

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-85**

### **PROCEDURAL HISTORY**

On July 7, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Bellevue School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

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 21, 2022, OSPI received additional information from the District. OSPI forwarded the additional information provided by the District to the Parent on July 25, 2022.

On July 25, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District the same day.

Also on July 25, 2022, OSPI received additional information from the District. OSPI forwarded the additional information to the Parent on July 27, 2022.

On July 26, 2022, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the Parent. OSPI received the requested information from the Parent on July 29, 2022 and supplemental information on August 1, 2022. OSPI forwarded the documentation to the District on August 1, 2022.

On July 27, 2022, OSPI received the District's response to the complaint. OSPI forwarded the District's response to the Parent the same day.

On August 3, 4, and 5, 2022, OSPI received supplemental responses from the District. OSPI forwarded the supplemental responses to the Parent on August 5, 2022.

On August 10 and 11, 2022, OSPI received additional supplemental information from the District. OSPI forwarded the additional supplemental information to the Parent on August 12, 2022. OSPI invited the Parent to reply.

On August 19, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District that same day.

OSPI considered all information provided by the Parent 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 July 8, 2021. 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. During the 2021–2022 school year, did the District follow proper procedures for determining whether the Student required recovery services, including involving the Parent in any relevant discussions?

### **LEGAL STANDARD**

Recovery Services: Recovery services are intended to mitigate the impact of COVID-19 school facility closures and COVID-19 pandemic generally. Recovery services should enable the student to make progress on IEP goals and be used if students have not been provided or were unable to access IEP services during the COVID-19 pandemic. While the need for recovery services may not be able to be fully measured while schools were operating in remote or hybrid models, districts were not prohibited from providing recovery services during the 2020–2021 school year. Recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during school building closures and during the 2020–2021 school year on the student’s overall progress and engagement, including progress toward their IEP goals. *Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020* (OSPI, August 26, 2020).

### **FINDINGS OF FACT**

#### **Background: 2019–2020 School Year COVID Facility Closures**

1. At the start of the 2019–2020 school year, the Student was eligible for special education services under the category of other health impairment and was in the eighth grade.
2. On March 13, 2020, the Washington Governor closed all public and private K–12 school facilities in the state through Friday, April 24, 2020. Subsequently, the school facility closures were extended through the remainder of the 2019–2020 school year.
3. At the time of the school facility closures during the 2019–2020 school year, the Student’s December 12, 2019 individualized education program (IEP) was in effect. The Student’s December 2019 IEP included annual goals in the areas of social emotional (managing breaks), adaptive (time on task), writing, reading (fluency and comprehension), and math (subtraction and determine value, counting backwards between 1 and 50, and identifying missing numbers). The Student also had related service goals in speech/language (listening comprehension), with progress reporting at the quarter.

The IEP included several accommodations and provided the following specially designed instruction:

- Adaptive: 240 minutes weekly (provided by a paraeducator in the general education setting)
- Social-Emotional: 240 minutes weekly (provided a paraeducator in the general education setting)

- Social-Emotional: 45 minutes weekly (provided by a social worker in the special education setting)
- Math: 240 minutes weekly (provided by a paraeducator in the special education setting)
- Reading: 480 minutes weekly (provided by a paraeducator in the special education setting)
- Writing: 240 minutes weekly (provided by a special education teacher in the special education setting)
- Speech: 45 minutes weekly (provided by a speech language pathologist (SLP) in the special education setting)
- OT: 45 minutes monthly (provided by an occupational therapist (OT) in the special education setting)

The IEP noted the Student would spend 41.2% of his time in the general education setting.

4. On May 4, 2020, the District emailed the Parents the Student's "Continuous Learning Plan" (CLP). The plan provided the following:
  - Social-Emotional: 30 min wk. Friday's 9:30 am
  - Math: 1 class period per week (5th period)
  - Reading: 3 class periods per week (1st, 2nd and 6th)
  - Writing: 1 class period per week (6th period)
  - Speech: Monthly, 40 minutes embedded into the 6th period
  - Speech: Monthly, 50 minutes
  - Occupational therapy: Consultation, as needed
  - Consultation (BCBA): Monthly, as needed
  - Targeted language arts class and learning opportunity materials emailed

The CLP further stated:

Remote learning opportunities during these times can possibly include, but are not limited to, Teams meetings, practice activities, small group work, video messages, question and answer sessions, or other methods as appropriate. Learning labs are optional for both students and staff. If teachers are holding learning labs, they will inform students in that class via email. Students have the option to join those learning labs offered for their classes.

