

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-94**

### **PROCEDURAL HISTORY**

On November 8, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On November 8, 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 November 24, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply. The Parent did not provide a written reply.

On December 9, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on December 13, 2021. OSPI forwarded the information to the Parent on December 14, 2021.

On December 14, 2021, the OSPI complaint investigator spoke with the Parent via phone about the complaint and the Parent shared additional information.

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

### **ISSUE**

1. Since September 7, 2021, has the District implemented the Student's individualized education program (IEP), including accommodations/modifications, supports for school personnel, specially designed instruction, and instructional assistant support?

### **LEGAL STANDARDS**

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. The district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

## FINDINGS OF FACT

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of other health impairment, attended a District high school, and his January 2021 individualized education program (IEP) was in effect.
2. The January 2021 IEP noted the Student struggled with executive functioning, which led to challenges with completing assignments on his own and producing work without support. The IEP noted that “with the added and increased IA [instructional assistant] support this school year [Student] has started strongly and is maintaining his current workload.” The IEP included an annual goal in each of the areas of math, social/behavior, and written language. The IEP included the following accommodations:
  - Access to directions in verbal and written form (weekly, core classes)
  - Access to visual daily schedule (daily, core classes)
  - Break larger assignments into smaller parts (weekly, core classes)
  - Extra time to complete assignments (weekly, core classes, “assignments complete in week of due date)
  - Frequent positive reinforcement of appropriate behavior (weekly, all school environment)
  - Quiet area for sensory breaks (weekly, special education)
  - Student-selected break available (weekly, special education)
  - Use of multiplication tables (daily and during testing, math class)

The IEP provided the Student with the following specially designed instruction:

- Math: 150 minutes per week (special education setting, provided by a special education teacher)
- Written Language: 100 minutes per week (special education setting, provided by an IA)
- Social/Behavior: 100 minutes per week (special education setting, provided by an IA)
- Social/Behavior: 100 minutes per week (general education setting, provided by an IA)

The IEP noted the Student would spend 80.8% of his time in the general education setting, including general physical education (PE).

3. On August 31, 2021, the Student’s case manager emailed the Parent, proposing they meet to discuss whether the Student’s IEP would need to be amended given the Student’s transition from middle to high school. In a subsequent email, the case manager explained that given the length of high school class periods and current classes the Student was signed up for, the Student’s schedule would provide more minutes of specially designed instruction than called for in his IEP, as well as support from an IA in all general education classes.
4. The District’s 2021–2022 school year began on September 1, 2021.
5. In her complaint, the Parent alleged that the Student had not been provided his specially designed instruction and accommodations, specifically that the District failed to provide:
  - Access to directions in verbal form (in all core classes between September 23 and the complaint filing on November 8, 2021). The Parent noted the Student’s case manager/special education teacher (case manager) only offered this accommodation periodically, that “Schoology” does not include instructions, and that she asked for “printouts and they were not provided.”

- Break larger assignments into smaller parts (in physics and social studies classes between September 7 and 23, 2021).
- Extra time (in physics and social studies classes between September 7 and 23, 2021).
- Frequent positive reinforcement of appropriate behavior (not provided by the instructional assistant (IA) on September 23, 2021).
- Quiet area for sensory breaks (not offered in the special education setting between September 7 and 23, 2021).
- Multiplication tables (not provided between September 7 and 23, 2021).

The Parent stated the full amount of specially designed instruction was not being provided and that the case manager "meets with [Student] intermittently throughout the week for less than 60 minutes daily when meetings are scheduled...no services are provided and if she is absent, no one else fills in to assist with this requirement."

In a phone call with the investigator, the Parent emphasized that her main concern was that while the District offered some special education services, the amount provided was inconsistent. Further, the Parent emphasized that multiplication tables were never provided and there was no space in the classroom for a quiet break and the Student had to ask to leave the classroom to access this accommodation.

