to organize modifications on all make up assignments for the Student to help him catch up.
18. On October 23, 2020, special education teacher 1 emailed the Student a document that included a planner she stated was started that week with direction to "Check Friday for History and [language arts]. Try to listen to as much as you can, hopefully till chapter 16. Keep on doing what you worked with [general education teacher]..."
19. Also, on October 23, 2020, the assistant principal emailed special education teacher 1 to ask when she and the paraeducator were checking in with the Student. The special education

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<sup>6</sup> Although not all meetings were consistently held, the documentation showed that some of these were due, at least in part, to the Student not logging in. This was addressed at the October 19, 2020 IEP meeting.

teacher emailed the assistant principal that in the mornings from 8:30–8:55, she was checking in online with the Student, and in the afternoons from 1:15–1:40 pm.

20. On October 25, 2020, the Parent responded to special education teacher 1's email that the planner was confusing and that the details did not appear to match with the Student's schedule in OneNote. The Parent suggested the special education teacher "Clarify the purpose [of the chart]," and asked, "Is this for [Student] to track the assignments and complete on a timeline? Or for you/teachers to track what is being accomplished? Or is this to teach organizing skills?" That same day, the special education teacher responded to the Parent's email to clarify the directions she had provided to the Student.
21. On November 1, 2020, the Parent emailed the supervisor a list of comments, requests, and concerns, including that the Student attend the agreed upon NPA for five days per week instead of three days per week because she believed the Student required additional math support for "missed instruction for Sept. & Oct." The Parent also requested that transportation be arranged. The Parent relayed that she did not feel that time the Student was meeting with special education staff in the morning and afternoon was effective to support the Student's organizational needs and was not helping the Student catch up on assignments as necessary to access the online system. She wrote:

We decided that [Student] would receive specific am and pm support to create and use a calendar/planner, address overdue assignments, and get help scheduling specific am and pm support during [asynchronous] time. The plan included a check in with [special education teacher 1] to develop a written plan for the day including assignments and [asynchronous] time, how to find links for the classes & assignments. While [special education teacher 1] has been discussing some of his assignments with him in the am, there's no organizational support or help maneuvering through the class sites or scheduling [asynchronous] time. The afternoon check out time with [paraeducator] (now at 1:15), should be used to go over his assignments, questions, and plan for the asynchronous time. He has met with [paraeducator] about ½ the days and they discuss some assignments or what happened in class. This is not working...[Student] still has no calendar/plan, no list of overdue assignments, no schedules w/teachers during [asynchronous] times. This does not work for [Student]. He needs a written plan and specific times to meet with teachers on specific topics during [asynchronous] time.
22. On November 10, 2020, the supervisor responded to the Parent's concerns and discussed the Student's schedule for attending the NPA for math.
23. On November 11, 2020, the assistant principal emailed members of the Student's IEP team and the supervisor and explained that she was concerned about the ongoing need for clarity that seemed to surface around the Student's IEP. She requested a meeting to discuss some staffing concerns regarding the services in the Student's IEP. In particular, she noted that she was not currently able to fill the Student's morning check-in slot, as special education teacher 1 did not work five days a week and was showing up to check in with the Student on days



when she was not scheduled to work as a result.<sup>7</sup> The assistant principal further noted that the time of the check-in was before the start time of the school day and was therefore; not a time during which she could ask other staff to work.

24. On November 14, 2020, the Parent emailed the supervisor that she understood and appreciated that special education teacher 1 "is communicating with [Student's] teachers based on the recent email [special education teacher 1] shared. [Special education teacher 1] created a chart and discusses the daily assignments with [Student] in the morning." The Parent attached a copy of the chart special education teacher 1 sent to the Student on November 3, 2020. The Parent added, however, that she had concerns with the chart because she "can't really see all the parts of the assignments and what he has completed, or what needs to be completed" for the following week. The Parent wrote that the Student "needs everything in writing, and he needs 1 on 1 support with all new assignments. The planning for assignments needs to be specifically mapped out with all the steps in writing in one location..." The Parent explained that the Student was experiencing "extreme anxiety," which had been exacerbated by a recent medication change, and that the Student was "overwhelmed." The Parent requested the Student receive "everything in writing, very clearly, and more support with a planner, or calendar, written times for classes, [asynchronous] check is, help scheduling practice or reading/home study, check lists for completing assignments, mapping assignments over time, visually, in writing. And one on one assistance to complete assignments."
25. On November 25, 2020, a staffing change occurred and a new special education teacher (special education teacher 2) assumed the role of providing check-ins during the morning for the Student. On the morning of November 24, 2020, special education teacher 2 informed the Parent that he would also be the Student's life skills teacher for the remainder of the school year. Special education teacher 2 also emailed the Parent and Student and explained where the Student could access links to his morning and afternoon check-ins, as well as his online classroom.
26. In its reply, the Complainant wrote that "When [special education teacher 2] took over as the Student's special education teacher...the sessions occurred regularly, and the content of the sessions more closely matched what was agreed to."
27. On December 9, 2020, the Student's IEP team met to discuss the Student's daily schedule and implementation of his specially designed instruction and other IEP supports through the District's "Access program." The team developed a daily schedule and outlined his morning

