

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-92

PROCEDURAL HISTORY

On August 3, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from a parent (Complainant) of a student (Student 9) attending the Edmonds School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the education of a class of students.

On August 4, 2022, 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 provide information on those students that fit within the class described in the Complainant's complaint request.

On August 8, 2022, OSPI received additional information from the Complainant. OSPI forwarded a copy of that information to the District on August 9, 2022.

On August 10, 2022, the District provided OSPI with a list of students that fell within the class of students described in the Complainant's complaint request. On August 15, 2022, OSPI selected nine students from the list for investigation (Students 1-9).

On August 16, 2022, the District requested an extension of time for it to submit its response. That same day, OSPI granted a brief extension.

On August 31, 2022, OSPI received the District's response to the complaint and forwarded a redacted version¹ to the Complainant on September 2, 2022. OSPI invited the Complainant to reply.

On September 7, 2022, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on September 14, 2022.

On September 16, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on September 26, 2022. OSPI forwarded that information to the Complainant on September 28, 2022.

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

SCOPE OF INVESTIGATION

The time period under investigation begins on August 4, 2021, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to August 4, 2021 is mentioned for informative, background purposes only.

¹ Under the Family Educational Rights and Privacy Act (FERPA), OSPI was required to redact any personally identifiable information on students other than the Complainant's child. (Student 9 in this investigation, see *infra*, was the Complainant's child.)

ISSUE

1. In preparing for the summer of 2022, did the District follow proper procedures for determining recovery services for students who qualified for special education, including consideration of Student-specific needs, Parent participation in determination of need, and communication of the decision to the Parent?

LEGAL STANDARDS

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).

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Basis for IEP Team Decisions: Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. *See, e.g.,* WAC 392-172A-03020(g); *see also, generally,* WAC 392-172A-03090.

FINDINGS OF FACT

Background Information

2019–2020 & 2020–2021 School Years

1. The District's response read, in part:

On March 12, 2020, the Governor ordered all public school closed due to the COVID-19 pandemic. In compliance with this order, the District closed its schools and temporarily ceased the provision of educational services to all District students.

...

In April 2020, the District began offering remote educational services to District students, including those eligible for special education services. In the spring of 2020, the District also developed Continuous Learning Plans for students with IEPs setting forth the services students would receive during the period of remote learning. The District completed the 2019-2020 school year serving students through a remote model.

...

In the fall of 2021, the District commenced providing special education services to students through remote instruction delivered according to individual student's IEPs. In December 2020, the District began offering in-person special education services for those students for whom it was determined appropriate given limitations in the students' ability to access remote instruction.

In April 2021, the District offered in-person learning opportunities to all eligible students. Some students elected to access the in-person learning opportunities, while others elected to remain fully remote.

2021–2022 School Year

2. The District's first day of school was September 8, 2021.
3. The District's response included a letter, dated June 6, 2022, and addressed to "Families of Students Eligible for Recovery Services from Special Education." It read, in part:

Some students who qualified for special education services also qualify for additional services, called recovery education services, through one-time federal funds. Your child does qualify for recovery education services, and you had indicated initial interest in accessing these services. Each district is developing what and how these services will be delivered, we will be offering recovery services this summer that coincide with many of the districts' summer programs.

We understand that many of you have already been contacted by your students case manager and if you have not, this conversation will occur in your upcoming annual IEP.

You will be receiving an additional communication from the special education department in the next few days with the individual offer of recovery services for your student, with specificity on your students offer program and have the opportunity to accept or reject. [sic] Your child is not required to attend, it is only an offer of additional services.
4. The District's response included a letter, dated June 28, 2022, and addressed to "Families of Students Eligible for Recovery Services from Special Education." It read, in part:

Thank you for your patience during the recovery services process. You should have received an email with an offer of recovery services for your student. Your student is eligible to receive recovery services July 11, 2022 through August 4, 2022 in conjunction with district summer school. We have hired special education teachers to support your student during this summer school offering.

If you did not respond to the original email please follow the steps below to accept or decline these services...We understand that this year's offer may not be of interest due to the needs outlined by the IEP team and/or family. If this is the case, parents [and] guardians can request an IEP meeting to discuss additional offers once teachers are back in session in the fall. Recovery services will be offered and delivered through the summer of 2023.

If your student was deemed eligible to receive recovery services in speech/language therapy, occupational therapy, physical therapy, or audiology, though services are being designed to occur during the 2022-2023 school year as we are currently experiencing staff shortages for summer programming.

5. The District's response included a separate letter, dated June 28, 2022, addressed to "Families of Students Eligible for Special Education Recovery Services." This letter read, in part:

We wanted to send an update to provide additional information about [the tutoring company]. [The tutoring company] offers remote tutoring instruction and will customize their service and support to each students' needs and goal areas. Parents will have access to session notes from [the tutoring company], and recorded sessions.

You should have received an email with an offer of remote tutoring instruction through [the tutoring company]. Your student is eligible to receive remote tutoring instruction through [the tutoring company] during the summer of 2022 through the summer of 2023. This reflects the district's offer of recovery services for your student.

If you agree to this offer of recovery services through [the tutoring company] and did not respond to the original email, please follow the steps [outlined in this email].

...

Once we have received your response to accept these services, you will receive an email with your student's goal areas and allotted hours that were determined by your student's progress data during the pandemic shift to remote learning from March 2020 through June 2021.

[The tutoring company] will reach out to each family directly to begin the enrollment process the week of July 11, 2022. Students can use their school computer if that is preferred.

If your student was deemed eligible to receive recovery services in speech language therapy, occupational therapy, physical therapy, or audiology, those services are being designed to occur during the 2022-2023 school year, as we are currently experiencing staff shortages for summer programming.

6. The District's response also read, in part:

For the 2021-2022 school year, the District served students in-person in accordance with their IEPs. As such, there were no COVID related impacts during the school year at issue.

...

Due to staffing shortages and other difficulties in securing District staff to deliver recovery services, the District was unable to provide recovery services during the 2021-2022 school year. As a result, the District focused on developing a plan for the delivery of services during the summer of 2022.

Although the District endeavored to secure District staff for the summer recovery services program, it was unable to do so. Faced with a lack of staff support for an in-District recovery services program, throughout the spring of 2022, the District explored other options for serving students.

In early June 2022, the District issued a communication to the families of all students who had been determined eligible for recovery services by their IEP teams. The communication reminded those families that their student had qualified for recovery services and stated that the District would issue a follow-up communication reflecting the specific services offered.

By June 22, 2022, the District sent letters to the parents of students who had qualified for recovery services setting forth the specific offer of recovery services. The District offered students the option of participating in the District's summer school program as a means of obtaining in-person learning opportunities. The District also offered students the option of participating in summer tutoring with an outside agency. The amount of recovery services offered to each student was determined by the District.