5. On May 7, 2020, the District issued a prior written notice, documenting that "On 4/13/20, Parents informed the district that [Student] is accessing on-line educational services through [private provider], specially designed instruction in the areas of Reading and Math." The notice further stated, "The parent chose to seek these services through [private provider] as they believe 'appropriate instruction was not provided to [Student]' through District during the COVID-19 related closure." The notice also stated:

A...CLP was sent home on 5/4/2020. This plan codifies the learning opportunities being offered and which goal areas they are supporting during the time of closure due to the COVID-19 Pandemic. Learning opportunities in reading are being provided through several 'class periods', in alignment with the district's schedule during closure. Math learning opportunities, manipulatives, etc. have been provided to the parent and can be accessed online. Questions and concerns regarding learning opportunities in math can be direct to and answered by the special education teacher for the math class and curriculum support staff. Reduced service(s) offerings were due to the...COVID-19 pandemic. There were not any proposed changes by the district to the student's IEP outside of our limited ability to provide full services. The District understands that all districts in the state of Washington

cannot provide the full menu of services they normally would, but are offering services commensurate with general education students (for example, rather than 7 class periods per day, students are attending 7 class periods per week...).

We understand that all parties involved (parents, students, staff, etc.) are hampered by this pandemic, and we have flexibility from federal and state authorities to provide learning opportunities. Because of this, IEP services will not mirror their full-day in-school program, but learning opportunities that are reflective and relate to the students IEP goals are being provided.

6. In July of 2020, OSPI issued its "Reopening Washington Schools 2020: Special Education Guidance," which included a section on "Recovery Service Needs as a Result of COVID-19 School Facility Closure." The guidance stated:

The term 'recovery services', as used in this document, may depict a variety of scenarios. It may describe services need to remedy a denial of [free appropriate public education] FAPE by a district (typically referred to during dispute resolution as 'compensatory services'), and also to describe additional, supplemental services needed to address gaps in service delivery due to COVID-19 health/safely limitations, of which districts had no control.

### **Background: 2020–2021 School Year**

7. The District's 2021–2022 school year began on September 3, 2020.
8. At the start of the 2020–2021 school year, the Student remained eligible for special education services, was in the ninth grade, and his May 29, 2020 amended IEP was in effect. The Student's academic and related service minutes remained unchanged from the December 2019 IEP. The IEP also included the following supplementary service minutes, to be provided in a special education setting:
  - 1:1 Paraeducator Support: 1,061 minutes weekly (provided by a paraeducator)
  - 1:1 Paraeducator Support: 785 minutes weekly (provided by a paraeducator)
  - Consultation: 15 hours monthly (provided by ABA therapist)

The description of services stated:

OT related/consultation services can be a combination of classroom observation, teacher/para training or education, and/or student training as needed.

ABA therapist hours to include meeting with staff, disseminating and documenting data, and consulting with staff. Hours may also include meeting with parents and district representatives 1x per quarter, up to 1 hour per meeting, to review data.

9. As part of the District's protocol for returning students to in-person learning, the District recommended the Student return to in-person school in a "second wave" of students, beginning December 10, 2020.
10. On October 8, 2020, the Student's IEP team met virtually. The meeting participants included four special education teachers, the school-level special education director, the District-level director of special education, administrator, school counselor, general education teacher, SLP, school nurse, OT, and Parents. That same day, the District issued a prior written notice,

proposing to change the Student's recovery services and modified instruction. The notice stated:

- The Student was eligible for recovery services in the areas of writing, reading fluency, reading comprehension, adaptive, social/emotional, and speech.
- The IEP team proposed finalizing recovery services at a later date in order to collect more data, including in the area of math.
- The IEP team proposed modifying the following classes: human geography, freshman composition, and biology.
- The IEP team proposed initiating a functional behavior assessment (FBA).

The notice further stated the IEP team based the recovery services on data indicating lack of progress in writing, reading fluency, reading comprehension, and speech from March 13 until October 16, 2020. The IEP team also based the recovery services decision on a free appropriate public education (FAPE) not provided in the areas of adaptive and social/emotional based upon the CLP. The prior written notice indicated the Parents disagreed with the math recovery data, which indicated the Student was making progress while the Parent reported the Student had regressed in math. The notice also stated the team considered records, recovery and progress monitoring data, the Student's CLP, educator input, and Parent input. Lastly, the notice stated that an IEP amendment meeting would be scheduled the week of October 26, 2020 to consider a reevaluation, FBA, clarify recovery services data, and review the essential learning standards in the modified courses.

11. On October 27, 2020, the Student's IEP team reconvened to discuss modified courses and recovery services. The meeting participants included the four special education teachers, the special education director, District director of special education, administrator, school counselor, general education teacher, SLP, school nurse, OT, and the Parents.