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<sup>7</sup> In the Complainant's reply, the Complainant alleged that "sessions did not always happen, particularly with the para-educator," and that "In fact, [special education teacher 1] only worked part-time and she could not actually attend all the sessions she put into the chart she created." The Complainant went on to state that "the District sent nothing to show [special education teacher 1] or the para-educator actually attended the sessions that were set or that the content of those sessions what was agreed to happen to provide the Student with support." The District provided emails, showing Zoom meetings were scheduled, but special education teacher 1 did not appear to maintain more specific notes regarding what activities we completed during each check-in.

and afternoon check-ins and supports for his general education classes, which the IEP team determined could be implemented through the Access program. The District documented the team's decision to implement the Student's IEP in the Access program—including the additional special education supports agreed to during the October 2020 IEP meeting during which the team amended the Student's IEP—in a PWN dated December 9, 2020.

28. On January 27, 2021, the Student's IEP team, including the special education teacher and the Parent, met to discuss the Student's progress in his general education classes and on his IEP goals. The team also discussed instructional systems of support for the Student's progress in his general education classes. The Student's health teacher reported that the Student had not needed any modifications in health class and was receiving an A. The Student's science teacher reported the Student was "bright and capable at reasoning and frequently took advantage of making appointments to work together during asynchronous class." The Student's band teacher reported that the Student had turned in everything for the end of the semester. The PWN issued by the District following the January 2021 IEP meeting stated the team found the Student had "not required any modifications in the course curriculum in his general classes and had completed all outstanding academic work." The PWN noted that at the meeting, the Student's family and IEP team agreed to "discuss possible amendments to the current IEP via email in order to reflect information gained at the meeting. Once the email discussion occurs, the IEP will be amended to reflect the discussion."
29. On February 3, 2021, the District provided a report on the Student's progress toward his IEP goals. The progress report documented the Student had met his **math** goal and made "some progress" on his social/behavior, study/organization, and written language goals.

In the area of **social/behavior**, the District reported the Student had "initiated conversations for assistance via the chat interface with all his academic teachers and initiated calls with his life skills teacher to receive support for work completion." In the area of **study/organization** skills, the District reported that the "Student continued to make improvements daily (2 of 2 life skills classes per week) with recording assignments, due dates, and steps. With the support of his Life skills class, [Student] references the source and OneNote to record upcoming assignments." In the area of **written language**, the District reported that "on a recent writing assignment, the Student had independently, without prompting, used planning strategies to break multiple questions into individually and easily answered components. Previously, [Student] has relied on his Life Skills class to collaborate in writing planning strategies. Additionally, [Student] is learning new writing strategies through provided course materials in his ELA and Life Skills classes."

30. On March 19, 2021, the Student's IEP team met to discuss his progress in his general education classes and his IEP goals. The IEP team also met to discuss the Student's mental health needs in response to concerns raised by the Parent that the Student was struggling with depression that was exacerbated by a large list of assignments that he needed to complete or was behind on. The team agreed to initiate in-person services prior to the District's scheduled date of April 19, 2021, to discontinue the need to continue providing the Student with lists of work to complete. The team also discussed adding an additional writing goal, which it felt would be

appropriate to some of the Student's post-secondary goals and agreed to revisit adding a new goal at the Student's next IEP meeting.