6. On September 3, 2021, the case manager and Parent met to discuss the Student's IEP and proposed schedule. According to the District's response, the Parent agreed with the Student's schedule and stated she wanted to think about whether an IEP amendment was needed. The Parent also stated she wanted the Student to be in a special education English language arts (ELA) class.
7. Between September 1 and 15, 2021, the Student's schedule was as follows:
  - 1<sup>st</sup> Period: PE – general education setting (push-in support from IA for social/behavior support as needed)
  - 2<sup>nd</sup> Period: Math – special education setting (264 minutes per week)
  - 3<sup>rd</sup> Period: Communication Skills – special education setting (264 minutes per week of social/behavior instruction)
  - 4<sup>th</sup> Period: Physics – general education setting (push-in support from IA for social/behavior, math, and written work support)
  - 5<sup>th</sup> Period: ELA – general education setting (push-in support from IA, 25 minutes a day for writing and social behavior support)
  - 6<sup>th</sup> Period: Social Studies – general education (push-in support from IA, 25 minutes a day for writing and social behavior support)
8. On September 8, 2021, the case manager emailed the Parent regarding the Student's homework that day, stating "[Student] has a worksheet using Google maps, [Student's] IA in [social studies] gave him another copy of the worksheet so that he can complete it today."
9. On September 15, 2021, the Student was enrolled in a special education ELA class and his schedule was changed to reflect that.

10. On September 22, 2021, the case manager emailed the Parent, updating her that the Student was communicating with his science teacher about how to submit an assignment and letting the Parent know the Student had IA support in science.
11. Also, on September 22, 2021, the case manager followed up with the Student's PE teacher. The PE teacher explained that the Student was not participating and refused to take his headphones out during class. The case manager, in turn, provided the Parent with an update about what was going on in PE.
12. Later, on September 22, 2021, the Parent emailed the case manager and requested an IEP meeting. The case manager responded, stating she would work on scheduling a meeting.
13. Regarding accommodations provided during the first several weeks of school, the District provided the following information from the Student's case manager:
  - Quiet place and place for sensory breaks: "Space provided in Comm[unication] skills class with [special education teacher], [staff] or [case manager's] rooms."
  - "Start of school year 9/1-9/10 students worked on 'getting to know you' style projects in [science] and in Foundations class. Assignments were broken down and done as a class with support from IA in both classes. [Student] had not engaged in much of the physical school work but was engaged in classroom discussions and [science] labs. IA support in working with [Student] to remove headphones and cue to the teacher and work that was being asked of him. Student work was needed to see what modifications were needed to adjust the volume of work in these two classes. IA checked in with [Student] during comm skills to work on initiating and completing [science] work each day but [Student] would not engage and used phone instead."
  - Extended Time: "[Student] was not on a specific time line to get work done in the above classes. Students were given class time to do the assignments with support from IA and general education teachers. [Student] was encouraged to get work done and turned in for grading but was not penalized for any timelines."
  - Multiplication Table: "Provided for each student in the basic math classes and multiplication tables are displayed" in classrooms.
14. On September 23, 2021, the Parent stated that the IA made threatening and discriminatory comments toward the Student.<sup>1</sup> The District's response stated that the IA supporting the Student during PE "counseled [Student] about being disrespectful to his teachers," as the Student was struggling with "engaging and removing his headphones during class, particularly during [PE] and had been speaking negatively about his teachers." The District noted the IA "allegedly said something to the effect of 'I will be assisting you because you can't handle your workload in [science] and you don't insult/assault your teachers because I'm from the hood.'"

Following the incident, the Student reported this to the Parent, the Parent picked the Student up from school, and the Parent spoke with the case manager and assistant principal about her

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<sup>1</sup> The Parent's complaint noted that she filed a complaint with the District's civil rights office and that there is currently an open investigation. OSPI does not have the authority through the special education community complaint process to investigate discrimination. References to this allegation are included in this decision as they related to context, continuity, and the provision of accommodations by the IA.

concerns. The District noted the Parent indicated the Student would not be attending school until her concerns were remedied.