Specific Students Selected for Investigation

Student 1

2020–2021 School Year

1. At the start of the 2020–2021 school year, Student 1 was in the second grade, attended a District elementary school, and was eligible for special education under the disability category of autism.
2. Student 1's IEP team created a new IEP for Student 1 on February 17, 2021. It read, in part:
Student 1 has currently been receiving services remote within the special education setting due to COVID-19 school closures. In a typical year Student 1 would be with his general education peers during recess and lunch times...With the building opening for special education students there is not currently in person opportunities to engage with Student 1's general education peers. When typical schooling returns and Student 1 shows safe circle behaviors inclusion in a morning meeting can be explored as an option for Student 1...Services have been provided during remote learning due to COVID-19 restrictions.
...
Social/Emotional...Student 1 has been attending online zooms with an adult present to support his learning. During zooms Student 1 receives physical praise from adults by receiving hugs, and arm/shoulder squeezes. During in person learning social distancing is enforced as much as possible. Student 1 struggles to find his own space at circle times and needs support finding an appropriate circle spot in 4/5 opportunities. Student 1's goal was when given a time when sitting next to peers Student 1 will have safe hands improving self-control and personal safety from touching others in 4/5 opportunities. Due to COVID restrictions we cannot focus on this goal as much as we would like to shape this behavior. We have decided to change his goal to when given a peers is using something Student 1 wants or makes a choice that frustrates Student 1 he will make a choice from provided options with a safe body/quiet voice when taking turns is not an option from making a safe choice in 0/5 opportunities. This goal is based off of data we have from our return to in

person learning. When Student 1 does not get the choice he wants (recess choice, toys, activity) he becomes very frustrated and will scream yell or throw objects near him in 4/5 opportunities. Due to COVID restrictions we cannot share items as easily as we could in the past. We would like Student 1 to focus on making a different choice that he can do/play with to shape his behavior when sharing is not an option.

2021–2022 School Year

3. At the start of the 2021–2022 school year, Student 1 continued to be eligible for special education services, was in the third grade, and attended a District elementary school. At that time, Student 1's February 2021 IEP was in effect.
4. On December 3, 2021, a special education teacher emailed Student 1's parents, stating, in part: Based on a review of your student's engagement in learning (attendance during virtual or in-person learning), progress reports from January 2020 through June 2021, and any data from the Continuous Learning Plan, your student is currently recommended for recovery services...We need to know if you are interested in receiving recovery services for your student or not? If so, would you prefer services during the Early Release Fridays January – June (transportation provided) or during our summer programming?

In subsequent communications in early December 2021:

- The District explained, "Students are only eligible for one time frame for recovery services, so Student 1 could either do the early release days on Fridays or summer school;"
- The District explained the recovery services would be provided in a special education setting and Student 1 would receive instruction in the service areas identified on his IEP; and,
- The Parent wrote, "I think the best option for Student 1 is summer."

5. According to the attendance data for Student 1 included in the District's response, Student 1 had approximately 9.5 excused absences in spring 2022.
6. On February 16, 2022, Student 1's IEP team created a new IEP for Student 1. The February 2022 IEP read, in part:

The Student's Recovery Services Needs: The IEP team determined that Student 1 would benefit from recovery services. Recovery Services will be delivered based on school district guidance.

...

Behavior: Student 1 special education teacher reported information regarding Student 1's performance in class. When Student 1 is calm, he is able to stay in the designated locations, manage his materials, and follow the daily routine. He is sometimes able to show empathy and apologize for mistakes without prompts. He has shown growth in his physical self-control over time. He is able to share his emotions but does not like to say he is sad when he perceives that it is bad to feel something other than happy. When he is frustrated, he will get out of his seat, move near students or staff, and will tip over or throw objects. When given work, he will often complain about the task or the period being too long. Most of the time he is able to follow class routines and rules and has gotten better about arguing over time. When Student 1 is upset, he often demands to know whose fault it is but does not often accept the answer that is given. He can fixate on a topic, question, or response which can cause escalating behavior. He is working on waiting with a quiet hand instead of yelling

for attention from others. His waiting period is short and he can continue to escalate if he is not attended to quickly. Student 1 does tease peers if he knows how to trigger them. This can look like responding verbally to a student who is showing distress, or moving near a student who he knows prefers more space. At recess, he often chooses to engage with peers that he knows will respond with inappropriate behaviors.

...

Student 1 demonstrates significant difficulties with problem behaviors at school. He demonstrates aggression and rule-breaking behaviors and can behave in atypical ways at times. He can engage in behaviors that impede his learning and affect those around him while at school. He continues to require specially designed instruction in behavior and a functional behavior plan is recommended.

...

Social/Emotional...Student 1 demonstrates significant difficulties with social skills as compared to his peers. He requires specially designed instruction in the area of social skills focused on interpreting social cues from others, making friends, and conversational skills.

7. On March 7, 2022, the Parent emailed the District, stating, in part:

I am trying to plan for summer camp for Student 1. The message below [from December 2021] is the most recent information I have received. Is Student 1 still signed up for recovery services?

I am assuming it is part time which eliminates the camp option those weeks. He really loves the camp and needs the contact with the other kids. The new teacher for special education knows Student 1 from her recent work at Camp...and tells me Student 1 fits in with the group.

Later that day, the special education teacher responded, stating, in part, "Student 1 is still signed up for recovery services. We are still waiting for details about when the recovery services will be during the summer. As soon as I know, I'll pass along the information."

8. On May 4, 2022, the Parent emailed the special education teacher, again asking if the Student was still eligible for participation in the summer 2022 recovery services. The Parent's email read, in part:

I schedule and take him to all his appointments and services and have not scheduled him for summer day camp or swim lessons in the month of July in anticipation of him attending the summer session. Please let me know as soon as you can. Most camps and activities are full and taking wait lists.

On May 9, 2022, the special education teacher responded, stating, in part:

I checked again with the District office. They are still in the planning stages for recovery services. It has taken more time than they anticipated since it is a new program...Do any of the summer camps or swim lessons let you pay a refundable deposit? At this point, I would try to schedule him for any camps that still have openings.

On May 10, 2022, the special education teacher responded again, stating, in part, "We are still waiting for dates, times, and locations."

9. The District’s response read, in part, “Student 1 was offered recovery services in the summer of 2022, but declined to access the offered services.”
10. The District’s response included the following progress reporting information for Student 1:
- February 17, 2021 IEP:
 - Behavior – June 2021 through June 2022: Sufficient Progress to Mastered.
 - Social Skills (self control) – June 2021 through January 2022: Emerging Skill to Sufficient Progress.
 - Adaptive Behavior – June 2021 through January 2022: Sufficient Progress to Insufficient Progress demonstrated to meet this annual goal.
 - Math – June 2021 through January 2022: Sufficient Progress to Insufficient Progress demonstrated to meet this annual goal.
 - Reading – June 2021 through January 2022: Sufficient Progress.
 - Written Language – June 2021 through January 2022: Sufficient Progress.
 - Language Skills (receptive language) – June 2021 through January 2022: Sufficient Progress.
 - Language Skills (expressive language) – June 2021 through January 2022: Sufficient Progress.
 - Language Skills (wh questions) – June 2021 through January 2022: Sufficient Progress.
 - February 16, 2022 IEP:
 - Behavior – June 2022: Emerging Skill.
 - Social Skills (self control) – June 2022: Emerging Skill.
 - Adaptive Behavior – June 2022: Emerging Skill.
 - Math – June 2022: Emerging Skill.
 - Reading – June 2022: Emerging Skill.
 - Written Language – June 2022: Emerging Skill.
 - Language Skills (expressive language) – June 2022: Emerging Skill.
 - Language Skills (wh questions) – June 2022: Emerging Skill.