That same day, the District issued a prior written notice, stating as it pertained to recovery services, the team proposed recovery services for the Student for all goal areas. The team proposed that the amount, frequency, and methodology of recovery services be finalized in a meeting to be held at a later date. The reason for the proposal was stated:

Student is eligible for recovery services in the above listed areas based upon progress monitoring data demonstrating one or more of the following (a lack of progress, regression, or deferred instruction) during remote instruction due to Covid 19 from March 13, 2020 to November 9, 2020. The team proposes that a meeting be held specifically to determine recovery services.

The notice further stated recovery services are based upon "[A] review of records and progress monitoring tools as measured by special education progress monitoring data. In addition, the team completed a record review, reviewed progress monitoring data, educator input, and parent input."

12. On November 20, 2020, the Student's IEP team met to discuss music therapy and in-person services for the Student. The meeting participants included four special education teachers, the special education director, District director of special education, administrator, school counselor, general education teacher, SLP, school nurse, OT, and Parents.

13. On November 23, 2020, the District issued a prior written notice, proposing to initiate music therapy and "Wave 1.5"<sup>1</sup> in-person instruction as a recovery service for all areas of academics. The notice stated the team proposed to initiate:

- Eight weeks of music therapy as a supplemental service beginning January 11, 2020 at 60 minutes per week.
- In-person services for Student beginning December 10, 2020.

The notice further stated the reasons for the proposed actions were based upon the recommendation and data from the Student's music therapy evaluation. The team proposed eight weeks of music therapy because as a new approach to specially designed instruction, the team wanted to monitor and assess how the Student responded. At the end of eight weeks, the team planned to reconvene to discuss next steps. The team also determined the Student qualified for in-person instruction based upon consideration of online learning risk factors (such as Teams engagement at less than 50%), as well as a discussion with the family. The notice further stated the team considered music therapy as recovery services, but rejected the idea and instead would reconvene after eight weeks and evaluate if there should be a second session a week added for recovery services.

Other factors listed in the prior written notice included:

- Music therapy cannot be added to this IEP amendment because this IEP ends prior to the date the music therapist is available to begin (January 11, 2021) so the eight weeks of supplemental service of music therapy will be added to the annual IEP in December 2020.
- While "Wave 1.5" in-person instruction begins the second week of December, the Student's family will be traveling and may need to quarantine. More specific information about in-person will be provided next week. In addition, the family will be provided quarantine guidance. Transportation will be provided for the two full days of in-person services.
- Progress monitoring is now due November 30, 2020.
- The team will meet again on December 9, 2020 for the annual IEP meeting.
- On December 7, 2020, the Student's evaluation team met at the Parent's request, to conduct his reevaluation meeting.
- On December 8, 2020, the District issued a prior written notice, proposing to implement the reevaluation results and recommendations. The notice indicated that assistive technology (AT) would also provide ongoing consultation with the IEP team as needed. An FBA and related behavior intervention plan (BIP) will also be implemented.

The notice stated standardized academic, social/emotional, behavior/executive functioning, and OT assessment, AT consultation, FBA, review of records, teacher/parent/student input, and team deliberations were used as the basis for this action.

14. On December 9, 2020, the Student's IEP team met, including the Parents, principal, special education director, Student, special education teacher, general education teacher, OT, AT support staff, and the District director of special education. Recovery services was mentioned in the present levels section of the IEP in information provided by the SLP, which stated:

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<sup>1</sup> "Waves" refers to the grouping of students as the District returned students to in-person learning. "Wave 1.5" indicated the Student returned to in-person instruction earlier than originally planned.

This past year, Student was seen for 45 min weekly sessions with communication targets focused on improving understanding of vocabulary terms related to academic curriculum and listening comprehension. While in virtual instruction, Student is most successful when services are provided for sessions no longer than 30 min. In person, he has demonstrated the ability to attend for 45 min sessions. See his [FBA] for more details in behaviors demonstrated during virtual learning and plan for improving engagement. Student's growth has been impacted by his difficulty with virtual instruction and will be addressed in recovery services due to COVID 19 and in-person services offered in Wave 1.5.

15. On December 15, 2020, the District issued a prior written notice,<sup>2</sup> proposing to change the Student's IEP. The notice included the following description of the proposed action:

The IEP team proposes to implement Student's annual IEP due December 18, 2020, by updating goals, present levels, updating his [BIP], adjusting his course schedule, service matrix, accommodations and modifications.

The IEP team proposes to change minutes of instruction from 1830 [minutes per week] mpw to 1200 mpw, due to Parents' submission of 'Intent to Homeschool' and part-time enrollment in District for specially designed instruction in Reading (480 mpw) math (240 mpw) written expression (240 mpw) and a general education course in Piano for 240 mpw for a total of 1200 min of special and general education per week. Parents selected to receive ancillary services of speech language intervention for 45 mpw and occupational therapy for 30 minutes per week.

