

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-58

PROCEDURAL HISTORY

On July 7, 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 [REDACTED] 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 July 7, 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 July 15, 2021, OSPI received additional information from the Parent. After reviewing the additional information, OSPI modified one of the issues to clarify the Parent's allegation. On July 19, 2021, OSPI notified the District of the issue modification.

On July 16, 2021, OSPI received the District's request for an extension of time for the submission of its response. On July 19, 2021, OSPI approved the District's request and requested the District submit its response no later than August 3, 2021.

On August 4, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on August 5, 2021. OSPI invited the Parent to reply.

On August 15, 2021, OSPI requested that the District provide additional information, and on August 17, 2021, the District provided the requested information. OSPI forwarded the information to the Parent the same day.

On August 18, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On August 18, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on August 24, 2021. OSPI forwarded the information to the Parent on August 25, 2021.

On August 20, 2021, OSPI conducted interviews of District staff.

On August 23, 2021, OSPI requested that the Parent provide additional information, and the Parent provided the requested information that same day. OSPI then forwarded the information to the District that day.

On August 23 and August 24, 2021 and September 1, 2021, OSPI conducted interviews of District staff and interviewed the Parent.

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

ISSUE

1. Did the District implement the Student's individualized education program (IEP) during the 2020–2021 school year, excluding the dates of December 9, 2020 through January 20, 2021,¹ including implementing in-person services?²

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 Individuals and Education Disability Act (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

¹ On June 1, 2021, the Parent filed a complaint with OSPI involving the same Student in this complaint, alleging, in part, that the District did not implement the Student's IEP from December 9, 2020 through January 20, 2021. OSPI investigated the Parent's allegations and on July 26, 2021, issued findings and corrective actions in response to any violations found (see Special Education Citizen Complaint 21-44). In her reply to this complaint, the Parent requested OSPI review part of the corrective actions ordered for SECC 21-44 and consider additional corrective actions. While this complaint may include facts from the time period of December 9, 2020 through January 20, 2021 to provide context for the overall investigation, there is no appeal process for state complaints and allegations already reviewed in SECC 21-44 are not re-investigated in this complaint.

² After filing the complaint, the Parent contacted the complaint investigator to clarify her allegations. Specifically, the Parent relayed concerns that the District delayed the implementation of in-person services; thus, denying the Student a free appropriate public education (FAPE). The Parent reported that there was a "15 minute deficit" in the amount of instruction time the Student received, alleging that while the District agreed classes would commence at 8 am during in-person instruction, she was asked to bring the Student in at 8:15, and that this deficit was contrary to the Student's IEP. Although this issue was addressed in SECC 21-44, the Parent alleged the timing issue began prior to the start of the December 9, 2021 timeline of SECC 21-44. The Parent additionally explained that she believed the Student's IEP, including the Student's behavioral intervention plan (BIP), was not implemented in the remote setting due to a lack of training of staff on how to utilize the online platform used to deliver special education services during synchronous and asynchronous learning, and that this resulted in the Student being denied a FAPE.

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).

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive a free appropriate public education (FAPE). The BIP, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

1. At the commencement of the 2020–2021 school year, the Student was eligible for special education services under the category of other health impairment,³ was in the first grade, and attended an elementary school in the District.
2. On September 3, 2021, prior to the first day of school, the District and Parent met to review data collected over the summer and to discuss how the Student’s 1:1 paraeducator⁴ would support the Student in the remote learning environment during the 2020–2021 school year. Both the District and Parent told the complaint investigator that during remote learning, the understanding was that during general education classes, the Student would have a 1:1 paraeducator or special education staff who would be assigned as a co-host on Zoom to support the Student. It was discussed that the co-host would support the Student by supporting the general education teacher with the Student by modeling appropriate behavior, and by using the private chat and breakout room functions when appropriate with the Student. The Parent reported that at this meeting, she requested the District require staff working with the Student to practice utilizing Zoom software with the Student prior to the first day of school, and that the District declined.
3. At the start of the school year, the Student’s December 2019 individualized education program (IEP) was in effect, which provided the Student with the following specially designed instruction, to be delivered by a paraeducator/special education staff in the *special education setting*:⁵
 - Social skills, 20 minutes 4 times weekly
 - Social skills, 20 minutes, 1 time weekly
 - Behavior, 20 minutes, 5 times weekly

The Student’s IEP includes measurable annual goals in social skills (self-control/boundaries; verbal expression), and behavior (self-regulation/back to baseline, transition with safety awareness, identify emotions).

The Student was supported by a functional behavioral assessment (FBA) and behavioral intervention plan (BIP). The BIP addressed target behaviors of disruptive behaviors and

³ The Student had above grade level academic skills, particularly in reading, where the Student was reading at a fifth grade reading level. However, the Student had behaviors that interfered with her learning related to her diagnoses of attention deficit hyperactivity disorder (ADHD), communication disorder, and sensory integration disorder which required specially designed instruction.

⁴ The Student had two primary paraeducators (“paraeducator 1” and “paraeducator 2”) who provided 1:1 paraeducator support to her throughout the school year.

⁵ The Student attended general education classes and received her specially designed instruction as a “pull-out” service.

noncompliance, including elopement.⁶ It included several setting and antecedent strategies, including ensuring the Student's functional communication system was available, that the Student's break plan was reviewed with her and that she was able to use her breaks, and among other things, that she was provided positive feedback, consistency in schedule, and support with transitions in line with her BIP.

The Student's IEP additionally provided the Student with full time 1:1 paraeducator support for 356 minutes, five times weekly when the Student was in the *general education setting* to support the Student's academics and implementation of the BIP. The Student spent approximately 89% of her time in the general education setting.

4. September 15, 2020 was the first day of the 2020–2021 school year.⁷
5. From September 15 through November 2, 2020, the Student's schedule provided for 30 minutes of synchronous specially designed instruction in social skills via Zoom Monday through Friday, 30 minutes of synchronous specially designed instruction in behavior via Zoom Tuesday through Friday, and 30 asynchronous minutes of specially designed instruction in social/behavior on Monday. The Student's schedule additionally provided for general education Zoom classes Monday through Friday from 10–11 am, and optional asynchronous time in the afternoons for 20 minutes.
6. On the first day of school, the behavior specialist attended the Student's general education Zoom class to observe the Student. The behavior specialist additionally served as the special education staff providing the Student's 1:1 support that day. The Parent expressed concern that the private chat function was disabled, which she stated prevented the Student from receiving 1:1 support.