15. Also, on September 23, 2021, the case manager emailed the Parent and Student with information about how to make up an assessment in PE and instructions for reviewing Schoology for missing and incomplete work.
16. On September 24, 2021, the Parent emailed the case manager regarding the incident, follow up to her concerns, and asked when she could "pick up or access class work" for the Student.

The case manager responded with a time for a meeting with the Parent and District. The case manager also stated that "all of [the Student's] teachers (except PE) said that he can use Schoology for his resource for work that he is missing while he is out" and stated, "Please let me know if you have any questions about how [Student] can access this information."

17. On September 27, 2021, the Parent met with school personnel to discuss the September 23 incident. According to a later prior written notice (October 20, 2021 prior written notice), the Parent "said [Student] would not return until schedule changes were made to ensure [Student] would not be working with the school personnel any longer." The notice further stated that on September 28, 2021, "staff changes were made so that [Student] would have different support in his classes. [Parent] was emailed that staff changes were made, emails between [case manager] and [Parent] explained that the staff member would not speak to [Student] in the hallway or be present in [Student's] scheduled classes."

According to a later email from the Parent on October 8, 2021 to the principal, summarizing the incident, the team agreed to "removal of the IA who caused, 'verbal harm'" at the September 27, 2021 meeting and the Parent requested the Student's annual IEP meeting be scheduled.

18. On September 28, 2021, the Parent emailed the case manager and stated the Student could return to school "under the circumstances and address what was discussed in yesterday's meetings." The Parent listed the following things she wanted to happen before the Student would return to school, summarized:
  - IEP meeting to fully review the IEP based on the first two weeks of school.
  - Change the Student's push-in/IA support. The Parent did not want the IA involved in the incident to "interface" with the Student or be in any of the Student's classes. And if this request was not honored, the Parent asked what other educational options the Student had.
  - Meeting to introduce the Student to his new IA and review his IEP goals.

The case manager responded and stated she switched the IA's schedule so that he was no longer in the class with the Student and that the case manager would provide the support in that class instead. The case manager stated she would work on scheduling an IEP meeting.

In a later, additional email response to the Parent's September 28, 2021 email, the case manager stated the requested reevaluation was currently underway and they were reviewing the IA and other supports for the Student.

19. Based on the incident, the Parent kept the Student out of school after September 23, 2021. The Parent stated the Student was doing schoolwork remotely, but that his IEP had not been implemented since September 23, 2021.
20. According to the District and documented in emails, following the September 27, 2021 meeting, the case manager changed the Student's support schedule, in that he would no longer be supported by the IA involved in the incident (the Student's class schedule stayed the same, only the specific IA providing support changed). The case manager notified the Parent of this change on September 30, 2021.
21. On September 30 (and again on October 1), 2021, the Parent emailed the Student's science teacher regarding materials and links for the class. The Parent requested that the Student be able to retake assessments from the beginning of the year.

The teacher responded on October 1, 2021, with the following information, in part:

The first email from [Student] [about turning in assignments] was confusing [because] there weren't any assignments that needed submitting...Today I will be introducing 'OneNote' since this is another platform I can use to view student work and can catch up [Student] when he returns. The assessments close at a specific time in an attempt to reduce any cheating or advantages but I have class days, usually Fridays, when students can work on make-ups/retakes and I can open up the ones needed during class...of course [Student] is welcome to take the assessments he missed but we would need to coordinate that with a specific time or something so I can set that up...

The teacher additionally provided detailed information about her schoology page, including an explanation of the unit folders, resources, handouts/links, and videos.

22. Also, on September 30, 2021, the Parent requested the Student's triennial reevaluation occur in an email to the case manager. The Parent also stated the IA "needs to be omitted from the learning process with my son all together" and asked what the status of this request was.