The IEP team proposes to initiate a one-hour session each week for eight weeks of music therapy, an evidence-based strategy to combine academic instruction through music to support math, reading and social goal areas; music is also an area of interest and motivation to Student.

The notice further stated the reason for the above action:

The IEP team met on the following dates to develop the annual IEP for Student: 12/9/2020; 12/14/2020; 12/17/2020; A fourth IEP meeting was scheduled for 12/17/20 but due to parent cancellation was rescheduled for 1/11/21; 1/15/21; 1/25/21 but was canceled due to school closure due to snow. A sixth IEP was scheduled for four hours on 2/10/21 and facilitated by Sound Options to clarify continued questions and issues raised by parents and to support completion of the IEP; seventh IEP meeting was scheduled on 3/2/2021. The 7th IEP meeting concluded in order to initiate special education services for Student...The IEP team initiated a private music therapy evaluation...Recommendations from the 10/2020 music therapy evaluation include a trial music therapy intervention during academic instruction to determine whether the Student would demonstrate educational benefit defined as a clear difference in performance on math, reading, and social emotional IEP goals. The district is implementing eight weeks of music instruction in person at the high school and will conclude in May 2021.

Description of other options considered and rejected stated:

At an initial IEP, the parents requested 5 days of in-person educational services, however, have now filed an 'Intent to Homeschool' with part-time services in the district.

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<sup>2</sup> OSPI notes this prior written notice was initially developed on December 15, 2020, but given the information in the notice, it was updated at a later date or dates.

The IEP team considered a full offer of FAPE, 1830 mpw which includes 7 courses. Parents rejected this offer due to their filing of Intent to Homeschool. The team also considered Social Skills class to meet Student's social skills and adaptive goal areas and extended school year (ESY) services.

The notice further stated the reasons for rejecting the above options:

The District is offering virtual and partial in-person opportunities due to Covid-19 restrictions, and considerations for expansion is outside what the IEP team can recommend at this time due to health and safety guidelines of WA State Department of Health and King County. Based upon the student's reading fluency and comprehension data and the student's zone of proximal development the team is recommending 3rd grade reading goals. The student has not yet mastered third grade reading standards in fluency or comprehension.

The team rejected the math goal of identifying coins and dollar bills because the Parents determined that was not educational and they would prefer to teach these skills at home.

The family submitted an 'Intent to Homeschool' and withdrew Student from 3 general education classes.

The family rejected Social Skills class concluding that their focus was on reading instruction.

The team will discuss [extended school year] ESY and music therapy data at the meeting following Spring Break when progress in math and reading from the music therapy data is reviewed...

16. The District was closed for winter break from December 21 through January 1, 2021.
17. On February 10, 2021, the Parents initiated part-time home instruction and withdrew the Student from general education classes with the District.
18. On February 12, 2021, the Parents submitted their declaration of intent to homeschool form.
19. On March 23, 2021, the Parents re-enrolled the Student full time at the District.
20. On March 26, 2021, the Student's IEP team reconvened for an IEP meeting.
21. On April 2, 2021, the District issued a prior written notice, proposing to change the Student's IEP. The notice stated the following proposed actions:
  - "Following full-time re-enrollment in the District, the IEP team is proposing to initiate the IEP amendment, increasing Student's total minutes of instruction to 1835 minutes per week. The program includes specially designed instruction developed in a two-tier system of support."
  - "In the first tier (3/26/2021-06/22/2021) Student will receive special education services for 960 mpw, which includes specially designed instruction in the areas of math calculation (240 mpw), written expression (240 mpw) and reading comprehension (480 mpw). He receives concurrent services from a special education teacher in mathematics problem solving, social-emotional, adaptive, and behavior, each for 240 mpw, and reading fluency skills for 480 mpw. From 3/26/2021-6/22/2021, Student will receive the following concurrent supplementary aids and services: 1:1 Paraeducator support for 1835 mpw, ABA therapist 15 hours/month. Student will



receive supplementary aids services consultation from a private Behavior Analyst for 16 mpw from 04/05/2021-5/12/2021."

- "In the second tier, (06/23/2021-12/17/2021) the District proposes that Student will receive special education services for 480 minutes per week in a special education setting. Services will be provided as proposed in the first tier, however, written expression will be served for 240 mpw in a general education setting. He will receive supplementary aids and services concurrently for 1:1 Para-educator support for 1835 mpw, and consultation from an ABA therapist for 15 hours/ month."

The notice also stated the Student's Parents requested that the Student return to full time enrollment at the high school, voiding their homeschool request.

22. The District was closed for spring break April 12–16, 2021.

23. On May 3, 2021, the Student's IEP team met to review the current IEP and develop the Student's ESY IEP. That same day, the District issued a prior written notice, proposing to add ESY eligibility. The description of proposed action stated:

- "The IEP team proposes adding an additional 5 weeks of Music Therapy for IEP goals Math operational sense and math problem solving operational sense and reading fluency, 5/19/21 - 6/16/21."
- "The IEP team proposes that speech therapy services will be provided at 30 minutes per week."