⁶ In its response to the Parent's complaint, the District stated it implemented the following strategies in the remote setting in support of the Student's BIP: use of visuals by District staff during Zoom, provision of visuals to the Parent to support the Student during breaks at home, utilization of breaks, adaptation of token economy to the remote setting, and Parent training. For in-person learning, the District stated it took the following actions in support of the Student's BIP: set of up in-person work center to include individual workspace and physical boundaries, taped-off areas to visually show designated student/teacher areas, added plexiglass placed between Student and teacher area, created a designated break area, developed laminated visuals to remind of designated areas, purchased break items and timer for use at school, created new token economy, developed new social stories incorporating COVID-19 protocol, developed laminated visuals to support reflection process, purchased extra masks. The paraeducators and general education teacher additionally received training by the behavior specialist in both the remote and in-person setting on implementing the BIP and completing data collection on the BIP in the remote setting (including on responding to elopement behaviors).

⁷ School was scheduled to commence on September 7, 2020 but was delayed for all students in the District due to wildfires in the state.

7. The executive director of special services⁸ (executive director) explained to the OSPI complaint investigator that during the first couple weeks of school, the entire District experienced technological difficulties with its Zoom platform regarding the “co-host” function. The District-wide problem resulted in teachers being unable to designate other staff members as “co-hosts” once they had signed on and started their class. Because teachers and specialists were unable to be assigned as co-hosts, the staff member serving as the Student’s 1:1 support on those days was unable to enter into a private chat with the Student or move the Student into a breakout room, as had previously been discussed. The Student remained able to chat with the general education teacher and the 1:1 continued to monitor the Student’s behavior and collect data. The behavior specialists and paraeducators interviewed described the Student as having some difficulties using the chat function appropriately (the Student would sometimes send multiple emojis or get off topic), but noted other students did this as well and at times, chat would be disabled for all students.⁹

The behavior specialist, general education teacher, and paraeducator 1 explained during interviews that while private chat was disabled for all students, the individual serving as the Student’s 1:1 paraeducator would remain pinned on the Student’s screen and that in lieu of using the private chat function, the 1:1 would model the behavior expected of the Student and utilize laminated visuals created by the behavior specialist to help prompt the Student to follow behavior expectations, use functional communication skills, and to ask/take a break if it escalated. It was explained that while they were unable to utilize the private chat, they also avoided “calling out” the Student publicly in front of her peers for behavior, which they believed would have embarrassed her or caused an escalation in behaviors. Special education staff reported that from their perspective, the Student was generally able to respond well to the visual prompts provided, and the behavior modeling provided by the behavior specialist or paraeducator providing 1:1 support.

The Parent reported that from her perspective, however, the Student was confused and upset by not being able to communicate using the private chat as expected, and that this escalated the Student. The Parent also reported that the Student would often break down in tears and sometimes “elope” by exiting from her Zoom class and not returning.

Once the technological error was fixed so hosts could assign co-hosts, and the co-hosts could engage in private chat, the paraeducators and staff who served as the Student’s 1:1 relayed to

⁸ The OSPI complaint investigator conducted interviews with the Parent, executive director, director of special services (director), behavior specialist, general education teacher, paraeducator 1 and paraeducator 2. All confirmed that there were unexpected technological issues at the start of the school year. The District additionally provided emails to OSPI, showing their efforts with the provider of the platform used and their tech support to resolve the issue once it was brought to their attention.

⁹ In September 2020, the Parent sent emails to the District regarding concerns about the Student being unable to access her 1:1 paraeducator on September 15, 20, 21, and 25, 2020. These dates all fell within the time period the District acknowledged it was having technological difficulties. The Parent reported the Student breaking down in tears, eloping from class (exiting out of Zoom), and becoming escalated.

the complaint investigator that they began to utilize the private chat function in accordance with the Student's BIP and as trained to do so by the behavior specialist.¹⁰

8. On September 30, 2020, the behavior specialist conducted a training with the learning specialist and the Parent on how to utilize visuals with the Student per the Student's BIP.¹¹
9. During the month of September 2020, the behavior specialist provided over six hours of training to District staff working with the Student on how to problem solve behavior issues that may arise based on strategies included in the Student's BIP.¹²
10. On October 1, 2020, the behavior specialist provided 60 minutes of training to all school paraeducators on data collection, including the paraeducators working with the Student. An additional 30 minutes of training on behavior problem solving was provided to the learning specialist and principal the following day.
11. On October 2, 2020, the Parent emailed the learning specialist to express concern about the Student not being able to access her 1:1 paraeducator in the Zoom private chat and to summarize her understanding of the IEP meeting held on September 3, 2020. In her email, she wrote that her understanding was the 1:1 would be ready to support the Student on the first day of school, and that the 1:1 would support the Student in the remote learning environment through the chat feature of Zoom ("the 1:1 will be able to pull Student" and "Student will be able to privately chat with the 1:1" and the "breakout feature of the Zoom – the 1:1 will be able to pull [Student] out to a breakout room to de-escalate and take [Student] back to rejoin the class when she is ready").
12. On October 2, 7, 14, 15,¹³ 16, 23, and 30, 2020, the Parent alleged the Student was unable to access her 1:1 paraeducator support during some portion of her general education class or

¹⁰ The Parent sent multiple emails to the District between the first day of school on September 15 and the end of September 30, 2020, reporting that the Student did not have access to her 1:1 paraeducator and stating that the Student was unable to access her education during this time.

¹¹ Visuals were emailed to the Parent. The behavior specialist additionally offered to provide in-person training to the Parent regarding use of the visuals. The Parent declined in-person training but did receive training over Zoom.

¹² This included 45 minutes of paraeducator training planning to the director, learning specialist, and school building principal (principal) and 60 minutes of general education teacher training on September 14, 2020, 60 minutes of collaboration training to the learning specialist on September 15, 2020, 60 minutes of training on implementing problem solving behavior strategies with the general education teacher on September 16, 2020 and September 23, 2020, 30 minutes of training on the same topic to the learning specialist and principal, also on September 23, 2020, and a 60-minute training with paraeducator 1 on September 29, 2020 regarding how to use visuals with the Student during remote learning.

