

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-38**

### **PROCEDURAL HISTORY**

On April 23, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Bellevue School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On April 23, 2021, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On April 30, 2021, OSPI received additional information from the Parent regarding the complaint. OSPI forwarded a copy of that information to the District on May 3, 2021.

On May 17, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on May 19, 2021. OSPI invited the Parent to reply.

On June 2, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on June 4, 2021.

On June 4, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on June 9, 10, and 14, 2021. OSPI forwarded the information to the Parent on June 16, 2021.

On June 16, 2021, OSPI requested that the District provide additional information, and the District provided the requested information that same day. OSPI forwarded the information to the Parent on June 17, 2021.

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

### **ISSUE**

1. Beginning April 19, 2021, did the District provide the Student with in-person services appropriate to both the Student's needs resulting from the Student's individualized education program (IEP), as well as relevant state guidance concerning the provision of special education during the COVID-19 pandemic?

### **LEGAL STANDARDS**

Authority of State Education Agencies: State education agencies have "general supervisory responsibility" to ensure compliance with the IDEA. 34 CFR § 300.600; *see also Letter to Warkomski* (Mar 30, 2001); *Letter to Librera* (May 26, 2004) ("The SEA is ultimately responsible for ensuring

that all Part B requirements, including eligibility, evaluation, and procedural safeguards, are met for eligible children residing within the State.”)

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. A school district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure the student’s IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. “When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child’s IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.” *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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

## FINDINGS OF FACT

1. According to the District, during the 2020–2021 school year, the Student was in the ninth grade, attended a District high school, and was eligible for special education services under the category of other health impairment.
2. On March 15, 2021, Washington state’s Governor issued “Emergency Proclamation (ER) 21-05.” ER 21-05 read, in part: “By April 19, 2021, all school districts must offer at least 30% of average weekly instructional hours as on-campus, in-person instruction for all K-12 students who wish to attend in-person.”<sup>1</sup>
3. On March 26, 2021, the Student’s previous individualized education program (IEP) was amended to create a March 2021 Amended IEP. The March 2021 Amended IEP provided the Student, in part, with the following special education services:

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<sup>1</sup> [https://www.governor.wa.gov/sites/default/files/proclamations/21-05\\_Children%27s\\_Mental\\_Health\\_Crisis\\_%28tmp%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/21-05_Children%27s_Mental_Health_Crisis_%28tmp%29.pdf)

**Services 03/26/2021 - 06/22/2021**

| Concurrent               | Service(s)                     | Service Provider for Delivering Service | Monitor                     | Frequency            | Location (setting) | Start Date | End Date   |
|--------------------------|--------------------------------|---|-----------------------------|----------------------|--------------------|------------|------------|
| <b>Special Education</b> |                                |   |                             |                      |                    |            |            |
| No                       | Math Calculation               | Special Ed Teacher                      | Special Ed Teacher          | 240 Minutes / Weekly | Special Education  | 03/26/2021 | 06/22/2021 |
| No                       | Written Expression             | Special Ed Teacher                      | Special Ed Teacher          | 240 Minutes / Weekly | Special Education  | 03/26/2021 | 06/22/2021 |
| Yes                      | Mathematics Problem Solving    | Special Ed Teacher                      | Special Ed Teacher          | 240 Minutes / Weekly | Special Education  | 03/26/2021 | 06/22/2021 |
| Yes                      | Social-Emotional               | Special Ed Teacher                      | Special Ed Teacher          | 240 Minutes / Weekly | Special Education  | 03/26/2021 | 06/22/2021 |
| Yes                      | Adaptive                       | Special Ed Teacher                      | Special Ed Teacher          | 240 Minutes / Weekly | Special Education  | 03/26/2021 | 06/22/2021 |
| Yes                      | Behavior                       | Special Ed Teacher                      | Special Ed Teacher          | 240 Minutes / Weekly | Special Education  | 03/26/2021 | 06/22/2021 |
| No                       | Reading Comprehension          | Special Ed Teacher                      | Special Ed Teacher          | 480 Minutes / Weekly | Special Education  | 03/26/2021 | 06/22/2021 |
| Yes                      | Reading Fluency Skills         | Special Ed Teacher                      | Special Ed Teacher          | 480 Minutes / Weekly | Special Education  | 03/26/2021 | 06/22/2021 |
| <b>Related</b>           |                                |   |                             |                      |                    |            |            |
| Yes                      | Occupational Therapy (RS)      | Occupational Therapist                  | Occupational Therapist      | 60 Minutes / Monthly | Special Education  | 03/26/2021 | 06/22/2021 |
| Yes                      | Speech-Language Pathology (RS) | Speech-Language Pathologist             | Speech-Language Pathologist | 45 Minutes / Weekly  | Special Education  | 03/26/2021 | 06/22/2021 |