The case manager responded that "the schedule has changed and [IA] is not in [Student's] [science] class anymore. I will be supporting [Student] that period and [a different IA] supports him in [ELA]."

The Parent responded that she wanted a reevaluation, requested that someone confirm that the IA had "been removed from assisting [Student] for the entire school year," and stated that if there were behavioral issues with the Student that staff needed to contact her directly. In a second email, the Parent stated, "Once the IA issues is resolved, [Student] may return to school safely" and that she needed "confirmation that [IA] will not be an IA for [Student] at all for the remainder of the school year."

23. Later, on September 30, 2021, the case manager forwarded the Parent's emails to the principal, assistant principal, and other District staff, stating "I am not [IA's] supervisor but I feel I have answered this already when I explained who would be supporting [Student.]" The case manager stated she had responded and that she thought the Parent was looking for

confirmation from someone else. The case manager asked someone to respond to the Parent regarding the IA schedule.

24. On October 1, 2021, the Parent emailed the Student's science teacher and case manager with questions regarding what assignments the Student should work on and requested further instructions. The case manager responded that the Student could meet with her via Microsoft Teams on Monday and that she could "provide support during 5<sup>th</sup> and 6<sup>th</sup> period." The case manager stated the Student would not have "1 x 1 support the whole time but I will be [able] to get him started on independent work and support him by guiding him to resources so that he doesn't fall too far behind."
25. On October 5, 2021, the case manager emailed the Parent to check in and let her know that the math teacher had gathered work for the Student and that the case manager's offer to work with the Student during 5<sup>th</sup> and 6<sup>th</sup> period via teams still stood.
26. Also, on October 5, 2021, the Parent emailed the case manager and assistant principal regarding reviewing the Student's assignments for incomplete assignments and asked what the plan was to address this. The Parent noted a concern that the Student was not able to "reopen assignments" in science. The Parent, among concerns about the IA and whether the current IEP was working for the Student, stated that the Student needed modifications, opportunities to retake failed assignments, and more time in science and more time to complete work in social studies. The Parent also asked what the "status is of the IA change."
27. On October 5, 2021, the case manager worked with the Student via Teams.
28. On October 7, 2021, the case manager emailed the science teacher and requested access to class materials so that she could provide support and modify the assignments for the Student.
29. Also, on October 7, 2021, the Parent emailed the case manager and again asked what the status was of the change in IA supporting the Student.

The assistant principal responded to the Parent and stated they would "love to see [Student] at [school] and remain ready to serve him!" The assistant principal further stated that as the case manager shared the schedules had changed and the "[IA] is not in [Student's] [science] class anymore. [Case manager] will be supporting [the Student] that period and [a different IA] supports him in [ELA]."

The Parent replied, thanking the assistant principal, and stating she wanted to meet with the team first before the Student was reintroduced to staff.

The case manager also responded, noting that she had made changes to the IA support as of September 27, 2021 and that the IA would not support the Student in his classes, but that they could not guarantee that the IA would never be present in a class the Student was in.

The Parent further replied, stating that unless the District could "guarantee [Student] will not see or interface with [IA]," the Student would need other options for education.

30. On October 8, 2021, in an email to the principal regarding her "summary and timeline of my experience with your school," the Parent indicated she wanted a virtual option for the Student. The Parent stated that the Student has been out of school "twelve school days and counting. IEP supports have not been offered or modified due to this situation."
31. An October 11, 2021 email from the case manager indicated she had been using her prep and afterschool time to support the Student.
32. On October 11, 2021, the principal emailed the Parent, reiterating that the IA's schedule had been changed and that he would not be supporting the Student, the Student would be supported by different IAs. The principal stated they could schedule an IEP meeting and stated they were "committed to serving [Student] at [school] and discussions and decisions about his services need to be made by the IEP team; even though he is now being evaluated, we can still meet to discuss an interim plan."
33. Also, on October 11, 2021, the case manager emailed the Student and Parent, stating the Student had done great work that day. The email indicated the case manager had met with the Student. The case manager further stated she could not meet with the Student the next day to work on social studies, but provided instructions for what to work on. The case manager stated they could meet for science and that the Student could attend a different teacher's communication class during 6<sup>th</sup> period the next day to get extra support.
34. On October 12, 2021, the Student's IEP team met. According to the District's response, the team discussed virtual options for the Student. According to a later prior written notice (dated October 20, 2021), the team discussed the Student returning to the high school and that the high school "felt confident they could provide [the Student] IEP services and support him without contact with the staff member" and that the Parent stated she wanted to "explore a virtual option for [Student] as he did not feel comfortable coming back in person...At this time [high school] does not have a virtual option for students...many virtual options were provided to the parent to pursue and an IEP meeting for 10/20/201 [sic] was set up."