The reasons for the proposed actions stated:

- "Student's data demonstrates regression or recoupment determining ESY (see ESY IEP). Data demonstrates the need for services in the areas of math problem solving, math calculation, reading fluency, reading comprehension, written expression, and behavior in order to maintain skills."
- "Music therapy data shows that the Student made progress in social emotional skills but did not make growth in reading or math. Because the IEP was not completed until March 2, 2021 and the program worked on the 2019-20 IEP, the team recommends implementing music therapy instruction on the current IEP goals to determine progress in academic areas of math and reading. The team will review the data in August 2021 to determine continued need for services in addition to specially designed instruction."
- "The team recommends Speech services of 30 mpw for 7 weeks of ESY under extenuating circumstances given limited data collection following breaks for recently implemented IEP. Student also demonstrated little progress on prior IEP paraphrasing goal through 2/12/2021. Given negative reactions to virtual services, it is difficult to determine cause of limited progress or evaluate effects of long breaks. On his IEP goal recalling details for 6th grade passage, he showed improvement over the course of 1 month's data collection, but he then had an increase in avoidance behaviors and data was unable to be collected."

The notice further stated that the team discussed recovery services, but that no recovery options were determined at this meeting. The notice further stated that other relevant factors included, "Music Therapy will continue for the remainder of the 20/21 school year for an additional 5 weeks, 5/19/21–6/16/21...Therapist's report is attached to the IEP amendment. The team will meet to review music therapy data at the end of August 2021."

24. On June 15, 2021, the Student's IEP team met to discuss ESY and recovery services. The June 2021 IEP included several accommodations and provided the following specially designed instruction:

- Reading Comprehension: 240 minutes weekly (provided by a special education teacher in the special education setting)
- Reading Fluency: 240 minutes weekly (provided by a special education teacher in the special education setting)
- Writing: 240 minutes weekly (provided by special and general education teachers in the general education setting)
- Math Calculation: 240 minutes weekly (provided by a special education teacher in the special education setting)
- Math Problem Solving: 240 minutes weekly (provided by special education teacher in the special education setting)
- Social-Emotional: 240 minutes weekly (provided by a special education teacher in the special education setting)
- Adaptive: 240 minutes weekly (provided by a special education teacher in the special education setting)
- Behavior: 240 minutes weekly provided by a special education teacher in the special education setting)
- Speech: 45 minutes weekly (provided by an SLP in the special education setting)
- OT: 40 minutes monthly (provided by an OT in the special education setting)

The IEP erroneously noted the Student would spend 73.84% of his time in the general education setting. However, the June IEP entitled the Student to approximately 1,975 minutes weekly during a 1,835 minute week.

25. On June 17, 2021, the District issued a prior written notice, proposing:

- ESY from 9 am–1 pm to correspond to the four hours per day in the ESY IEP
- To add supplementary aids and services of a paraeducator during summer football practice
- A "Person Centered Plan" (PCP) to be completed the first quarter of the 2021–2022 school year
- In-person music therapy changing the dates to the first 9 weeks of the 2021–2022 school year based upon availability of music therapist staffing (September 1–November 5, 2021)
- One-hour of staff training related to supports for students with the Student's medical syndrome to be completed the first quarter of the 2021–2022 school year
- An additional accommodation that instruction will include the instructional cycle of pre-teach, teach, reteach of teacher identified high leverage content area key vocabulary and concepts

The notice also stated the Parents asked about recovery services, which the Parents believed should include a fifth year of high school, private reading instruction, and intensive math instruction, but that recovery services have not yet been determined and would be discussed next year. The notice indicated that a request for a fifth year of high school falls under District policy and procedure 2421 (grade level retention policy).

### **The Complaint Investigation Timeline Began July 8, 2021**

26. The complaint investigation timeline began on July 8, 2021, and at that time, the Student's June 2021 IEP was in place.

27. On July 8, 2021, the District issued a prior written notice, proposing to change music therapy to three Friday sessions on July 9, July 16, and July 23 between 2–3 pm. The notice further stated:

In IEP amendment dated 6/15/2021, in-person Music Therapy dates changed from ESY to the first 9 weeks of the 2021-2022 school year based upon availability of staffing (September 1 - November 5, 2021) because the music therapist was not available for in-person services during ESY hours and the team declined virtual music therapy for Student. Observation and data reveal a higher level of engagement when service is provided in-person. With 3 music therapy sessions available during July, music therapy will now run from the weeks of September 1, 2021 - October 15, 2021 (7 weekly sessions) at which time the team will reconvene to review music therapy data. The parent will provide transportation for the three July 2021 sessions.