**Supplementary Aids and Services:**

| Concurrent | Service(s)                | Service Provider for Delivering Service | Monitor            | Frequency             | Location (setting) | Start Date | End Date   |
|------------|---------------------------|---|--------------------|-----------------------|--------------------|------------|------------|
| Yes        | 1:1 Para-Educator Support | Para-Educator                           | Special Ed Teacher | 1835 Minutes / Weekly | Special Education  | 03/26/2021 | 06/22/2021 |
| Yes        | Consultation              | ABA Therapist                           | Special Ed Teacher | 15 Hours / Monthly    | Special Education  | 03/26/2021 | 06/22/2021 |
| No         | Consultation              | Private Behavior Analyst                | Special Ed Teacher | 60 Minutes / Weekly   | Special Education  | 04/05/2021 | 05/12/2021 |

The March 2021 Amended IEP included the following measurable annual goals:

- Social emotional 1 (self-advocacy);
- Social emotional 2 (social engagement);
- Adaptive (study skills);
- Behavior 1 (attention to task);
- Behavior 2 (emotional regulation);
- Behavior 3 (following directions);
- Math 1 (problem solving);
- Math 2 – 3 (calculation);
- Reading 1 (fluency);
- Reading 2 (comprehension);
- Written Expression (use of assistive technology);
- Speech 1 (vocabulary); and,
- Speech 2 (listening comprehension).

The March 2021 Amended IEP provided all of the Student’s specially designed instruction and related services in a special education setting. The March 2021 Amended IEP read, in part: “Total minutes per week Student is served in a special education setting: 960 minutes.”

4. The District’s response included an April 2, 2021 prior written notice that read, in part:

Following the Behavior Intervention Plan completed by the ABA Consultant and agreed to during the annual IEP meeting<sup>2</sup> in the initial phase of the behavior plan Student will be on a modified daily schedule (e.g., begin with no more than 2 hours daily) only during remote learning with a focus on shaping the increase of time (length of school day) with success that is monitored by data collection.

5. On April 5, 2021, the special education coordinator emailed the Parent, stating, in part: "The bus will be set up for the in-person return the week of April 26 but it may not be possible to change the bus this week."
6. On April 5, 2021, the Parent emailed the special education coordinator and the special education teacher, stating, in part:

As we are not traveling over Spring Break, [our] expectation is that Student will continue to receive in-person services/learning the week of April 19th in line with Governor's Inslee's emergency proclamation. It is my understanding that school districts have submitted their plans to OSPI for serving all students at 30% in-person who have chosen hybrid as of April 19th, and compliance will be addressed on a district-by-district basis.
7. In a separate email to the Parent on April 5, 2021, the special education teacher stated, in part:

Our thoughts are in the same place...The administration is juggling so many things right now, we just do not have a definitive answer until things are all in place. So, please be patient, we are just awaiting confirmation on our request for having IEP students with high need after lunch.
8. In her reply to the District's response, the Parent stated that at some point prior to April 2021, "Our Student chose a Hybrid model of in person learning"—meaning, the Student accessed some remote learning and some in-person instruction.
9. On April 6, 2021, the Parent emailed several District staff members, stating, in part:

Based on the principal's input, it appears that it is an IEP team recommendation that appropriate services for Student are in-person services. This recommendation is certainly supported by the data that shows there have been no in-person behavior problems, barriers to learning, escalations, etc. It is also my understanding from...staff reports, that Student is consistently engaging with teachers, paras and curriculum in-person. At home in remote instruction, Student continues to struggle with academic engagement, access to the curriculum, attention, isolation and aggression.