¹³ On October 15, 2020, the Parent emailed paraeducator 1 regarding her concerns that the Student was unable to sit through the entire general education class. She noted that the Student had "raised her hand" and that paraeducator 1 did not provide support, and that the Student walked away from the Zoom class

during specials (music or physical education). When interviewed and asked to respond to this allegation, paraeducator 1 stated that by October, she was regularly using the co-host function of the chat in general education classes with the Student and denied ever disabling the Student's private chat. Paraeducator 2, who began working with the Student in mid-October, also denied ever disabling the Student's chat.¹⁴ The paraeducators reported, however, that they may not have always engaged with the Student in the chat box if the behavior was not appropriate—and that this accounted for some instances where they believe the Student may have told the Parent her paraeducator was not responding to her. The behavior specialist reported that the paraeducator's observations were that the Student would often "attempt to engage in an off-topic conversation to avoid following directions, place inappropriate emojis in the chat-box, or state to a Parent in the home environment that she is unable to chat with staff to avoid following the stated expectations." During interviews with the Parent, the Parent pointed out that the Student's BIP requires the Student be able to have an adult to work through escalations with her and that she felt the Student was left alone without support. Although the Parent was at home and had been trained by the behavior specialist, the Parent explained that she was working during the day and unable to provide the type of behavior support she felt the Student required to receive a FAPE.

When interviewed regarding the Parent's allegations, the behavior specialist¹⁵ told the complaint investigator that the 1:1 paraeducator or special education staff primarily supported the Student in her general education classes by modeling appropriate behavior. If the Student demonstrated inappropriate or disruptive behavior outlined in her BIP, the 1:1 support would first provide the Student an opportunity to respond to behavior prompts made by the Student's general education teacher. If the Student did not respond to the general education teacher's prompts, the paraeducator was trained to intervene through visual prompts or private chat, reminding the Student of the behavior expectation.¹⁶ If the Student continued to

several times without the paraeducator intervening. The Student left the class early and the Parent reported the Student was "in tears." The paraeducator responded that there were technical difficulties and that while she could see the Student was upset, she was unable to see the Student had raised her hand and could not enter into a private chat with the Student. The paraeducator indicated that she would try to resolve the issue before the following class.

¹⁴ Paraeducator 2 reported that she was aware of the technological issues from the beginning of the school year, but that they were resolved by the time she began working with the Student.

¹⁵ The behavior specialist frequently provided the 1:1 support herself during the first half of the 2020–2021 school year. She also provided training on the Student's BIP to the general education teacher, learning specialist, paraeducator 1, and paraeducator 2.

¹⁶ The behavior specialist relayed that when training staff members on the Student's BIP on how to intervene if prompts by the general education teacher were not successful at redirecting the Student, staff were to first remind the Student (either using visuals or in private chat) of the expectation in the Student's BIP and how to the Student's her functional (sic) communication to get help ("i.e., 'Remember student if you need help, say, 'Can you help me please,' or 'I'm feeling frustrated.'") and then staff were trained to not disengage the Student in the chat until the Student followed directions "to avoid a power struggle." (sic)

escalate or demonstrate inappropriate behaviors, the Student may be prompted to take a break. Prompting the Student to take a break in the remote setting was done using both visuals and the chat function. The behavior specialist reported that the data showed this strategy was the most effective at avoiding a power struggle and quickly redirecting the Student.¹⁷ The behavior specialist added that as the school year continued, the team began to rely less on the breakout and chat functions of Zoom and more on modeling and visual prompting because the latter were found to be more effective, whereas using the breakout room and private chat encouraged attention seeking behaviors.

The behavior specialist did, however, relay that during October, she became aware, in part due to concerns raised by the Parent, that some specialists in the District may have been experiencing some confusion regarding how to utilize the co-host function in Zoom preventing the Student from accessing private chat. To remedy this issue, the behavior specialist trained all specialists in the District on how to use the co-host function of Zoom and on the expectations and role of paraeducators on October 22, 2020.

13. On October 6, 2020, the behavior specialist provided 30 minutes of training to the director, learning specialist, and principal on paraeducator support.
14. On October 8, 2020, the behavior specialist did a 30-minute phone check in with paraeducator 1 regarding the Student.
15. On October 13, 2021, the Parent emailed the behavior specialist, paraeducator 1, the learning specialist, and the general education teacher that the Student left the general education class 20 minutes early and told her that she had permission to do so. The Parent requested to be informed of decisions regarding similar incidents so she could talk with the Student if this was not a decision the Student's teacher had made.¹⁸
16. On October 14, 2020, the District held a staff training day and there was no school.

¹⁷ The behavior specialist explained that data collected indicated that "if an adult in the environment either engages with [Student] or attempts to problem-solve with [Student] while still escalated she will further escalate by either escaping the environment (leaving Zoom), creating a larger disruption in class (unmuting and shouting, covering her camera, singing, etc.) shouting, crying, or arguing with adults at home." The behavior specialist added that, "If staff or those in the home environment provide [Student] processing time without engaging with her she will make an appropriate choice and either take a break or return with the activity or praise and positive reinforcement."

¹⁸ Both the Parent and District agreed that situations where the Student would either exit Zoom and not return (either turn off camera or log out) was considered an "elopement" and was documented accordingly. The District relayed the Student would not have been permitted to leave early; however, paraeducator 1 and 2 reported that sometimes the Student would log on and off or turn her camera or microphone on and off several times during a Zoom session. Each reported they would stay on and wait for the Student to return. The District relayed that the Student's difficulty with remote learning was a factor when considering the Student for in-person learning.

17. On October 15, 2020, an IEP meeting was held to discuss the Parent's request that the Student receive in-person services for five full days a week. According to a prior written notice (PWN) issued by the District on October 23, 2020,¹⁹ the IEP team decided to begin providing the Student in-person learning four days a week for 2.5 hours each day, Tuesday through Friday, with a 1:1 paraeducator at the District elementary school due to the impact of the distance learning model on the Student's behaviors. During interviews with paraeducator 1 and the behavior specialist, District staff elaborated that while the Student was performing at or above grade level academically, the Student would exhibit "elopement" behaviors, which was defined as turning off her camera or leaving early and not returning, which was difficult to address during remote learning. For this reason, the IEP team recommended the Student receive some in-person learning. However, the behavior specialist explained that the IEP team felt the Student required a gradual increase in in-person time to work on safety behaviors, especially in light of the pandemic, including those related to classroom elopement. The IEP team determined that the remainder of the Student's general education instruction would be provided during asynchronous and synchronous opportunities remotely with 1:1 paraeducator support.
18. On October 21²⁰, 22,²¹ 26,²² and 30,²³ 2020, the special education staff and general education teacher working with the Student received training from the behavior specialist on implementing the Student's BIP and providing support to the Student.
19. On October 30, 2020, the behavior specialist met with the Parent, learning specialist, principal, director, and general education teacher to discuss and review the Student's schedule.²⁴
20. On November 2, 2020, the principal and paraeducator 2 received training by the behavior specialist on the Student's BIP, including data collection. That same day, the behavior specialist also conducted a training with the Parent, Student, and learning specialist on the use of home visuals for when the Student was in remote learning.