### **2021–2022 School Year**

28. The District’s 2021–2022 school year began on September 1, 2021.

29. At the start of the 2021–2022 school year, the Student remained eligible for special education services under the category of other health impairment and was in the eleventh grade. The Student’s June 2021 IEP was in place.

30. In its response to this complaint, the District stated its position that the Student’s IEP team had sufficiently met during the 2021–2022 school year. The District stated the Student’s IEP team met for approximately 12 and a half hours for IEP meetings and more than 11 hours for additional meetings about transition, behavioral intervention plans, etc., for a total of over 24 hours of meetings with the Parents. The District cited the following meetings:

- 9/13/21 – IEP amendment meeting, 3:30–4:30 pm
- 10/21/21 – Person Centered Planning with team and Parents part 1, 3–4 pm
- 10/28/21 – Private reading provider and Parents, SS, 9–10 am
- 11/8/21 – Q1 progress monitoring meeting, 8–9 am
- 11/10/21 – Person Centered Planning with team and Parents part 2, 3:30–4:30 pm
- 12/3/21 – IEP meeting, 7:15–9:15 am
- 12/6/2021 – IEP meeting, 7:15–9:15 am
- 12/10/21 – IEP meeting, 2–4 pm
- 2/7/22 – Reading system review, 12–1 pm
- 2/15/22 – IEP amendment, 12:30–1:15 pm
- 3/3/22 – Q2 progress monitoring meeting, 3:15–4:30 pm
- 3/9/22 – FBA/BIP meeting and IEP goal amendment, 3–4:30 pm
- 3/17/22 – BIP/FBA review with Parent and BCBA and SS, 8–8:40 am
- 4/7/22 – ESY IEP meeting, 10–11 am
- 4/15/22 – Regional skills center cooperative tour, 3–4:30 pm
- 4/21/22 – IEP transition meeting, 3–4:30 pm
- 4/25/22 – IEP amendment meeting and transition planning, 7–9 am
- 4/25/22 – Q3 progress monitoring meeting, 3–4 pm
- 5/5/22 – IEP amendment meeting, and goal amendment, 9:30–10:30 am
- 7/7/22 – Q4 progress monitoring, 3:15–4:30 pm

31. On April 25, 2022, the Student's music therapist provided a report addressing the Student's progress on the IEP math goals (with a total of four sub-goals). The report was based on data collected from music therapy sessions between January 12 and April 20, 2022. Results indicated progress in all goal areas targeted in the music therapy setting and stated the Student's consistent engagement in the music therapy session and strong motivation to participate in music therapy interventions demonstrated that music is a unique learning strength. The report recommended continued 1:1 music therapy service for the Student for 60 minutes each order to maintain current progress in math. The report stated the clinician would continue consultation with the Student's math teacher for generalizing music strategies to the math classroom.

32. On May 24, 2022, the District issued two prior written notices. The first prior written notice addressed the Parent's refusal of recovery services, and the second documented the District's refusal to conduct an IEP meeting. The first prior written notice stated:

Student was determined eligible for recovery services in the areas of Social Emotional, Adaptive, and Behavior noted in Prior Written Notice dated 10/16/2021. Recovery Services were offered through Aspiring Youth in collaboration with the District during the summer of 2022. Parents rejected the offer of recovery services for Social Emotional, Behavior, and Adaptive by not completing the Aspiring Youth registration form and indicating through email and phone conversation that they were not interested, thus this offer is considered to be declined by the family. The team considered Social Emotional, Behavior, and Adaptive recovery services this summer in collaboration Aspiring Youth. The following areas for recovery services have not been scheduled at this time: Literacy and Math. Teams will connect with families when these recovery services have been determined. The District stands ready to serve recovery services for Student in the areas of Social Emotional, Behavior, and Adaptive through Aspiring Youth through its start on June 27, 2022, should the family change their mind.

The second prior written notice stated:

The team is proposing to refuse the parents request for an additional IEP meeting to discuss an additional writing goal, recovery services, reviewing targeted ELA data, transition, after school plan, and adding a self-advocacy goal.

The IEP team has met sufficiently this year to develop IEP services and specially designed instruction for the Student. The IEP team this year met: 9/13/21 3:30-4:30; 12/3/21 7:15-9:15; 12/6/2021 7:15-9:15; 12/10/21 2-4; 3/9/22 3-4:30; 4/7/22 10-11:00; 4/25/22 7-9; 5/5/22 9:30-10:30 for a total of 12 hours and 30 minutes.