Later that day, the principal responded, stating, in part:

To clarify, as an administrator and a member of the IEP team, I am asking to support bringing Student to...in person more frequently. A student's IEP team makes this decision and the building works to support the team's determination...The details of the way these services are offered will need to be discussed at [our weekly special education department meetings] and then also checked through the building safety team's protocols.

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<sup>2</sup> The behavioral intervention plan was created between December 9, 2020 and January 19, 2021, and its finalized version read, in part: "The initial phases of the behavior plan will focus on a modified daily schedule (e.g., beginning with no more than 2 hours daily) during remote learning."

Later that day, the special education coordinator responded, stating, in part:

For increased intervention services...recommendations go to the...administrators not the special education department, who also present to the...Safety Team. As the special education teacher said below, they are awaiting confirmation about specific items such as lunches, available locations, etc.

10. On April 8, 2021, the special education teacher emailed the Parent, stating, in part:

We finally have approval from...administration, the Health team, and our Building Team to move forward with having a very limited number of students attend beyond the A or B only days. Student has been approved to be in-person M-F when we come back the week of April 26. This means that he will be allowed to come in on A AND B days to access [a free appropriate public education] FAPE per his IEP and team considerations.<sup>3</sup>

11. During the course of this investigation, the Parent provided OSPI with an "In-person Instruction Teacher Survey for Week of April 19<sup>th</sup> to 23<sup>rd</sup>."

The survey read, in part: "While we are not broadly bringing students in person the week of April 19, 2021 per the MOU, some educators have requested to service students in-person that week." The survey consisted of one question, which read: "Do you want to provide in-person instruction during the week of April 19 – 23?"

12. The District was on spring break April 12–16, 2021.

13. According to the District:

[A relevant memorandum of understanding with the teacher's union required that] the week after the District's April 12 – 16, 2021 spring break would be...virtual instruction. This approach was intended not only to provide traveling students an opportunity to quarantine without missing in-person instruction, but to protect others at school who would face exposure to traveling students or staff if in-person instruction were to resume immediately following a school break...[The District did] attempt...to arrange alternate staffing in order to provide in-person services to students, including Student, during the week of April 19, 2021 – a communication was sent to staff soliciting interest in teaching in-person that week, and the District was not able to identify appropriate staffing to deliver the services in Student's IEP in-person.<sup>4</sup>

14. On April 19, 2021, the Parent emailed the special education teacher, stating, in part: "We did not travel outside the state for Spring break last week and Student is a Hybrid student who

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<sup>3</sup> In her reply to the District's response, the Parent cites the special education teacher's April 8, 2021 as support for the following statement: "Our Student was identified on or before April 8, 2021, by multiple District staff and 'teams' to qualify and be 'allowed' for in person services Monday through Friday to access FAPE per his IEP and team considerations."

<sup>4</sup> In her reply, the Parent stated the "survey" of availability that was sent to staff was insufficient and that it does not represent a serious effort by the District to obtain staffing so as to provide Student with in-person services beginning April 19, 2021.

has also been identified as needing 5 days of in-person services/instruction based on his unique needs.”

15. According to the District, “during the week of April 19, 2021, Student did not attend remote general education classes due to the provisions of his behavior plan recommending no more than two hours per day of remote learning.”

According to the District, during the week of April 19, 2021, the District offered the Student the following, remote, instruction:

- Monday and Thursday:
  - 40 minutes of synchronous specially designed instruction in math;
  - 40 minutes of asynchronous specially designed instruction in math; and,
  - 40 minutes of asynchronous general education guitar instruction.
- Tuesday, Wednesday, and Friday:
  - 80 minutes of synchronous specially designed instruction in reading; and,
  - 40 minutes of asynchronous specially designed instruction in writing.
- Wednesday:
  - 40 minutes of in-person music therapy

16. According to the special education teacher, the week of April 19, 2021, the Student “checked out early twice but attended all classes offered.”<sup>5</sup>

17. According to the Parent, as “the in-person provider for [the] Student at home the week of April 19, 2021...[she was] able to capture [which] remote learning opportunities provided by the District [the] Student [was] able to access.”