¹⁹ The PWN stated the action would be implemented on November 3, 2020.

²⁰ On October 21, 2020, paraeducator 1, paraeducator 2, and the rest of the school team working with the Student received 60 minutes of training by the behavior specialist on implementation of the BIP.

²¹ On October 22, 2020, the general education teacher and learning specialist received a 30-minute follow-up training on implementation of the Student's BIP.

²² On October 26, 2020, the learning specialist received 60 minutes of training by the behavior specialist on problem solving and providing additional supports.

²³ On October 30, 2020, the learning specialist and paraeducator 2 received 60 minutes of training on implementing the Student's BIP in the hybrid environment.

²⁴ This was shortly after paraeducator 2 began to support the Student, and the same day the Parent alleged paraeducator 2 was not available via private chat during the Student's general education Zoom class.

21. On November 3, 2020, the Student began receiving in-person services for 2.25 hours²⁵ per day at school, Tuesdays through Fridays. During that time, the Student received all of her specially designed instruction per her IEP.²⁶
22. On November 10, 12, and 20, 2020, the behavior specialist attended the Student's in-person learning and provided in-person modeling and coaching of the BIP to the general education teacher and the 1:1 paraeducators working with the Student.
23. On November 11, 2020, school was closed in observance of Veteran's Day.
24. On November 20, 2020, the Parent reported the Student was unable to access her 1:1 paraeducator during one of her general education Zoom classes because the chat feature was disabled. The Parent additionally alleged the Student was not permitted to enter another general education Zoom class and that the 1:1 paraeducator was absent and unable to help the Student enter.
25. From November 25–27, 2020, school was closed for Thanksgiving Break.
26. During November 2020, the Parent communicated with the District regarding her concerns about the Student's schedule. During non-in-person synchronous learning, the Parent reported the Student was having difficulty self-regulating during Zoom classes that lasted longer than 30 minutes. Interviews with staff confirmed that they observed these behaviors as well. While the Student was continuing to progress at or above academically and on her IEP goals, it was noted that the home environment made it difficult for the Student to attend to learning.
27. On November 30, 2020, the District sent the Parent an invitation for an IEP meeting scheduled for the first week of December 2020 to discuss her concerns, including a request for more in-person instruction time. The District also sent the Parents an IEP parent input form to fill out.

²⁵ The Parent alleged she was asked to bring the Student in 15 minutes later than when the class was supposed to start, which resulted in the Student receiving an hour less of in-person time than agreed upon by the IEP team.

²⁶ The Parent noted that the IEP team determined the Student would attend school in person for 2.5 hours per day, four days a week. Accordingly, the Student's schedule originally provided the Student would attend school in-person four days per week from 8–10 am. Upon realizing staff did not begin teaching until 8:15 am, the District provided the Parent with a new schedule that provided the Student begin school at 8:15. This resulted in the Student attending in-person instruction 2.25 hours per day, or nine hours per week. According to the District's calculation, the Student received a shortened schedule from November 3 through December 8, 2020, a total of eighteen school days, or 4.5 hours. When the Student returned on January 20, 2021, the Student returned to hybrid instruction and full school days.

28. On December 2, 2020, the behavior specialist met with the learning specialist, general education teacher, principal, paraeducator 1, and paraeducator 2 to review data²⁷ collected on the Student's behaviors and provide a summary of her observations. During the debriefing, the behavior specialist reviewed what the Student's target behaviors (disruptive behavior, noncompliance, and unsafe behavior) looked like both in person and online, and provided information on the data collected on the intensity and frequency of the behaviors, as well as on the interventions²⁸ used as they appeared in the Student's BIP. The following summary of observations were provided:

- The same target behaviors of non-compliance, disruptive classroom behavior, and elopement were reestablished. Although unsafe behavior was observed, a pattern of unsafe behavior was not established.
- There was a "notable spike in demonstrated behavior on 11/3/2020 when the Student began in-person services."
- The data reestablished the function of the Student's behavior was to escape/avoid a stated consequence.
- "Student engagement increased when adults were not in close proximity to student."
- "Student was the least likely to demonstrate the target behaviors in environments where the expectations were clear and stated consistently using scripted language, the schedule/routine was consistent, there was a high rate of positive reinforcement, and adults maintained physical separation from the student while the student was working."

29. On December 8 and 10, 2020, the behavior specialist provided training to the learning specialist on behavior problem solving with the Student via Zoom.

30. On December 14, 2020, the Parent reported the Student was able to access the chat function but noted the 1:1 paraeducator did not respond to any of the Student's chats.²⁹

²⁷ According to a summary prepared for the December 2, 2020 meeting, frequency/event data on target behaviors was collected by over 19 days from September 29 to December 2, 2020, in both the Zoom environment and in person, during different days of the week, during different classes, and while working with a different staff member "to look for patterns and identify antecedents," and Antecedent Behavior Consequence (ABC) data was collected over six days in the Zoom environment and in person during different days of the week, during different classes, and while working with a second staff member.

²⁸ Observations confirmed that interventions from the Student's BIP were successfully being implemented with the Student, including positive reinforcement (18%), visuals (18%), time and space (separation) (18%), and scripted language (16%). The report did note, however, that the intervention of providing additional process time was used (6%) less successfully. Interviews with District staff noted that when staff provided the Student with processing time without engaging her in response to a target behavior that has not responded to attempts to redirection, the Student will usually make an appropriate choice and either take a break or return to the activity with praise and reinforcement. However, the District acknowledged that this intervention is more difficult in the remote setting due to there being more distractions.

²⁹ The District responded that this was in accordance with the Student's BIP.