Student 2

2020–2021 School Year

11. At the start of the 2020–2021 school year, Student 2 was eligible for special education services and was in preschool.
12. On May 14, 2021, Student 2’s IEP team created a new IEP for Student 2. Student 2’s May 2021 IEP read, in part:
- Student 2 is sometimes prone to distraction, but this may be because he has been participating in speech therapy remotely (via Zoom) due to COVID-19 school closures, and he usually has his older sibling and two younger siblings, as well as his mom, in the room with him. His parents are concerned about his speech skills and that he be able to interact well with others...Student 2 is young and has not been attending a general education preschool program this school year.

Student 2’s May 2021 IEP provided the Student with the following specially designed instruction in a *special education setting* from August 1, 2021 through May 18, 2022: 30 minutes 3 times a month of speech skills.

2021–2022 School Year

13. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of speech or language impairment, was in kindergarten, and attended a District elementary school. At that time, the Student’s May 2021 IEP was in effect.
14. The District’s response read, in part:
Although the documentation indicated that Student 2 was not eligible for recovery services, recovery services were offered to Student 2 in the summer of 2022. Student 2 declined to access the offered services. As such, Student 2 has been offered, but has not accepted, any recovery services from the District.
15. On May 4, 2022, Student 2’s IEP team created a new IEP for Student 2. Student 2’s May 2022 IEP reads, in part:
Student 2 is a kind, creative, and enthusiastic student. He easily participates in all speech therapy activities. His parents are concerned about his speech skills and that he be able to interact well with others. They also report concern for his behavior, noting that he comes home from school frustrated at times.
...
The Student’s Recovery Service Needs: Student 2 does not require recovery services.

Student 2’s May 2022 IEP provided Student 2 with the following specially designed instruction in a *special education setting* from May 10, 2022 through May 9, 2023: 30 minutes 3 times a month of speech and language skills.

The Parent of Student 2 signed the May 2022 IEP, and according to a “Contact Attempt Report,” on March 22, 2022, the Parent confirmed she could attend the May 4, 2022 IEP meeting.

16. The District’s response included the following progress reporting information for Student 2:
- May 14, 2021 IEP:
 - Speech Skills (articulation) – June 2021 through January 2022: Emerging Skill.
 - May 4, 2022 IEP:
 - Speech and Language Skills (articulation/phonology) – June 2022: Sufficient Progress.
 - Speech and Language Skills (expressive language skills) – No information.

Student 3

2020–2021 School Year

17. At the start of the 2021–2022 school year, Student 3 was in the second grade and attended a District elementary school.
18. On June 24, 2021, Student 3’s IEP team created a new IEP for Student 3. The June 2021 IEP reads, in part:

Reported by...Special Education Teacher on 2/23/2021: Student 3 is attending [the] 2nd grade general education class during remote learning due to COVID-19 school closure. Reported by [teacher]: When present, Student 3 participates in class discussions and is happy to share news with her classmates. Student 3 completes a great deal of her Seesaw activities. She is reading a bit above grade level at this time. It has been fun to watch Student 3 grow this year. I know the setting is difficult for all children but I am proud of the work she has done this year.

ADVEREcovery servicesE IMPACT: Student 3 is demonstrating significant delays in the area of Social-Emotional (~-2.0 Standard Deviations). This developmental delay adversely impacts her ability to participate in the general education curriculum and qualifies her for special education services under the disabling category of Developmental Delay (DD). Student 3 requires specially designed instruction (SDI) in Emotion Regulation, Social Skills, and Written Language in order to progress in the general education program.

...

Social Emotional... Due to increase behaviors at home, we reduced Student 3's demands to not attend social small group Zoom classes per Mom's request. Even with the reduced work demands Student 3 can have between 15-50 or more behaviors daily. Mom is working very closely with her on her academics and her behaviors. Due to these reasons, small group zoom have also been put on hold. We will return to these goals when in person learning resumes.

...

Writing: Report by...Special Education Teacher on 2/23/21: Student 3 is working very hard during remote learning and she is making great stride in her writing.

The June 2021 IEP included measurable annual goals in the areas of emotional regulation, social skills, and written language. It also provided Student 3 with the supplementary aid and service of: paraeducator support – 2 hours 1 time a day.

2021–2022 School Year

19. At the start of the 2021–2022 school year, Student 3 was eligible for special education under the category of developmental delay, was in the third grade, attended a District elementary school, and her June 24, 2021 IEP was in effect.
20. The District's response read, in part, "Student 3 was offered recovery services in the summer of 2022, but declined to access the offered services. As such, Student 3 has been offered but has not accepted any recovery services from the District."
21. Student 3's IEP team created a new IEP for the Student on February 25, 2022.

According to a "Contact Attempt Report" included in the District's response, the Parent was informed of the date of the meeting, and stated that she could attend the same, on three occasions prior to the meeting taking place.^{2 3}

The February 2022 IEP read, in part:

The Student's Recovery Services Needs: The team has considered this service and determined it to be inapplicable to her needs.

...

Student 3 started in the Intensive Social Emotional Support classroom at the beginning of the 21-22 school year. She attended 28.5 days of 104, not consecutive. This has directly impacted her learning progress.

Adverse Impact Statement: Attendance issues have directly impact data collection regarding behavior/Social/Emotional [as well as] data collection in writing skills. Additional time and observations are needed to discern Student 3's service needs.

The February 2022 IEP included goals in the areas of emotional regulation, social skills, and written language. It also included the related service of counseling.

22. Student 3's IEP team created a new IEP for the Student on June 14, 2022. The June 2022 IEP read, in part, "The Student's Recovery Services Needs: The team has considered this service and determined it to be inapplicable to her needs."

The June 2022 IEP: incorporated the results of a recent reevaluation, dated June 2, 2022; stated Student 3 continued to show a need to be educated in the "Intensive Social Emotional Support" classroom; provided Student 3 with specially designed instruction in behavior, social skills, and written language; and provided Student 3 with the related service of behavior counseling (15 minutes 1 time a week).

The Parent signed a June 14, 2022 IEP included in the District's response that includes a watermark reading 'Draft' overtop the IEP.

23. On June 24, 2022, the Complainant (Parent of Student 9) emailed District staff, stating, in part:
I am writing with permission from Parent of Student 3. Student 3's Parent has been calling the District offices and reaching out to anyone she can get a hold of in regard to her children's offer of recovery services. Unfortunately, Parent of Student 3 has not had an IEP team meeting to discuss the areas her children, [including Student 3], qualify in, or the services that would be offered to them, so she is confused about what they qualify for, and how the District determined what services they would be offered and the time allotted as she was not part of these discussions. Please provide the Parent of Student 3 with an explanation and opportunity to get this information...Student 3 has not received [an offer of recovery services] and Parent of Student 3 would like to find out why.