According to the Parent, the week of April 19, 2021, the Student accessed the following:

- Monday:
  - Math: 40 minutes accessed of 80 minutes provided.
  - Piano: 40 minutes accessed of 40 minutes provided.
- Tuesday:
  - English: 30 minutes accessed of 40 minutes provided.
  - Reading: 30 minutes accessed of 80 minutes provided.
- Wednesday:
  - English: 20 minutes accessed of 40 minutes provided.
  - Reading: 40 minutes accessed of 80 minutes provided.
- Thursday:
  - Math: 20 minutes accessed of 80 minutes provided.
  - Piano: 40 minutes accessed of 40 minutes provided.
- Friday:
  - Speech: 30 minutes accessed of 30 minutes provided.
  - Reading: 30 minutes accessed of 60 minutes provided.

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<sup>5</sup> The special education teacher was unable to speak to the Student’s participation in certain remote piano courses the week of April 19, 2021. In an email provided to OSPI during the course of this investigation, the special education teacher stated, in part: “[Student’s attendance at] the piano classes [is] not certain however since these were extra services offered by [the music teacher], perhaps he can speak to [this issue].”

- o English: 30 minutes accessed of 40 minutes provided.

18. During the course of this investigation, the special education teacher provided OSPI's investigator with the following statement—in regard to whether social emotional, behavior, and adaptive IEP goals were concurrently addressed during the provision of remote specially designed instruction during the week of April 19, 2021:

[The] specially designed instruction on [these] goal areas [was] offered online. Examples of the ways that behavior is offered is by going over online expectations at the beginning of instruction, asking Student to be responsible with our time, social engagement is only between teacher and student since all online instruction is 1:1. Student also set a timer to help regulate time during online breaks from instruction that week For adaptive, we work on location of assignments and online platforms.

19. During this investigation, the occupational therapist provided OSPI's investigator with the following statement regarding the provision of occupational therapy IEP services to the Student the week of April 19, 2021:

Student's OT minutes are 60 minutes monthly, not weekly. He was seen the following dates that month: April 2nd for 20 minutes; April 7th Teams meeting with support team (paras and sped re: use of AT tools); April 8th Emailed team (including Mom) Short cut and blurb on dictation; and, April 30th for 50 minutes...I did not see [Student demonstrate] any regression [in the area of occupational therapy] on or after the week of April 19th.

20. On April 23, 2021, OSPI received the Parent's complaint. It read, in part:

In-person services [and] instruction is not being provided this week due to a January 2021 memorandum of understanding agreement between [the District] and [the teachers' union] – rather than [it being a decision] based on Student need...[Student] was...recently identified by multiple District 'teams' to qualify for 5-days of in-person services/instruction<sup>6</sup>...Student did not travel outside the state of Washington for Spring break last week and therefore does not need to quarantine for any length of time...Student's behavioral intervention plan indicates a maximum of 2 hours per day of remote instruction/services, therefore, the week of April 19, 2021, Student is only able to access 2 hours or less of remote instruction per day...I would like to see this in-person time [that was missed the week of April 19, 2021 to be] made up in subsequent weeks, [with said make-up] to be completed prior to the last day of school, June 22, 2021.

...

The District did not provide [5 days of in-person] services until April 26, 2021...We are requesting that full instructional in-person hours be awarded to Student for the 5 days (April 19 – 23, 2021) [wherein] only remote instruction was provided.

21. According to the District:

On April 26, 2021, Student began receiving in-person services five days per week...Student receives some virtual instruction on Monday and Tuesday afternoons, consistent with the parameters in the behavioral intervention plan...[With said schedule], Student's IEP is currently being implemented in-person.

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<sup>6</sup> In her reply, the Parent also stated: "'In-person' language [was] specifically used in the Student's IEP to describe speech language pathology services for our Student."

22. In its response, the District stated, in part: "Of note [concerning the Student's progress, is the following:] Student's IEP includes a goal regarding independent access of online class materials, and data from the week of April 19, 2021 show that Student was doing so at a level of 75 percent."
23. On May 17, 2021, OSPI received the District's response to the Parent's complaint. It read, in part:  
Although Student's current rate of progress toward his IEP goals does not indicate that virtual instruction during the week of April 19 was a material failure to implement Student's IEP that impacted his overall progress toward his goals, if future progress data should suggest this was the case, Student's IEP team will consider the impact of missed in-person minutes of service during the week of April 19, and will offer recovery services as appropriate. The District requests that OSPI close this complaint without a finding of violation.
24. The District's response included a progress report that includes entries up until early June 2021. A copy of that progress report is attached hereto and labeled **Exhibit 1**.