31. Throughout December 2020,³⁰ the behavior specialist provided in person modeling and coaching of the BIP to support staff working with the Student. The behavior specialist reported that this was done to support the Student in transitioning to have more in-person time, focusing particularly on developing strategies to address the Student's elopement behaviors.³¹
32. On December 20, 2020, the Student's BIP was updated to include additional data collected in the remote learning environment information on interventions to be used in the remote setting for disruptive behavior, including:
- Blocking the Student from being able to change her name on Zoom
 - Allowing a co-host in Zoom settings so adult can redirect the Student's behavior using private chat
 - Clearly communicating Zoom expectations for behavior using visual supports in advance
 - Teaching expectations for taking a break in the distance learning environment during 1:1 setting while the Student is at baseline (not while escalated)
 - Provide frequent positive reinforcement when the Student demonstrates behavior expectations
 - If the Student has already mastered a task, provide an enrichment activity
 - Reinforce behavior expectations at beginning of class
 - Use scripted language to ensure consistent expectations, (e.g., "please raise your hand before you unmute")
 - Reflect with the Student at the end of the day and reteach behavior expectations as needed
 - Watch for signs of academic disengagement and contact the Student through private chat to check for understanding
 - Move the Student to breakout room with a paraeducator for 1:1 assistance with academic tasks
 - Avoid moving the Student to the waiting room without adult support or removing her from class without explanation
33. From December 21, 2020 through January 1, 2021, school was closed for winter break.
34. On January 5, 6, 7, 8, 20, 22, 27, and 29, 2021, the behavior specialist provided in-person modeling of and coaching on the BIP.
35. On January 8, 2021, the behavior specialist met with paraeducator 2 to discuss paraeducator 2's support of the Student.
36. On January 12, 2021, the behavior specialist retrained paraeducator 1 and paraeducator 2 on the Student's BIP, following changes made in December 2020 for the remote learning environment.
37. On January 14, 2021, the Student's IEP team reconvened and increased the amount of specially designed instruction the Student received to the following:

³⁰ In-person modeling and coaching on the Student's BIP was provided to paraeducators working with the Student, and at times, also to the general education teacher and principal on December 1, 3, 4, 8, 9, 19, 11, 16 and 17, 2020.

³¹ As previously noted, this complaint does not cover the time period of December 9, 2020 through January 20, 2021.

- Behavior, 45 minutes, 4 times weekly in the special education setting
- Social skills, 60 minutes, 5 times weekly, in the special education setting

38. On January 19, 2021, the Student's schedule changed as hybrid learning began in the District. The Student began attending school in-person (with 1:1 paraeducator support) on Tuesdays and Thursdays. The Student received all of her specially designed instruction on Zoom (synchronous) or through asynchronous learning on non-in-person days.³² In the complaint and reply to the District's response, although the District offered the Student all of the number of minutes of specially designed instruction provided for in her IEP, the Parent raised concern that the Student was unable to access her specially designed instruction that was not provided in-person.

39. On January 22³³ and 26,³⁴ 2021, paraeducators 1 and 2 received training by the behavior specialist.

40. On January 24, 2021, the District sent PWN, documenting two IEP meetings (December 14, 2020 and January 14, 2021), and the IEP team's proposal to update the Student's IEP goals to reflect her present levels and current needs as the Student returned to hybrid learning, to document that "the team agreed that [Student] has not made the progress the team would like her to make and increased her service time in the areas of Social and Behavior," and that "The IEP team reviewed data and noted that [Student] has did not progress at the rate they wanted and some regression in one or more goals and recommended ESY services".

41. On January 25, 2021, the behavior specialist scheduled daily debriefs for the rest of the year with paraeducators 1 and 2 to discuss the Student.

42. On January 27, 2021, the Student was isolated in the social emotional learning (SEL) classroom for five minutes for removing her face covering and entering into other classrooms—causing a mixing of cohorts.³⁵ That same day, the school behavior specialist filled out an incident report. According to the incident report, prior to the isolation, in addition to eloping ("running") from the classroom, the student was "yelling," and "refusing to complete tasks." Verbal/visual redirection, offering choices, reinforcement of approximate behaviors, reminder of reward system, offering of a break, proximity of body positioning, and use of scripted language were offered as interventions prior to the isolation. The incident was observed by paraeducators 1 and 2. The building principal was notified of the isolation at 11:15 am and the Parent at 2:29 pm. Later that afternoon, the District behavior specialist debriefed the incident

³² The District reported that the Student was offered a Zoom session to support the Student in completing asynchronous work.

³³ On January 22, 2021, paraeducators 1 and 2 received 30 minutes of training on the Student's BIP and in-person behavior modeling.

³⁴ On January 26, 2021, paraeducators 1 and 2 received 30 minutes of training on behavior problem solving.

³⁵ Mixing of cohorts was prohibited by the District's COVID-19 health and safety policy.

with paraeducators 1 and 2 and the school behavior specialist. In addition to identifying triggers (transition to math, staff attempting to process with Student while escalated) and noting what worked and did not work, the behavior specialist made recommendations for what the school staff might do differently to avoid similar incidents (“keep other classrooms locked,” “develop accommodations for math,” and “reduce academic expectations”). The team determined the BIP was followed during the incident.

43. On January 29, 2021, the Student eloped from school twice. During the first elopement, the Student stated she did not want to be at school and started to walk home. The Student was redirected by the principal and returned to her classroom. During the second elopement, the Student continued to walk home, which was located directly across from the school, and refused to return to school. The behavior specialist and paraeducator followed the Student. That day, the principal emailed the Parent, “We would like to zoom with [Student] this afternoon for the remaining of her [specially designed instruction] today. Would she be available from 2:00 – 2:45 pm?” In a follow up email, the Parent relayed that she felt the principal had asked her to keep the Student home because the District “does not have a process or methods to handle school refusal and [principal] expected [Student] to run away from school that day.”³⁶
44. On February 1, 2021, the Student’s IEP team met to discuss the Parent’s request that the Student attend school in-person full time. The Student’s IEP team declined the Parent’s request to increase in-person time. According to the PWN created the same day, the IEP team reviewed progress data collected since the Student had started the hybrid schedule and believed it indicated “that the previous behavior of eloping [was] re-emerging,” and that, “The change to hybrid learning and adjusting to her new schedule in the general education classroom may be causing this behavior.” The IEP team concluded that the data indicated “that [Student] needs additional time to adjust before changing her schedule again.” The IEP team agreed to meet again on February 24, 2021, to reconsider the Parent’s request.
45. On February 2, 5, 10, and 19, 2021, the behavior specialist provided in-person modeling of and coaching on the BIP to staff working with the Student and to support goal of increasing the Student’s in-person time at school.
46. On February 12, 2021, the Student was restrained and isolated. That same day, the District completed a physical restraint and isolation form. The form documented that the restraint occurred for four minutes and isolation occurred for sixty-five minutes. Proceeding the incident, the Student was hitting, kicking, pushing, running, and “attempting to bite/remove staff’s shirt.” Interventions that proceeded the isolation and restraint included verbal/visual redirection, reinforcement of approximate behaviors, reminder of reward system, offering a break, offering choices, separation/accountability, and proximity/body positioning. The principal was notified of the isolation and restraint at 11:45 am and the Parent was notified at 2:45 pm the same day. That same day, the behavior specialist debriefed with the principal and