² The pertinent meeting invitation stated the purpose of the meeting was to "Review the IEP."

³ The Parent did sign a February 25, 2022 IEP included in the District's response that includes a watermark reading 'Draft' overtop it.

24. The District's response included the following progress reporting information for Student 3:
- June 14, 2022 IEP:
 - Behavior – June 2022: No instruction provided.
 - Social Skills – June 2022: No instruction provided.
 - Written Language – June 2022: No instruction provided.

Student 4

2020–2021 School Year

25. At the start of the 2020–2021 school year, Student 4 was in the third grade, attended a District elementary school, and was eligible for special education under the category of specific learning disability.
26. On January 26, 2021, Student 4's IEP team created a new IEP for Student 4. The January 2021 IEP read, in part:
- During remote learning due to school closures due to COVID, Student 4 is a hard worker and is motivated to learn. He does his best work...During his remote learning due to school closures due to COVID, Student 4's behavior does not impede his learning or that of others. While in the classroom at school, Student 4's behavior did impede his learning. He engaged in work avoidance behaviors that interfered with him accessing the curriculum and making progress in learning.

The January 2021 IEP provided Student 4 with specially designed instruction in the following areas: reading, learning strategies/organizational skills, and written language.

2021–2022 School Year

27. At the start of the 2021–2022 school year, Student 4 continued to be eligible for special education services, was in the fourth grade, and attended a District elementary school. At that time, Student 4's January 26, 2021 IEP was in effect.
28. The District's response read, in part, "Student 4 did not qualify for recovery services."
29. On January 19, 2022, the Parent of Student 4 was invited to an IEP meeting to "Review [Student 4's] Current IEP" scheduled for January 21, 2022. According to a "Contact Attempt Report," the Parent of Student 4 stated he could attend the IEP meeting scheduled for January 19, 2022.
30. On January 21, 2022, Student 4's IEP team created a new IEP for Student 4. The January 2022 IEP read, in part, "The Student's Recovery Services Needs: The IEP team determined that Student 4 does need access to recovery services."

The January 2022 IEP provided Student 4 with specially designed instruction in reading, learning strategies/organizational skills, and written language.

The District's response included a title page for Student 4's January 2022 IEP that included the Parent's signature.

31. The District's response included a prior written notice, dated January 21, 2022, that read, in part, "Recovery services were considered and accepted by the IEP team." This same prior written notice stated the Parent attended the January 21, 2022 IEP meeting.

32. The District's response included the following progress reporting for Student 4:

- January 21, 2022 IEP:
 - Written Language (adds detail) – June 2022: Insufficient Progress.
 - Written Language (conventions) – June 2022: Insufficient Progress.
 - Learning Strategies/Organization Skills (starting work) – June 2022: Sufficient Progress.
 - Learning Strategies/Organization Skills (staying focused) – June 2022: Sufficient Progress.
 - Reading (phonics) – June 2022: Emerging Skill.
 - Reading (comprehension) – June 2022: Sufficient Progress.
 - Reading (fluency) – No information.

Student 5

2020–2021 School Year

33. At the start of the 2020–2021 school year, Student 5 was eligible for special education services under the category of other health impairment, was in the tenth grade, and attended a District high school.

34. On February 10, 2021, Student 5's IEP team created a new IEP for Student 5. The February 2021 IEP read, in part:

Biology:

Interactions: Student 5 rarely/never comes to Zoom sessions so I cannot comment.

Strengths: Cannot comment as he does not come to class or submit independent work assignments.

...

Submissions: The only assignment he has submitted all semester is a weekly quiz for which he received a 2 out of 10.

...

Social/Emotional:

Interactions: I have not had Student 5 attend class this semester, but I did have him last year. He is well liked by his peers and seems to have many friends.

...

Supports: His attendance is the main area that needs to improve. Student 5 is very capable of doing the work and doing it well. He does benefit from adult support to prompt him to begin, to check in and answer questions and review material at times, and to work with him on knowing what assignments are missing and how to get caught up.

The February 2021 IEP provided Student 5 with specially designed instruction in math, reading, written language, emotional regulation, and learning strategies/organizational skills. It also provided Student 5 with the supplementary aid and service of behavior consultation.

2021–2022 School Year

35. At the start of the 2021–2022 school year, Student 5 continued to be eligible for special education services, was in the eleventh grade, and attended a District high school. At that time, the Student’s February 2021 IEP was in effect.
36. The District’s response read, in part, “Student 5 was offered recovery services in the summer of 2022, but declined to access the offered services. As such, Student 5 has been offered but has not accepted any recovery services from the District.”
37. According to a “Contact Attempt Report,” on January 7, 2022, the Parent was invited to attend an IEP meeting scheduled for January 26, 2022, and she confirmed her ability to attend that same day.
38. On January 26, 2022, the Parent was invited to an IEP meeting scheduled for January 26, 2022 to discuss, in part: transition services; a possible reduction of the Student’s schedule; review of the Student’s current IEP; graduation; and attendance issues.
39. On January 26, 2022, the Student’s IEP team created a new IEP for Student 5. The Parent signed the title page of Student 5’s January 2022 IEP. The January 2022 IEP read, in part:
- The Student’s Recovery Services Needs:** Recovery services were offered, but not requested for this student at this time. (Special education teacher...1/27/2022).
- ...
- General Education Teacher Report:** Student 5 is a junior attending a District high school. Student 5 joined us second quarter after not passing any classes at his previous school during first quarter. At the time of writing, he is passing math, Family and [silent sustained reading], but not passing Social Skills and Entry. He is passing one of three core classes. His current attendance rate is approximately 25%, and due to this, it is being considered to shorten Student 5’s schedule.
- ...
- Social/Emotional:** Student 5 just joined...this quarter and has attended my class seven days so far out of twenty seven, which is about twenty-six percent. The first few days he was hyperactive, and the then he was extremely tired the other days he attended. The results of his interactions with the other students was mixed.

The January 2022 IEP provided Student 5 with the following specially designed instruction: math; reading; written language; emotional regulation; and learning strategies/organizational skills. It also provided Student 5 with the supplementary aid and service of behavior consultation.

40. The District’s response included the following progress reporting for Student 5 for the 2021–2022 school year:
- January 26, 2022 IEP:
 - Emotional Regulation (decision making) – January 2022: Insufficient Progress.
 - Learning Strategies/Organization Skills (task initiation) – January 2022: Insufficient Progress.
 - Reading (reading comprehension) – January 2022: Insufficient Progress.
 - Written Language – January 2022: Insufficient Progress.
 - Math – January 2022: Insufficient Progress.