## CONCLUSIONS

**Issue 1: Provision of In-Person Services Beginning April 19, 2021** – In the complaint filed with OSPI, the Parent alleged: (a) prior to April 8, 2021, the Student was "identified...by multiple District staff and teams to qualify for in-person services" 5 days a week; (b) the only instruction the Student was provided with the week of April 19, 2021 was provided remotely; and, (c), the decision to only provide the Student with remote instruction the week of April 19, 2021 resulted from administrative concerns—and not the Student's needs resulting from the Student's disability.

To remedy the alleged failure to provide the Student with some in-person instruction the week of April 19, 2021, the Parent requested that the "in-person time [that was missed the week of April 19, 2021 be] made up in subsequent weeks, [with said make-up] to be completed prior to the last day of school, June 22, 2021."

The documentation provided to OSPI during the course of this investigation—by both the Parent and the District—shows the following:

On March 15, 2021, Washington State's Governor issued a proclamation that read, in part: "By April 19, 2021, all school districts must offer at least 30% of average weekly instruction hours as on-campus, in-person instruction."

In emails dated April 5 and 6, 2021, the Parent, principal, and special education teacher each expressed support for increasing the amount of time the Student was in-person at school. However, as of April 6, 2021, it does not appear the Student's full IEP team had met to determine: (a) whether to increase the amount of in-person instruction the Student received – and, if so, how much of an increase in in-person instruction was needed based on the Student's individual needs resulting from the Student's disability in order to receive a free appropriate public education (FAPE), as well as the local public health situation; and, (b) to the extent an increase in in-person



instruction was needed, the exact date said increase would first be implemented. From documentation provided to OSPI during the course of this investigation, it appears that during this time—early April 2021—the District was in the process of figuring out how to return all students (including general education students), to greater in-person services.

Then, on April 8, 2021, the special education teacher emailed the Parent, stating the Student would be able to come back to in-person instruction five days a week beginning April 26, 2021. It appears this decision, in part, resulted from administrative concerns that were applicable to all students. For example, as explained by the District in its response:

[A relevant memorandum of understanding with the teacher's union required that] the week after the District's April 12 – 16, 2021 spring break would be...virtual instruction. This approach was intended not only to provide traveling students an opportunity to quarantine without missing in-person instruction, but to protect others at school who would face exposure to traveling students or staff if in-person instruction were to resume immediately following a school break.

The District was on spring break from April 12–16, 2021. According to the Parent, the Student “did not travel outside of Washington State for spring break [the week of April 12-16, 2021] and therefore [did] not need to quarantine for any length of time [starting the week of April 19, 2021].”

It is unclear exactly how much remote instruction the Student accessed the week of April 19, 2021. According to the Parent, the Student accessed approximately 350 minutes of remote instruction that week. According to the District, the District offered 640 minutes of instruction and the Student accessed a very significant portion of the 640 minutes of remote instruction offered.

Under either scenario, the Student did not receive the approximate nine hours of ***in-person*** instruction the Student would have received had the District implemented the Governor's March 15, 2021 proclamation.<sup>7</sup> It is important to note, though, that while OSPI has general supervisory responsibility to ensure school districts comply with all aspects of the Individuals with Disabilities Education Act (IDEA); OSPI Special Education Division, through the special education citizen complaint process, does not have authority to ensure school districts comply with executive orders issued by the state governor.

Here, then, the relevant inquiry is: was the Student's March 2021 Amended IEP materially implemented the week of April 19, 2021? When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

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<sup>7</sup> Here, during the 2020–2021 school year, the Student was in the ninth grade. And, according to the State Board of Education, “each school district shall make available to students instructional hour offerings of at least a district-wide average 1,080 hours in grades nine through 12 [and] 1080 hours of instruction equates to 30 hours weekly.” ([https://www.sbe.wa.gov/faqs/instructional\\_hours](https://www.sbe.wa.gov/faqs/instructional_hours)) So, if the District had implemented the Governor's March 15, 2021 proclamation starting the week of April 19, 2021, the Student would have received approximately nine hours of in-person instruction that week (9 is 30% of 30 hours).