³⁶ In her reply to the District’s response, the Parent referred to January 29, 2021 as “an abbreviated school day” and noted that she believes it should be documented as such.

paraeducators 1 and 2. On the debriefing report, it was noted that the Student had stated she was “upset there was slime on her pants” and had been “denied access to staff offices” prior to the incident, during which staff had been injured. In addition to other strategies, it was noted that in the future, staff should ensure the Student has a change of clothing within eyesight when completing art projects and that staff should prepare the Student for changes in environment and routine earlier.

47. On February 15–16, 2021, school was closed in observance of Presidents’ Day.
48. On February 22, 2021, the behavior specialist met with District administration and the Student’s general education teachers to review and debrief behavior data collected on the Student.
49. On February 23, 2021, the behavior specialist emailed the Parent to update her on the Student’s progress using Zoom. She wrote that the Student:
continues to improve. [Student] followed directions and participated for most of Zoom. Towards the end of her Zoom she started to have a more difficult time staying on topic and taking turns while speaking. [Paraeducator 2] reminded her that she could ask for a break in zoom and she took a 7 minute break. She returned from break and continued to participate This is wonderful progress!

The behavior specialist also discussed moments where the Student had gotten off topic or had to be directed, to which the Student responded, “I was in the middle of talking.” The behavior specialist also wrote that the Student “turned off her camera and muted herself at 9:55 am and did not return. It was unclear if she had eloped or was just not participating.” In response to the Student’s behavior, the behavior specialist added that paraeducator 2 had provided 15-, 20-, 5-, and 2-minute transition warnings for the end of class and that the paraeducators remained in Zoom until 10:15 am in case the Student returned. In response to the behavior specialist’s email, the Parent responded that she appreciated the update and described some of the difficulties the family had at home regarding turn taking during conversations and some of the strategies they used. The Parent requested additional suggestions to support the Student. The behavior specialist responded with how they support the Student at school and with a game the Parent could use with the Student to practice two-way conversations.

50. On February 24, 2021, the Student’s IEP team reconvened to continue discussing increasing the amount of in-person instruction the Student received per the Parent’s request. The IEP team proposed to continue the Student’s in-person instruction time but recommended a change in time of the Student’s Zoom classes. The team determined the Student required additional time to adjust to her current schedule before changing it again and set three goals for the Student to achieve before adding additional demands for in person services, including: (1) a decrease in the number of elopements; (2) a safe hands and body; and, (3) not entering other’s classrooms. To support the Student, the IEP teams discussed “breaking up zoom times to decrease elopement and increase participation, and d allow Student to share her input on

this; the possibility of the BIP being updated when she has transitioned to the new schedule; and if Student needs to be presented with more challenging academic work in the classroom.”

51. On March 3, 2021, the District sent PWN, documenting that the Student was currently attending a hybrid B schedule, was in school for full school days on Wednesdays and Fridays, and that the IEP team proposed to continue the current hybrid schedule with a change in Zoom times until the team could meet again to review data. The PWN stated that the team continued to review progress data collected since February 2021, as the Student “continues to adjust to the hybrid schedule” and “the observation and data indicates that the previous behavior of eloping continues; however, the duration of each elopement is decreasing. [Student] continues to elope into other classrooms (mixing of cohorts) is unsafe with body (removing of mask and taking items). This indicates that [Student] needs additional time to adjust before changing her schedule again.” The PWN also noted the three goals the IEP team discussed, and that the data showed the Student “may reach these goals by the next meeting.”
52. On March 12, 2021, all elementary schools in the District were closed for “Grading Day”.
53. On March 15, 2021, the Student’s IEP team met to discuss behavior data and the Parent’s request for additional in-person learning on non-in-person days during which the Student was receiving specially designed instruction through Zoom and asynchronous work. The IEP team proposed that the Student receive her specially designed instruction on Mondays when no students were on campus. According to a PWN sent by the District on March 18, 2021, the IEP team “propose[d] to change the [specially designed instruction] from Behavior 45 minutes 4 days a week and Social Skills 60 minutes 5 days a week, to Behavior 180 minutes 1 time weekly and Social Skills 300 minutes 1 time weekly.” The PWN stated that the current data indicated the Student was “ready to transition to more in person learning. While the number of elopements may not have decreased, the intensity and duration have decreased. This data indicates that [Student] is adjusting to the hybrid schedule and is ready to transition to another change of schedule. The team determined that Mondays will be the day she will attend due to current elopement into another classrooms/cohorts. On Mondays there are no other students in the building.” The PWN also recorded the team’s objection to add in-person days on the Student’s asynchronous learning time on Tuesdays and Thursdays due to the Student’s continued elopement into other classroom/cohorts.³⁷
54. On March 19, 2021, the District completed a progress report on the Student that showed the Student was making sufficient progress in all areas. On the Student’s “self-regulation/back to baseline goal,” the progress report noted that “3/5 [Student] is taking breaks, processing with staff, and returning to baseline 3/5 opportunities.” On her “transition with safety awareness” goal, the progress report stated, “3/5 [Student] is transitioning with safe feet and hands within the school. She is keeping her mask on and is showing safe behaviors in the general education classroom more and more.” On her “self control” goal, the Student’s progress report read,

³⁷ It was clarified during interviews that all of the Student’s specially designed instruction was being provided in-person, and that the remaining asynchronous learning time was for general education instruction or WIN time.