The family has also participated in progress monitoring meetings on 11/8/21 8-9; 3/3/22 3:15-4:30; 4/25/22 3-4; and additional meetings about transition, BIPs, PCP, etc. on 10/21/21 3-4; 10/28/21 9-10; 11/10/21 3:30-4:30; 2/7/22 12-1; 2/15/22 12:30-1:15; 3/17/22 8-8:40; 4/15/22 3-4:30; 4/21/22 3-4:30 for a total of 11 hours and 40 minutes.

- Social Emotional Self advocacy goal was amended on 3/9/22.
- The team reviewed the transition plan on 4/25/22.
- The writing goal was amended on 5/5/22.
- Prior Written Notice dated 5/24/22 addresses recovery services.
- The IEP team has exhaustively reviewed and discussed the writing goal, transition, self advocacy goal, ELA and after school plan in previous meetings, there is no

justification for convening a meeting to discuss further. The most recent IEP amendment (5/13/2022) will be reviewed by the IEP team prior to the beginning of the 22/23 school year.

33. June 21, 2022 was the District's last day of school for the 2021–2022 school year.

### **Summer 2022**

34. On July 7, 2022, the Parent filed this special education community complaint with OSPI.

35. On July 21, 2022, the District special education director sent a letter to the Parents in response to their request for information about recovery services for the Student, and in response to the special education community complaint filed with OSPI. The letter stated:

Recovery Services is a term that was created by OSPI that is specific to the provision of additional special education services to address a student's lack of appropriate progress on IEP goals due to missed or limited services or for other reasons because of the COVID-19 pandemic. Recovery services can address a lack of reasonable progress on IEP goals or to support a student's return to expected levels progress towards post-secondary goals (as indicated in the IEP Transition Plan and High School and Beyond Plan).

Student's IEP Team previously determined that he was eligible for Recovery Services in the areas of adaptive, reading comprehension, reading fluency, writing, and social/emotional skills, as well as for related services from an...SLP. There was a disagreement between you and the IEP team as to if Student was eligible for Recovery Services in math. District offered Recovery Services for Student in the areas of adaptive and social/emotional through [private provider]. You declined that offer.

The District continues to stand ready to provide Student Recovery Services in the areas of literacy (reading comprehension, reading fluency, and writing) and related services from a Speech Language Pathologist and to resolve any disputes between you and the District, the District will also agree to provide Student with Recovery Services in the area of math.

36. On July 27, 2022, general counsel for the District emailed OSPI and reiterated much of what was in the July 21, 2022 letter to the Parents and further stated:

...The District does not believe that by the preponderance of evidence OSPI can conclude that the District violated Part B of the IDEA related to this Student during the calendar year at issue in the manner the Parents have alleged...The District recognizes that OSPI has created the concept of recovery services and to the extent that OSPI believes that the District did anything wrong with respect to determining eligibility for and offering recovery services to this Student, we believe that the above are appropriate student-specific corrective actions.

The District also believes that [documentation submitted by the District in response to this Complaint] reflects that the District engaged in efforts to address this issue with the Parents in the 25 hours and 10 minutes of meetings that have occurred this school year alone.

To the extent that the Parents are challenging the offer of services by the District in connection with [private provider], the District identifies that [private provider] and its parent organization [non-profit organization licensed by Department of Children, Youth,

and Families...], are appropriate providers for the District to partner with. Both have a long track record of success in providing services in the areas of Social Emotional, Adaptive, and Behavior. In fact, participating in [private provider] programs is a frequent parent request with respect to the provision of compensatory education and recovery services, and as a contract service provider to serve elements of a student's IEP in collaboration with school districts. While the Parents and the District members of the IEP team may not agree on what the Student's recovery service needs were and how to best address them, the District worked with the family in good faith to address this topic consistent with the guidance OSPI has provided to school districts on the topic of recovery services.

## CONCLUSIONS

**Issue One: Recovery Services** – The Parent alleged the District failed to hold an IEP team meeting specifically to discuss the duration, extent, nature etc. of recovery services for the Student. Specifically, the Parents alleged the District unilaterally determined, without Parents' input, the duration, extent, nature, provider for the Student's recovery services and did not follow OSPI's recovery services guidance.

General Process for Determining Need for Recovery Services: Recovery services are intended to mitigate the impact of COVID-19 school facility closures and COVID-19 pandemic generally. Recovery services should enable a student to make progress on IEP goals and be used if students have not been provided or were unable to access special education services during the COVID-19 pandemic. There was no specific process a district was required to use to plan recovery services, nor did OSPI dictate what recovery services should look like in a district (type, format for services, duration, etc.). Rather, recovery services should be determined by IEP teams on a case-by-case basis. While the need for recovery services may not have been able to be fully measured while schools were operating in remote or hybrid models, districts were not prohibited from providing recovery services during the 2020–2021 school year. OSPI recommended districts address students with greater need first.