Here, the March 2021 Amended IEP provided the Student with all of the Student's specially designed instruction and related services in a special education setting. The March 2021 Amended IEP read, in part: "Total minutes per week Student is served in a special education setting: 960 minutes."

According to the Parent, the Student accessed approximately 350 minutes of remote instruction that week. According to the District, the Student accessed a very significant portion of the 640 minutes of remote instruction it offered that week. During the week of April 19, 2021, the Student was offered and provided specially designed instruction in the following areas: math; reading; writing; and, speech.<sup>8</sup> OSPI finds the District materially implemented the portion of the March 2021 Amended IEP that related to the following service areas: math, reading, writing, and speech.<sup>9</sup>

The March 2021 Amended IEP also included the following related service: occupation therapy, to be provided in a special education setting 60 minutes a month. Based on the documentation provided to OSPI during this investigation, it does not appear the Student was provided with access to occupational therapy the week of April 19, 2021; however, the requirement in the IEP was not for weekly services and OSPI does not find a violation.<sup>10</sup>

Next, the March 2021 Amended IEP included measurable annual goals in social emotional, behavior, and adaptive. According to the March 2021 Amended IEP, these areas of specially designed instruction were to be provided concurrently with other service areas. According to the special education teacher, these goals were worked on concurrently during the remote specially designed instruction that was provided the week of April 19, 2021:

[The] specially designed instruction on [these] goal areas [was] offered online. Examples of the ways that behavior is offered is by going over online expectations at the beginning of instruction, asking Student to be responsible with our time, social engagement is only between teacher and student since all online instruction is 1:1. Student also set a timer to help regulate time during online breaks from instruction that week For adaptive, we work on location of assignments and online platforms.

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<sup>8</sup> Speech was not on the April 19, 2021 schedule provided by the District, but the Parent stated the Student accessed 30 minutes of speech on Friday, April 23, 2021.

<sup>9</sup> Relevant, in part, to this finding is the following: progress reporting does not show the Student suffered a regression in any of these goal areas that can be clearly attributed to any lack of specially designed instruction the week of April 19, 2021.

<sup>10</sup> Additionally, the occupational therapist provided OSPI's investigator with the following statement regarding the provision of occupational therapy services to the Student the week of April 19, 2021: "Student's OT minutes are 60 minutes monthly, not weekly. He was seen the following dates that month: April 2nd for 20 minutes; April 7th Teams meeting with support team (paras and sped re: use of AT tools); April 8th Emailed team (including Mom) Short cut and blurb on dictation; and, April 30th for 50 minutes...I did not see [Student demonstrate] any regression [in the area of occupational therapy] on or after the week of April 19th."

Additionally, based on progress reporting, it does appear the following goals were concurrently addressed during the week of April 19, 2021: **social emotional (self-advocating); behavior (attention to task); behavior (follow directions); and, adaptive (tracking)**. It therefore appears that the portions of the March 2021 Amended IEP represented by the foregoing goals were materially implemented the week of April 19, 2021.

From progress reporting, it appears **social emotional (social engagement)** may not have been concurrently addressed during the week of April 19, 2021. However, this does not appear to have negatively affected the Student. According to progress reporting, the Student demonstrated mastery of this goal on April 5, 26, May 3, 10, 17, 24, and 31, 2021. Similarly, based on progress reporting, it appears **behavior (emotion regulation)** was not worked on prior to April 26, 2021—when the Student returned to part-time in-person five days a week. Again, though, this does not appear to have negatively affected the Student—with the exception of regression the week of May 31, 2021—it appears the Student demonstrated consistent progress and/or mastery of **behavior (emotion regulation)** from April 26 through May 24, 2021. Additionally, a narrative portion of the Student’s progress report reads, in part: “As of June 11, 2021, school staff report that no maladaptive behaviors (from BIP focus) have been observed during in-person learning.” OSPI finds the fact that these two particular goals do not appear to have been worked on during the week of April 19, 2021, does not represent a material failure to implement the IEP, as other behavior and social emotional goals were worked on that week. No corrective actions are warranted.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

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

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)