"[3/5 [Student's] elopements are down to 2 per day average. She is asking for a break 33% of the time." On her social skills goal (verbal expression), the progress report said, "The data shows that [Student] is consistent within a day but over multiple days can be inconsistent. Somedays she is 4/4 and others 0/4." On her second goal, the progress report stated, "[Student] is able to use her tools and also discuss her feelings on 3/5. She does well at reflecting after she has a circumstance. Within her [specially designed instruction] she is able to describe zones and feelings."

55. On March 19, 24, 26, and 31, 2021, the behavior specialist conducted in person modeling of and coaching on the Student's BIP with her paraeducators and teacher.
56. On March 22, 2021, the Student's schedule changed as agreed to at the March 15, 2021 IEP meeting.
57. On April 5–9, 2021, the District was closed for spring break.
58. On April 15, 2021, the behavior specialist met with paraeducator 2 to discuss the Student's behavior.
59. On April 19, 2021, the Student's IEP team met to discuss the Parent's request for an increase in in-person learning time. The Student was currently receiving instruction on Zoom for non-in-person days (hybrid B schedule) and was in person for a full school day on Wednesdays and Fridays. In addition, the Student was coming into school on Mondays to receive her specially designed instruction. The IEP team proposed to add an additional hour of SDI on Mondays, beginning on April 26, 2021. The PWN sent after the meeting stated the team rejected additional in-person SDI time being added to the Student's Wednesday/Friday time because that would increase the Student's school day, and "the team believed Mondays would be a better option for [Student] at this time. Data indicates that the Monday in person learning is going well at this time." The PWN additionally noted that asynchronous work (two 30-minute sessions) would be changed to a scheduled Zoom time with a paraeducator.
60. On April 26, 2021, the Student's schedule for delivering special education services changed to include an additional hour of in-person services on Mondays.
61. On May 10, 2021,³⁸ the Student was restrained after she was out of her seat and wandering around, throwing objects ("Student stated that her tutu was itchy and student took off tutu and was swinging it"). The Student further escalated (hitting, removed mask and spitting, bit staff) when directed to put the tutu on or away. The restraint lasted for one minute. The principal was notified of the incident at 1 pm that afternoon, and the Parent was notified verbally at 2:57 pm. Paraeducators 1 and 2, the principal, and director were debriefed by the behavior specialist on the incident that afternoon. It was determined that the Student's BIP was followed during the restraint.

³⁸ A more in-depth written debrief of the incident was additionally done through an exchange between paraeducators 1 and 2 on May 14, 2021.

62. On May 27, 2021, the IEP team met to consider input from a private occupational therapy provider on the BIP, per the Parent's request. The IEP team agreed to update the BIP to align scripted language to include language used at the Student's private therapy with language used at school. The IEP team rejected other requests made by the Parent, including a "5 step break plan," "daily schedules and offering small schedules," and "movement and schedule breaks," because the team noted these were already being provided in the school environment. The PWN noted that the data indicated the Student's break plan was successful in the school environment, that the team "discussed the written schedule and small visual checklists that are offered during academics and how they are used successfully," and that "movement and scheduled breaks were discussed and the team clarified they are offered/scheduled by the general education teacher and provided during the Social Emotional Learning curriculum."
63. On May 31, 2021, the District was closed for Memorial Day.
64. On June 17, 2021, an IEP meeting was held to discuss continuing collaboration between staff and outside private occupational therapy. The team also discussed the changed language of the BIP to align with the Student's outside private therapy, but declined to make any other changes and that its implementation date would be in the fall of the next school year.
65. June 22, 2021 was the last day of the 2020–2021 school year.
66. On August 18, 2021, the Parent submitted her reply to the District's response. In her reply, she expressed that she believed the incidents of restraint and isolation during the 2020–2021 school year "may not have occurred had the District staff been trained in use of technology," "had the Student had access to her Related Service of a 1:1 behavior support paraeducator while in Zoom," and "had an appropriate level of in-person services for the Student not been delayed so profoundly, and...had the Student's schedule been more stable instead of constantly changed incrementally throughout the school year." Regarding the allegation of a delay of in-person services, the Parent noted that she believed beginning on January 20, 2021, the District inappropriately "cut-off" the Student's in-person services by providing an amount different from what was determined at the October 2020 IEP meeting.

CONCLUSIONS

IEP Implementation – The Parent alleged the District did not implement the Student's individualized education program (IEP) during the 2020–2021 school year, excluding the dates December 9, 2020 through January 20, 2021 (which were addressed in a previous complaint). In particular, the Parent alleged the District did not implement the Student's IEP regarding the provision of the 1:1 paraeducator support in her IEP or in-person services agreed to by the IEP team. The Parent additionally alleged that the District delayed responding to her requests for in-person services and did not provide its staff appropriate training in utilizing the online platforms used to provide instruction to the Student, and that this resulted in a denial of a free appropriate public education (FAPE) for the Student.

At the beginning of each school year, each district must have in effect 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 Individuals and Education Disability Act (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. 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. A behavioral intervention plan (BIP) is part of an 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.

Implementation of 1:1 Support: The Parent alleged the District denied the Student a FAPE by not implementing the Student's 1:1 paraeducator support.

The Student's IEP provided the Student with full time support of a 1:1 support provided by a paraeducator or special education staff when in the general education setting. Prior to the commencement of the school year, members of the Student's IEP team, including the behavior specialist and the Parent, discussed how the Student's IEP would be implemented in the remote setting for the upcoming school year to ensure the Student's BIP was implemented. Making the 1:1 support a co-host and using the private chat and breakout room functions of Zoom were discussed. At the commencement of the school year, the District arranged for either the behavior specialist or a paraeducator to be available during the Student's general education classes to serve as a co-host. However, review of documents provided and interviews with District staff and the Parent showed that this particular strategy was not implemented perfectly. For example, at the beginning of the school year, technological difficulties prevented the general education teacher from being able to assign staff as co-host and prevented the co-host from utilizing the breakout room. Some specialists in the District also did not know how to utilize all functions of Zoom at first. The District responded by providing additional training to staff, implementing alternative strategies in the BIP, including reminding the Student of behavior expectations using visuals, providing breaks, and pre-teaching behavior expectations during 1:1 time. Data was also collected on the Student's IEP goals during this time and the IEP team met several times during the course of the 2020–2021 school year to review the data and make adjustments to the Student's IEP and BIP as needed. The Student's end of the year progress report showed the Student making sufficient progress on all IEP goals. In addition, the behavior specialist and general education teacher both reported a decrease in frequency and duration of the Student's elopement behaviors by the end of the year, showing an increased tolerance for the Student to receive in-person instruction, including access to general education peers. The documentation reviewed supported this observation. Thus, while the 1:1 support was initially implemented imperfectly, the failures in implementation were not found to be material. No violation is found.