Here, the Parent argued the District failed to convene an IEP meeting dedicated solely to determining recovery services. However, documentation provided in response to this complaint shows that the District began working with other members of District staff, outside providers, and the Parents to determine recovery services during an October 8, 2020 IEP meeting and continued to meet and review the Student's progress while determining and finalizing details for recovery services. Since the Student's IEP team first met to discuss recovery services in October 2020, the Student's IEP team has held more than 20 meetings to discuss the Student's IEP, progress, and educational needs. In its response to this complaint, the District provided IEPs and prior written notices from the 2020–2021 school year, but did not provide documentation detailing what occurred during all of the IEP meeting the team held during the 2021–2022 school year. However, the District provided sufficient data to demonstrate the school's willingness to meet with the family repeatedly, adjust the Student's providers and service minutes based on his progress, and repeatedly stated they would determine recovery services at a future date. Had the District offered nothing to the Student and continued to state it would address recovery services at a "future date," that would have created a potential issue. However, based on documentation provided in

response to this complaint, it appears the school remained responsive to the Parents requests for meetings and concerns regarding the Student's needs. The team consistently addressed concerns about regression, in part by providing access to music therapy and "Wave 1.5" in-person instruction when it was apparent the Student had struggled in the online format, and when the team provided the Student with extended school year services (ESY). Additionally, documentation provided by the District shows the IEP team discussed recovery services at, at least five of the Student's IEP team meetings.

Despite the District holding more than 20 meetings in approximately 18 months (between October 2020 and May 2022), the Parents stated they were not afforded a dedicated IEP meeting in which the team would only discuss recovery services. However, documentation provided by the District shows the IEP team met to discuss recovery services on May 24, 2022, at which time the Student was found eligible to receive recovery services in social emotional, adaptive, and behavior, but not literacy and math (at that time). The Parents rejected the recovery services. There was no requirement that districts had to hold a dedicated IEP meeting to only develop a recovery services plan and thus a lack of a recovery services specific meeting is not a violation. OSPI acknowledges that the Parent took issue with the private provider the District proposed to provide the Student's recovery services; however, the District chose a private provider that it had used for compensatory services in the past, and OSPI finds no issue with the suitability of the provider. Additionally, in response to the Parents' complaint, the District immediately communicated with the Parents its offer of additional recovery services in the area of math and suggestions of new methods for the Student to receive recovery services. Overall, OSPI finds no violation with respect to the District's general recovery services planning and that the District was responsive to the Parents' requests to discuss and meet about recovery services.

Student Specific Need for Recovery Services: The Parent also alleged the District failed to provide recovery services in the Student's areas of need (math), and that the District has refused the Parents' requests for an IEP meeting to review data and consider the Parents' input. While a student is not automatically entitled to recovery services in all areas on their IEP, the IEP team should make a student-specific decision based on student-specific data about the impacts of the COVID-19 pandemic.

Here, by May 2021, music therapy data showed the Student made progress on his social emotional goals but not on reading or math, the Student's June 2021 IEP doubled the Student's math service minutes and added 240 minutes per week for behavior. Additionally, the Student would no longer be served by a paraeducator in reading, math, adaptive, and social emotional service minutes, and would instead have these services provided directly by a special education teacher. By April 2022, the musical therapy instructor indicated progress in all goal areas targeted in the music therapy setting. Based on the documentation, the Parent and District members of the IEP team met many times, including for a reevaluation that occurred in December 2020, IEP meetings, and meetings at the end of each quarter to review and discuss the Student's progress on his goals.

The team determined that the Student needed recovery services in October 2020 and continued to meet to discuss the implementation of recovery services, among other topics addressed in prior written notices from the numerous IEP meetings. Neither party provided documentation

regarding the IEP meetings held during the 2021–2022 school year, so it is not clear what specific data the Student’s IEP team used to determine the type and amount of recovery services for the May 2022 meeting. However, based on the documented efforts of the District to serve the Student over the prior two school years, it is more likely than not that the May 2022 IEP team had sufficient data to make its determination. And, based on the District’s response to this complaint, the team has engaged in a substantial number of meetings and the District has collected and shared with the Parents an abundance of data as to the Student’s progress.

As of late July 2022, the District reached out to the Parent, proposing two options for the Student to access recovery services, including stating the District would provide recovery services in math, which the Parent rejected. Overall, OSPI finds the Student’s IEP team met numerous times, the Parents had many opportunities to provide input, the IEP team has already amended the IEP to increase services in response to the Student’s needs, and the District has offered appropriate recovery services decided upon by the IEP team. OSPI finds no violation. OSPI does recommend the District continue to extend its offer of recovery services and encourages the Parents to accept the District’s offer.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

Dated this \_\_\_\_ day of August, 2022

Dr. Tania May  
Assistant Superintendent of 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.)