Student 6

2021–2022 School Year

41. At the start of the 2021–2022 school year, Student 6 was eligible for special education services under the category of autism, was in the eighth grade, and attended a middle school in the District. At that time, the Student's May 26, 2021 IEP was in effect.
42. On August 12, 2021, the District emailed the Student's mother to ask if she was interested in recovery services for her child, who was eligible for recovery services.
43. On December 13, 2021, Student 6's teacher emailed the Parent, asking whether Student 6 would need transportation for recovery services during the summer of 2022.
44. On December 14, 2021, the Parent responded that Student 6 would need transportation to recovery services during the summer of 2022.
45. On June 6, 2022, an email from a District staff member, stating in a formal letter, that Student 6 qualifies for recovery services.
46. On June 13, 2022, the Student's mother emailed Student 6's teacher to request information on recovery services.
47. On June 14, 2022, Student 6's teacher emailed the Student's mother, stating that she did not have any information on recovery services.
48. On June 22, 2022, a special education program coordinator emailed the Student's mother a recovery services offer, and asked the mother to respond to the recovery services offer by June 24, 2022.
49. On June 23, 2022, the Student's mother emailed the special education program coordinator, requesting information on recovery services. The Student's mother requested a response by June 3, 2022.
50. On June 27, 2022, the special education program coordinator emailed the Parent, stating she had emailed recovery services information on June 22, 2022, attached the recovery services offer, and asked the mother to respond to the recovery services offer by June 30, 2022. The special education program coordinator sent out another copy of the recovery services to the mother and asked the mother to respond by June 30, 2022.
51. On June 28, 2022, a formal letter from the special education director stated that recovery services will be available July 11 through August 4, 2022, and that a response is needed by July 6, 2022. There will also be recovery services available during the summer of 2023.
52. On June 30, 2022, the Student's mother emailed the special education program coordinator that she was struggling with whether to accept the District's recovery services offer. She

mentioned that the IEP meeting during the school year did not discuss recovery services. The mother mentioned she would need to request an IEP meeting during the fall of 2022. She also stated that she would be willing to accept online reading and writing recovery services tutoring only during the summer of 2022, if the tutor is versed in the Student's disabilities. She wanted the rest of the Student's recovery services and reading and writing to be in person during the fall 2022.

53. On June 30, 2022, the Student's mother emailed a District staff member because she was confused about the recovery services offer. She wanted a Zoom meeting.
54. On July 5, 2022, the Student's mother emailed the special education director to ask questions about recovery services because the recovery services offer was not clear to her.
55. On July 7, 2022, the Student's mother followed up with the special education director because she had not received answers to her July 5, 2022 email.
56. On July 8, 2022, a District staff member responded to the Student's mother's email that an IEP meeting in the fall to determine the next steps for recovery services was a great plan.
57. On July 8, 2022, the Student's mother responded to an email from the special education manager. She stated that it was her belief that at this point, recovery services were not available to her child.
58. On July 10, 2022, the special education director responded to the Student's mother that she had a death in the family and that is why she had not responded earlier. The special education director also stated that there was still an opportunity this summer to work on the academic goals with a tutoring company and the other goals in the fall.
59. On July 10, 2022, the Student's mother responded to the special education director's email, asking how many hours the Student would have in reading and writing tutoring this summer.
60. On July 11, 2022, the special education director responded that she did not know how many hours Student 6 would receive, but that the tutoring company would contact the mother to set up tutoring hours that work for the family, and the length of time the mother wants.
61. On July 11, 2022, the Student's mother wrote an email to the special education director, stating that she did not know if the 20 hours of recovery services provided in the recovery services offer applied to all IEP service areas.
62. On July 13, 2022, the Student's mother emailed the special education director, stating that she is not accepting the recovery services offer for the summer, and that she would communicate with her child's IEP team during the fall of 2022 regarding recovery services.
63. The District's response read, in part, "Student 6 was offered recovery services in the summer of 2022, but declined to accept the offered services. As such, Student 6 has been offered but has not accepted any recovery services from the District."

64. The District's response included the following progress reporting for Student 6 for the 2021–2022 school year based on the November 2021 IEP:

- Reading (reading comprehension/inferencing) – January through June 2022: Sufficient Progress.
- Reading (vocabulary/word meaning) – January through June 2022: Emerging Skill to Sufficient Progress.
- Written Language (writing organization) – January through June 2022: Sufficient Progress.
- Written Language – January through June 2022: Sufficient Progress.
- Social Skills (social engagement structured) – January through June 2022: Sufficient Progress.
- Social Skills (social engagement unstructured) – January through June 2022: Sufficient Progress.
- Learning Strategies/Organization Skills (participation) – January through June 2022: Sufficient Progress.
- Learning Strategies/Organization Skills (face teacher/follow redirection) – January through June 2022: Sufficient Progress.
- Learning Strategies/Organization Skills (take materials home) – January through June 2022: Sufficient Progress.
- Language Skills (story recall) – January through June 2022: Sufficient Progress.
- Language Skills (conversation) – January through June 2022: Sufficient Progress.
- Language Skills (figurative language) – January through June 2022: Emerging Skill to Sufficient Progress.

Student 7

2021–2022 School Year

65. At the start of the 2021–2022 school year, Student 7 was eligible for special education services under the category of autism, was in the tenth grade, and attended a high school in the District. At that time, the Student's January 20, 2021 IEP was in effect.

66. On January 12, 2022, the Student's IEP team developed a new annual IEP for the Student. The IEP "Team Considerations" section stated, "The IEP determined that Student 7 has made significant progress and recovery services are not recommended at this time. See prior written notice for more information."

67. Student 7 had the following progress reporting data related to Student 7's January 12, 2022 IEP:

- Learning Strategies/Organization Skills – February through June 2022: Sufficient Progress.
- Learning Strategies/Organization Skills – February through June 2022: Sufficient Progress.

Student 8

2021–2022 School Year

68. At the start of the 2021–2022 school year, Student 8 was eligible for special education services under the category of multiple disabilities, was in the first grade, and attended an online school. At that time, the Student's March 9, 2021 IEP was in effect.

69. On March 8, 2022, the Student's IEP team developed a new annual IEP for the Student. Under the IEP's "Team Consideration" section, it stated, "Based on data from March 2020 through April 2021 measuring progress towards IEP goals, it was determined that [Student 8] does not need access to recovery services. Her family is in disagreement see [prior written notice]."
70. On March 8, 2022, according to the prior written notice, the IEP team approved recovery services in the areas of social and adaptive. The action taken in the IEP was based on direct work and observations of Student 8 in her general education class, as well as her self-contained classroom, communication with her general education teacher, review of records, classroom/teacher created assessments, conversations with parents and a review of parent participation worksheet & finding of three-year evaluation dated March 2021.
71. On May 25, 2022, the Student's mother emailed the special education director, stating that she had been called by the assistant principal and told that her child qualified for summer school. The mother wanted to know if summer school was being offered instead of recovery services. The Student's mother requested a response by June 3, 2022.
72. On June 3, 2022, the Student's mother emailed the special education director and an additional District staff member, asking about recovery services again. She also asked if the District could give parents a stipend to enroll children in community programs for the summer that were designed for students with disabilities.
73. On June 9, 2022, the Complainant, on behalf of the Student's mother, emailed, asking for the District to respond to mother's May 25 email.
74. On June 9, 2022, the special education director responded to the mother, informing her that Student 8 qualifies for recovery services and acknowledging the conflict in the IEP and PWN regarding the recovery services decision for Student 8.
75. On June 10, 2022, the Student's mother emailed the special education director about recovery services and summer school.
76. On June 10, 2022, the special education director emailed the Student's mother, stating that the mother would be receiving a recovery services letter in the near future.
77. On June 10 and 14, 2022, the Complainant, on behalf of the Student's mother, emailed a District staff person regarding the mother's previous emails. The District staff member responded to the Complainant, stating that she had replied to the mother's questions.
78. On June 14, 2022, the assistant superintendent emailed the Complainant, stating that she had just sent an email to Student 8's mother.
79. On June 14, 2022, the assistant superintendent emailed the Student's mother that Student 8 was eligible for summer school and that details would be provided in the near future. (Emails show: throughout the latter half of June 2022, District staff continued to communicate with the family of Student 8 regarding appropriate recovery services.)