Implementing In-Person Time: The Parent alleged the District delayed her request for in-person services for the Student, and that the District did not implement the in-person services the IEP team had determined the Student required for FAPE.

The Student's IEP team first met in October 2020 to discuss the Student's need for in-person services. At that meeting, the IEP team determined the Student required in-person delivery for 2.5 hours per day for four days (10 hours per week). The PWN did not specify how the minutes were to be provided, and accordingly, the District could have used them to provide in-person specially designed instruction and/or in-person paraeducator support during general education synchronous and asynchronous time. However, because the Student's IEP team determined the Student required a specific method of delivery (in-person) for a certain amount of time (10 hours) to receive a FAPE, the District was required to implement the Student's IEP according to that determination, as recorded in the October 2020 PWN, including in-person general education time with 1:1 paraeducator support. The District provided 15 minutes less per day of in-person time than indicated on the October 2020 PWN from November 3, 2020 through February 1, 2021—when the District provided PWN—indicating the Student would be attending the District's hybrid schedule. OSPI investigated this issue as it related to the dates December 9, 2020 through January 20, 2021 in SECC 21-44, where findings were made that from December 9, 2020 (the start date for SECC 21-44) through January 20, 2021 (the end date for SECC 21-44), the Student was not provided approximately four hours of in-person instruction minutes. During that time, however, the Student did receive all of her specially designed instruction minutes. It was further found that all Student-specific needs related to IEP goals, including concerns about rate of progress, were addressed at IEP meetings held in December 2020 and January 2021, during which the District increased the Student's specially designed instruction and updated the Student's BIP. Because the Student's specific needs were addressed by the IEP team, and no material failure related to IEP implementation was found, OSPI did not order compensatory services in SECC 21-44. Instead, the District was ordered to provide written guidance on implementing prior written notices and aligning schedules to provide service minutes required in IEPs.

Here, OSPI similarly finds a procedural violation for the approximately 19 additional school days covered under the timeline in this complaint during the first semester during which the District did not provide in-person services minutes in the amount agreed to at the IEP meeting (about five hours total). During this time, the Student received her specially designed instruction minutes. Similar to the findings in SECC 21-44, OSPI finds the actions of the IEP team in December 2020 and January 2021 to have sufficiently addressed the Student's specific needs that might have arisen out of this deficit. The District continued to collect data on the Student's progress on IEP goals and met several times during the 2020–2021 school year to review the data and make adjustments to the Student's IEP as needed. At the end of the 2020–2021 school year, the Student was receiving most services in-person, had made sufficient progress on all IEP goals, and was showing improvement in elopement and behaviors. OSPI accordingly finds the corrective actions ordered in SECC 21-44 to sufficiently address this issue.

Responding to Request for Additional In-Person Time: The Parent alleged the District inappropriately delayed the provision of in-person services, and that this resulted in an increase

of restraint and isolation and denied the Student access to her special education services and the general education setting.

The Parent made several requests for the District to consider increasing the Student's in-person time and following each request, the IEP team met to review data collected and to respond to the Parent's concerns. The IEP team's decision regarding increasing the Student's in-person time was based on Student-specific data and was documented in a PWN. OSPI did not find evidence that there was a delay in responding to the Parent's concerns or implementing agreed upon in-person services that denied the Student a FAPE. The Parent continued to assert that the Student was entitled to receive services delivered as specified on the October 2020 PWN (in-person services, four days a week, for 200 minutes total).

The January 2021 PWN, however, shows at that point, the IEP team had intended for the Student to participate in the hybrid schedule. Although the PWN for this change was sent to the Parent on February 1, 2021, the District began implementing it on or before January 26, 2021. The District accordingly did not provide the Parent sufficient notice prior to implementing the change in schedule because it did change part of the IEP: by stating the Student would be attending a hybrid schedule, the IEP team changed the determination that the Student needed to receive in-person services provided for "2.5 hours per day 4 days per week." Instead, OSPI finds the IEP team determined another schedule (the District's hybrid schedule) would be sufficient to implement the Student's IEP. However, again, the District implemented this change before providing the Parent PWN of the change. Thus, while OSPI does not find the District to have inappropriately delayed responding to the Parent's requests to consider the Student's individual need for in-person services, and no violation is found regarding the timeline for considering the Parent's request, it does note that the District did violate procedures regarding prior written notice by not providing the notice prior to implementing the change in schedule impacting IEP implementation. OSPI finds a violation and the District will be required to provide additional written guidance to staff regarding providing sufficient time in between providing a parent with PWN and implementing a change impacting a FAPE.

Training: The Parent alleged the District did not provide appropriate training to staff regarding how to utilize the Zoom platform, and that this resulted in a denial of FAPE.

While the documentation and interviews with staff and Parent showed there were technological difficulties assigning a co-host at the beginning of the year, and with some staff members getting acquainted with the Zoom platform—both impacting the delivery of the Student's related services—documentation and interviews also showed that the District responded to this information by working with the company providing the platform to fix the technology issues and by training and re-training its own staff (regarding Zoom, and extensive training on the Student's BIP and implementation of supports and strategies to support the Student). Brief interruptions in the Student's service delivery also may have occurred throughout the year, but these brief interruptions did not appear to be material, as by the end of the school year, the Student had made progress on all IEP goals and had been introduced to some more difficult IEP issues. OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **September 24, 2021** and **October 15, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

The District will develop written guidance to be provided to all District certificated special education staff, including educational staff associates (ESAs), principals, and District special education administration staff, which will address that prior written notice needs to be sent a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or, (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The written guidance should include examples. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school nurses, and other service providers. The guidance will include examples.

By **September 24, 2021**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by October 1, 2021, and provide additional dates for review, if needed.

By **October 15, 2021**, the District will provide OSPI with documentation showing that it provided all District certificated special education staff, including ESAs, principals, and District special education administration staff with the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross reference the list with the actual recipients.

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 September, 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.)