At the March 2021 IEP meeting, the team amended the Student's IEP to include the following specially designed instruction in the *special education* setting:

- Math, 60 minutes, 4 times weekly
- Social/behavior, 20 minutes, 4 times weekly
- Study/organization skills, 20 minutes, 4 times weekly
- Written language, 15 minutes, 4 times weekly

The Student's IEP continued to provide him with numerous accommodations in the general education setting.

31. On April 19, 2021, the Student began receiving in-person services. In its response, the District acknowledged that the Student began receiving in-person services after the intended start date agreed to by the IEP team, and noted this was after the agreed upon start date. It explained that after the IEP team determined the Student needed in-person services on March 19, 2021, the District "needed to complete an individualized analysis to determine the protocol and safety precautions necessary to ensure in-person services could be provided in accordance with the health and safety guidelines from the Department of Health and the Department of Labor & Industries," and that the District needed to obtain the necessary personal protective equipment ("PPE"). The District explained in its response that these activities caused a delay in implementation of in-person service delivery, but stated that during the time in between the IEP team's determination of the Student's need for in-person services and its provision, the Student continued to receive specially designed instruction and IEP supports delivered remotely. In its reply, the Complainant requested compensatory services for this time.

32. In its reply to the District's response, the Complainant stated that as a result of not being able to transition to the building before other students, the Student's depression has worsened, and he has since stopped attending school.

## CONCLUSIONS

**IEP Implementation:** The complaint was initially opened on the issue of whether the District implemented the Student's individualized education program (IEP) from May 12, 2020 through May 12, 2021, including the October 2020 and March 2021 IEP amendments. In the Complainant's reply to the District's response, the Complainant clarified that the Parents' concerns specifically pertained to the time periods of September 9 through November 30, 2020, when special education teacher 1 was the Student's special education teacher, and March 19 through April 19, 2021, when during which time the Complainant alleged the District failed to provide the in-person services as agreed to during the March 19, 2021 IEP meeting.

At the beginning of each school year, districts are required to have an 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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. During the COVID-19 pandemic and resulting public health crisis during the 2019–2020 school year, school districts were informed that they did not have to provide IEP services in conformity with the IEP, but were required to continue providing students a free appropriate public education (FAPE). At the commencement of the 2020–2021 school year, OSPI required districts to begin implementing special education services in conformity with the 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 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.

As an initial matter, the Student's IEP did not include morning and afternoon check-ins with special education staff prior to September 30, 2020. Thus, the District was not obligated to provide this support prior to this date. The prior written notice (PWN) from the September 30, 2020 IEP meeting indicated special education staff would meet with the Student in the morning and afternoon to "review [Student's] assignment expectations and schedule the following day." Documentation, including emails and progress reports, showed the Student generally received this support and made progress on all IEP goals. Although it is plausible based on the documentation provided that the support was not implemented perfectly and that there may have been occasions the additional support did not occur either because the staff was unavailable or because the Student did not login, these occasions appear to have been minimal and they did not have a material impact as the Student still made progress on all IEP goals. Further, although the Parent expressed concerns about the nature of the type of support provided, as well as about the methods used to review assignments, the Student's IEP did not specially require a particular method or that the special education staff follow a particular schedule of activities during the check-ins.

Similarly, the District acknowledged that it did not implement the Student's IEP exactly as agreed upon by the IEP team from March 19 through April 19, 2020, when it delayed the provision of in-person services. However, the Student was able to access services remotely during this time and continued to receive adult support. The delay accordingly does not appear to be material as there was no documentation to show the delay substantially impacted the services the Student was receiving or his ability to continue making progress on his IEP goals at this time.

OSPI accordingly finds no violation as the Student's IEP was materially implemented.

### **CORRECTIVE ACTIONS**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

## RECOMMENDATION

In her reply to the District's response, the Complainant noted that the Student's depression had worsened and that he was no longer attending school. The Complainant alleged this was directly caused by the District's one month delay in providing in-person services at the commencement of the 2020–2021 school and had resulted in a denial of a free appropriate public education (FAPE). OSPI did not find documentation to support this conclusion. However, OSPI acknowledges the urgency of the Parent's concerns, including any school refusal behaviors and observations that the Student's mental health may be worsening and impacting the Student's abilities to access his education or receive intended educational benefits. OSPI strongly recommends the Student's IEP team meet to discuss the Student's school refusal and consider whether the Student requires any additional special education supports and services to address mental health needs impacting the delivery of a FAPE.

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

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Special Education  
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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.)