80. According to a June 23, 2022 prior written notice, the family had not yet received an offer for recovery services. The Student's mother enrolled Student 8 in "The Social Skills Camp". This program met Student 8's recovery services social/emotional needs. The IEP team is writing a proposal to the assistant superintendent to use funds set aside for Student 8's recovery services for the camp.
81. On June 24, 2022, the Student's mother emailed the District that she had yet to receive a recovery services offer from the district.
82. On June 24, 2022, the "North Office Coordinator, Special Education Program," sent an email to the mother, providing a letter on recovery services which was signed by the special education director and dated June 21. The letter stated that Student 8 was eligible for tutoring services by "Varsity Tutors" during the summer 2022 and during the 2022–2023 school year. The District wanted an answer by June 30, 2022.
83. On June 26, 2022, the Student's mother replied to the special education program coordinator's June 24 email, stating that recovery services offer does not meet the needs of Student 8, and that she has sent an alternative proposal to the assistant superintendent.
84. On June 27, 2022, the assistant superintendent emailed the Student's mother that the District is not able to contract out recovery services.
85. On June 28, 2022, the Student's mother emailed the assistant superintendent, acknowledging the assistant superintendent's response and stating that she has not received new information regarding recovery services for families that are in similar situations. The Student's mother also explained why the District's recovery services proposals did not work for Student 8.
86. On June 28, 2022, the Student's mother emailed the assistant superintendent, asking whether she could use a \$650 allocation for individualized curriculum for Student 8.
87. On June 29, 2022, a District staff person emailed the Student's mother, explaining why the request for the reimbursement of funds for the social camp were denied.
88. On June 29, 2022, the Student's mother responded to a District staff person, asking for an explanation as to how the camp is different than other outside providers that the District pays for.
89. On July 14, 2022, the Student's mother emailed the assistant superintendent about the recovery services proposal.
90. On July 14, 2022, the assistant superintendent responded that the District was not able to pay for the outside services.
91. On July 14, 2022, the Student's mother responded that she had not received a prior written notice that addresses the approval or disapproval of the proposal.

92. The District's response included the following progress reporting data from Student 8's November 5, 2021 IEP:

- Written Language (writing conventions) – June 2021 through January 2022: Emerging Skill.
- Reading (phonemic awareness) – June 2021 through January 2022: Emerging Skill to Sufficient Progress.
- Reading (ordering phrase/illustrations to create awareness) – June 2021 through January 2022: Emerging Skill to Sufficient Progress.
- Math (addition/subtraction fluency within ten) – June 2021 through January 2022: Emerging Skill.
- Math (describe parts of sets up to 30) – June 2021 through January 2022: Emerging Skill to Sufficient Progress.
- Adaptive Behavior (following safety instructions) – June 2021 through January 2022: No Instruction.
- Adaptive Behavior (walking in line with the class) – June 2021 through January 2022: No Instruction.
- Social Skills (interacting with peers) – June 2021 through January 2022: No Instruction.
- Social Skills (apologizing without prompts) – June 2021 through January 2022: Insufficient Progress to No Instruction.
- Gross Motor Skills (jumping) – June 2021 through January 2022: Sufficient Progress.
- Gross Motor Skills (balancing) – June 2021 through January 2022: Sufficient Progress.
- Fine Motor Skills (bilateral motor skills) – June 2021 through January 2022: Sufficient Progress.
- Fine Motor Skills (drawing/pre-writing skills) – June 2021 through January 2022: Sufficient Progress.
- Fine Motor Skills (scissors skills) – June 2021 through January 2022: Sufficient Progress.
- Speech and Language Skills (answering questions) – June 2021 through February 2022: Emerging Skill to Sufficient Progress.
- Speech and Language Skills (receptive language (following directions)) – June 2021 through February 2022: Emerging Skill.
- Speech and Language Skills (expressive language) – June 2021 through February 2022: Emerging Skill.
- Speech and Language Skills (articulation (multi-syllabic words)) – June 2021 through February 2022: Sufficient Progress.
- Speech and Language Skills (articulation (final consonants)) – June 2021 through February 2022: Sufficient Progress to No Instruction.

The District's response included the following progress report data from Student 8's March 8, 2022 IEP:

- Written Language (writing conventions) – June 2022: No Instruction.
- Reading (ordering phrases/illustrations to create sentences) – June 2022: No Instruction.
- Reading (reading comprehension) – June 2022: No Instruction.
- Math (addition/subtraction fluency within ten) – June 2022: No Instruction.
- Math (numbers) – June 2022: No Instruction.
- Adaptive Behavior (following safety instructions) – June 2022: No Instruction.
- Adaptive Behavior (walking in line with the class) – June 2022: No Instruction.
- Social Skills (peer relations/self regulation) – June 2022: No Instruction.
- Fine Motor Skills (bilateral motor skills) – June 2022: Sufficient Progress.
- Fine Motor Skills (strength) – June 2022: Sufficient Progress.
- Fine Motor Skills (scissors skills) – June 2022: Sufficient Progress.

- Fine Motor Skills (strength and stamina) – June 2022: No instruction.
- Speech and Language Skills (answering questions) – May 2022: Sufficient Progress.
- Speech and Language Skills (receptive language (following directions)) – May 2022: Sufficient Progress.
- Speech and Language Skills (expressive language) – May 2022: Sufficient Progress.
- Gross Motor Skills (stairs) – June 2022: Sufficient Progress.
- Gross Motor Skills (playground) – June 2022: No instruction.

Student 9

93. At the start of the 2021–2022 school year, Student 9 was eligible for special education services under the category of autism, was in the sixth grade, and attended a District elementary school. At that time, the Student’s November 2020 IEP was in effect.
94. On August 12, 2021, the District emailed the Parent to ask if she was interested in recovery services for her child, who was eligible for recovery services. The Parent replied that she was interested in recovery services during the school year.
95. On November 18, 2021, the Student’s IEP team developed a new annual IEP for the Student. Under the “Team Consideration” section of this IEP, it stated that recovery services were not discussed.
96. On January 27, 2022, the director of special education sent an email, stating that recovery services was not going to be available during the school year and cancelling previously announced recovery services that was scheduled to begin January 28, 2022. The District announced that recovery services was going to be provided as part of 2022 summer school programs, which were going to be held July 11 through August 5, 2022. The District also informed parents that additional information would be provided during the spring.
97. On March 23, 2022, the Student’s IEP team held a meeting to amend the Student’s IEP. Under the “Team Consideration” section of this IEP, it stated that recovery services were not discussed.
98. On May 17, 2022, the Parent contacted the Student’s assigned program manager, asking about recovery services.
99. On May 18, 2022, the special education manager replied that she did not have any information. Then the Parent emailed the director of special education, to ask about recovery services.
100. On May 26, 2022, the special education director responded that recovery services information would be coming in the near future, and that a meeting could be set up to discuss what was known about recovery services. The Parent accepted the offer.
101. On June 6, 2022, the “Intermediate Intensive Support” person at the elementary school invited the Parent to a recovery services meeting on June 7, 2022. The Parent responded to the invitation by asking whether the director of student services was also attending the

meeting, or in the alternative, the special education director. The director responded that she would not be able to attend the meeting because of an injury. She added the special education manager and the interim special education program manager to the response. The special education manager responded that she was not available for the meeting.

102. On June 7, 2022, the Parent emailed, asking about current recovery services information. A District staff person responded that more information was coming out later in the week. The Parent suggested that the meeting be canceled, and it was.
103. There is a prior written notice dated June 16, 2022. The recovery services offer included 24 hours of tutoring. In-person would be conducted by the District and virtual tutoring would be conducted by a tutoring company. The Parent emailed questions to the special education director about recovery services.
104. On June 17, 2022, the Parent emailed a District staff person, asking for electronic copies of any documentation from March 2020 to the present regarding how Student 9 qualifies for recovery services. A District staff person provided the documentation. The Parent responded that based on the documentation she received, she did not see anything about recovery services and asked if there is any other place that mentions Student 9 qualifying for recovery services. A District staff person responded that internal District documents show that a District staff person recommended the Student for recovery services at the end of last year, but on the most recent IEP meeting, it indicated that recovery services was not discussed, and other than that, a District staff person wrote, "there is no other place I know of that shows [Student] qualifies for Recovery Services." Additionally, a District staff person wrote in this email that he was waiting to hear back from the administration about a meeting.
105. On June 20, 2022, the Parent emailed the District's special education office, asking for electronic copies of any documentation from March 2020 to the present regarding how Student 9 qualifies for recovery services. The Parent also sent an email to the school board, stating that parents were not included in recovery services decision making that was supposed to take place through IEP teams. This email provided questions and comments about the recovery services process.
106. On June 21, 2022, the Parent sent an email to the special education director that asked clarification questions about recovery services. The Parent also asked for an emergency IEP meeting/recovery services meeting to discuss her child's deteriorating mental health.
107. On June 22, 2022, the special education director answered the Parent's June 16 questions. The Parent responded with more questions.
108. On June 23, 2022, the "North Office Coordinator, Special Education Program" sent an email to the Parent, providing a letter on recovery services which was signed by the special education director. The letter informed the Parent that the District recovery services offer was as follow: Student 9 is eligible to receive tutoring services through the tutoring company over the course of the 2022–2023 school year and summer. Student 9 was offered 10 hours of tutoring in

emotional regulation and writing, and the recovery services decision was based on individual Student needs and goal areas. The letter also stated that the District wanted an answer by June 24, 2022, and that if the Parent refused the services, she could request an IEP meeting in the fall of 2022.

109. The special education program coordinator provided the Parent with a letter, dated June 22, 2022, offering 10 hours of recovery services tutoring in emotional regulation and writing to be done by the District.
110. On June 23, 2022, the Parent emailed the assistant superintendent of educational services, stating that the recovery services offered the day before was different than the recovery services offered in the June 16, 2022 PWN.
111. On June 23, 2022, the Parent responded that she could not accept or reject the recovery services offer because she did not have sufficient information and was waiting for a response from the special education director.
112. On June 24, 2022, the District responded to the Parent's June 20 records request. The District provided the records on July 11, 2022.
113. On June 25, 2022, the Parent emailed the assistant superintendent of educational services to follow up on the June 23 email the Parent sent.
114. On June 28, 2022, the District updated information on recovery services and the tutoring company and mentioned that they will continue to send out updated information through July 8, 2022.
115. On June 29, 2022, the Parent sent the special education director and the assistant superintendent of educational services an email, asking questions about recovery services and commenting how it was unfortunate that these questions could not be answered during an IEP meeting.
116. The District's response included the following progress reporting data related to Student 9's March 23, 2022 IEP:
 - Written Language (planning and writing) – January through June 2022: Emerging Skill.
 - Written Language – January through June 2022: Sufficient Progress.
 - Emotional Regulation – January through June 2022: Emerging skill.
 - Adaptive Behavior – January through June 2022: Sufficient Progress.
 - Social Skills – January through June 2022: Emerging Skill to Insufficient Progress.

CONCLUSIONS

Issue 1: Determination of Summer 2022 Recovery Services – The Complainant alleged the District did not follow proper procedures for determining recovery services for students who were eligible for special education for the summer of 2022.

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. Recovery services should be determined by IEP teams on a case-by-case basis. *Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020* (OSPI, August 26, 2020).

Parents are expected to be full participants in IEP discussions regarding recovery services. For example, parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in state and district-wide assessments, and what services the agency will provide to the child and in what setting.

Following its investigation of the class representatives—the nine Students selected for investigation—OSPI can make the following, systemic conclusions.

Determination of Eligibility

First, individualized determinations were made as to whether any particular student with an IEP qualified for summer 2022 recovery services, and that the parents of the respective students were involved in said eligibility determinations.

From the documentation, it appears there was a systemic policy in place whereby each student's IEP team was directed to discuss whether recovery services for summer 2022 were appropriate for that individual student whenever the respective annual IEP meetings were scheduled to take place throughout the 2021–2022 school year. For example, most students' annual IEPs, which were created during 2021–2022 school year, included an annotation in the 'Team Considerations' section, detailing whether that team determined recovery services were appropriate for the student in summer 2022.⁴

And, importantly, it appears the parents of the respective students were involved in the initial determination of whether summer 2022 recovery services were warranted. By way of limited example: it was determined Student 2 did not require summer 2022 recovery services at Student 2's May 4, 2022 IEP meeting, and the documentation shows the Parent of Student 2 attended that meeting; it was determined Student 3 did not require summer 2022 recovery services at Student

⁴ Furthermore, on August 10, 2022, the District provided a list of Students with IEPs which had IEP teams decide during the 2021–2022 school year whether summer 2022 recovery services were warranted. (The list named approximately 953 Students.) In its August 10, 2022 submission, the District was able to identify which students had IEP teams that did recommend summer 2022 recovery services and which students had IEP teams that did not recommend summer 2022 recovery services.

3's June 14, 2022 IEP meeting, and the documentation shows the Parent of Student 3 attended that meeting; and it was determined Student 4 did require summer 2022 recovery services at Student 4's January 21, 2022 IEP meeting, and the document shows the Parent of Student 4 attended that meeting.

Additionally, it appears Student specific data was utilized in determining whether a particular Student was eligible for summer 2022 recovery services. For example: as shown above, parents were generally involved in this process; the eligibility determinations took place, for the most part, during annual IEP meetings; and not all students with IEPs were automatically determined eligible for summer 2022 recovery services.⁵

In sum, it appears individualized determinations were made as to whether any particular student with an IEP qualified for summer 2022 recovery services, and that the parents of the respective students were involved in said eligibility determinations.

Determination of Specificity – Service Areas and Number of Hours in Each Service Area –

However, generally, after a student's IEP team determined them to be eligible for summer 2022 recovery services, it does not appear the IEP teams made a specific determination regarding what recovery services were to be provided to that student, meaning how many hours of recovery services were to be provided during the summer of 2022, and in which specific service areas.⁶ Several factual circumstances support this conclusion:

- Of the eight Students investigated as part of this decision, it appears only two Students had IEP teams that made *somewhat* specific determinations regarding what recovery services were to be provided during the summer of 2022. For example: for Student 6, the District offered 20 hours of summer 2022 recovery services, but the District never clarified what IEP service areas were to be addressed during these 20 hours; and for Student 9, there were conflicting offers from the District for either 10 or 24 hours of tutoring over the summer of 2022.
- Given the timelines evinced by the documentation, it makes sense that most students' IEP teams did not make specific determination regarding length of summer 2022 recovery services and subject matter of summer 2022 recovery services. As detailed above, eligibility for summer 2022 recovery services was determined at annual IEP meetings throughout the 2021–2022 school year, but the contours of the summer 2022 recovery services program was in flux as late as June 2022. For example: the District's initial plan had been to create a program specific to "summery recovery services" but it was "unable to...secure [the necessary] staff", so on June 28, 2022, the District then shifted to proposing to provide students eligible for recovery services those services "in conjunction with [the] District's [2022] summer school."
- Emails produced during this investigation show: as late as the end of the 2021–2022 school year, several Parents were confused as to the exact offer of recovery services for summer 2022 that was being proposed by the District. By way of limited example: on May 10, 2022, the Parent of Student 1 asked for information on the plan for summer 2022 recovery services, and the special education

⁵ Based on OSPI's calculation, approximately 180 of 953 students with IEPs were not found eligible for recovery services; and, 773 of 953 students with IEPs were found eligible for recovery services.

⁶ The District's response did include documentation showing that, for those students whose IEPs did determine the student required summer 2022 recovery services, those services were to consist of the services in the student's IEP – but, with few exceptions, there was no greater specificity provided.

teacher responded, stating, in part, "We are still waiting for dates, times, and locations"; and on June 24, 2022, the Parent of Student 9 emailed the District on behalf of the Parent of Student 3, with whom she had spoken to, stating the Parent of Student 3 was unclear as to what the plan was for Student 3 regarding summer 2022 recovery services.

- Five of the nine Students selected for investigation had IEP teams that determined summer 2022 recovery services were appropriate, but none of these five Students actually ended up accessing summer 2022 recovery services.
- Oftentimes, a diverse set of topics needs to be discussed at an IEP meeting, making it that much more unlikely that IEP teams during the 2021–2022 went beyond mere determination of summer 2022 recovery service eligibility, and actually made specific determinations regarding how many hours, and in which areas, were to be provided to any particular student. As but one example: recovery services for Student 5 were to be discussed at Student 5's January 26, 2022 IEP meeting, but according to meeting invitation paperwork, the following topics were, in part, to be discussed at that meeting: transition services; a possible reduction of Student 5's schedule; review of Student 5's current IEP; graduation; and attendance issues.

In sum, the above factual circumstances show that, generally, after a student's IEP team determined him or her to be eligible for summer 2022 recovery services, it does not appear his or her IEP teams made a specific determination regarding what recovery services were to be provided to that student, meaning how many hours of recovery services were to be provided during the summer of 2022, and in which specific service areas. Accordingly, based on this latter conclusion, OSPI finds a violation.

For corrective actions, the District will be required to:

- (1) Develop a plan to both make specific determinations regarding recovery services (see Conclusion 2, above) throughout the 2022–2023 school year;
- (2) Develop a plan to implement the aforementioned specific recovery services determinations;
- (3) In mid-Spring 2023, provide OSPI with documentation of the specific determinations made for no less than 20 students; and,
- (4) By the end of summer 2023, provide OSPI with documentation demonstrating its actual implementation of the specific recovery service determinations for the above stated 20 students.

In relation to (1) and (2), above, OSPI reminds the District:

- Recovery service determinations need to be individualized. For example, it would be inappropriate for a district, as a matter of course, to provide all students that require recovery services with the same number of hours of recovery services. Similarly, it may be that a particular student requires recovery services in one IEP service area, but not in a separate IEP service area.
- A district can make recovery service determinations, and implement the same, throughout the 2022–2023 school year; a district does not need to wait until summer 2023 to implement recovery service determinations. And, in fact, implementation of recovery service determinations throughout the 2022–2023 school year may help alleviate staffing challenges in recovery service implementation during the summer of 2023.
- In providing students with recovery services, districts and IEP teams can consider either reimbursing parents for the cost of a private provider, and/or the District can directly contract with a private provider, as needed based on a student's individual circumstances.
- The District may consider reaching out to either ESD 189 and/or the other districts that belong to ESD 189 for recovery service models and activities that have been successful in the region.

CORRECTIVE ACTIONS

By or before **October 28, 2022, April 28, 2023, and September 1, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Development of Plan for Specific Recovery Service Eligibility Determinations and Implementation of the Same

By or before **October 28, 2022**, the District will provide OSPI with documentation it has:

- (1) Developed a plan to both make specific determinations regarding recovery services (see Conclusion 2, above) throughout the 2022–2023 school year; and,
- (2) Developed a plan to implement the aforementioned specific recovery services determinations.

The above stated plans should consider the four reminders mentioned below.

Documentation of Specific Recovery Service Determinations for 20 Students

By or before **April 28, 2023**, the District will provide OSPI with documentation of the specific recovery service determinations made for no less than 20 students, meaning the specific IEP service areas and the hours to be provided in each identified area.

Importantly, the April 28, 2023 submission must include documentation showing the respective parent (or adult student) has been informed of the same.

Documentation of Implementation of Specific Recovery Service Determinations for 20 Students

By or before **September 1, 2023**, the District will provide OSPI with documentation demonstrating the implementation of the specific recovery service determinations for the above stated 20 students.

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.

REMINDERS

Recovery service determinations need to be individualized. For example, it would be inappropriate for a district, as a matter of course, to provide all students that require recovery services with the same number of hours of recovery services. Similarly, it may be that a particular student requires recovery services in one IEP service area, but not in a separate IEP service area.

A district can make recovery service determinations, and implement the same, throughout the 2022–2023 school year; a district does not need to wait until summer 2023 to implement recovery service determinations. And, in fact, implementation of recovery service determinations throughout the 2022–2023 school year may help alleviate staffing challenges in recovery service implementation.

In providing students with recovery services, districts and IEP teams can consider either reimbursing parents for the cost of a private provider, and/or the District can directly contract with a private provider, as needed based on the student’s individual circumstances.

The District may consider reaching out to either ESD 189 and/or the other districts that belong to ESD 189 for recovery services models and activities that have been successful in the region.

Dated this 29th day of September, 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.)