The Parent indicated she would be applying for a virtual academy provided through another Washington school district.

35. On October 14, 2021, the case manager emailed the Student and Parent, stating "Again, great job today" and providing reminders about other work/assignments to complete.
36. On October 15, 2021, the case manager emailed the Student's science teacher, submitting the Student's assignments. The case manager stated, "I had him to [sic] the modified project but do not see that he has shared it here. I would say his knowledge of the subject is about 60%."
37. On October 18, 2021, the case manager emailed the Student (and Parent), stating she was not available to meet with the Student and was waiting for the science teacher to unlock quizzes so the Student could work on them. The case manager also prompted the Student to submit other portions of his science assignment and reminded the Student to continue working on social studies, ELA, and math.



38. On October 20, 2021, the Student's IEP team met again to discuss the Student's current IEP and alternatives to returning to the high school. The District noted in its response that the team discussed virtual options per the Parent's request and amended the Student's IEP to update the Student's service matrix. The prior written notice documenting the meeting indicated that following the meeting, the Parent requested the amendment be deleted, despite the fact that the Student's IEP service matrix and current high school schedule did not align.
39. Also, on October 20, 2021, the Parent and science teacher emailed about reopening quizzes, and the science teacher stated she had "opened the assessments requested for the time they are requested," and that she and the case manager would continue to coordinate this.
40. On October 21, 2021, the case manager emailed the Parent and Student, with a summary of assignments and instructions included the following, in part:
- ...Math: You do not have to do any of the missing assignments up to today 10/21/2021. [Math teacher] said she will assign you new work through Khan academy...[social studies]: You can start this today and work through it. You have done some reading on the Seattle issues which will help picking a candidate. Your job is to create an endorsement for one of the two candidates for Seattle Mayor [further instructions and specifics to include plus an example and resources for research]...physics: In Schoology Start in [science] Unit >> go into week 6, 7 and current week and review what you have done and complete any missing assignments. I will request that we have the next assessment unlocked for Monday. I recommend you re-read the scientist ideas...to help with the quizzes. These have the most information outside of being able to do the labs. Also review the One note and your notes from the Labs when you were here and after you left...[Language arts]: Watch 'The Odyssey'...It is free on Youtube and there is multiple parts [sic]. [Teacher] will be away next week but she will have a worksheet posted on Schoology for you to answer questions about the movie...
41. Also, on October 21, 2021, the case manager emailed the Parent a copy of the IEP amendment, information about math assignment for the Student, and reiterated that, "We are of course ready for [Student] to return to school." The case manager also mentioned the different remote options they had discussed.
- The Parent responded in several emails, stating she had questions about the amendment and ultimately stated she did not want to amend the Student's IEP and requested the amendment developed at the October 20, 2021 IEP meeting be deleted. Subsequently, the case manager deleted the IEP amendment.
42. On October 26, 2021, the case manager emailed the science teacher, turning in a modified assignment for the Student. The case manager noted she was meeting with the Student that day and on Thursday.
43. On October 28, 2021, the Parent emailed several District staff, including the case manager and assistant principal. The Parent stated she had started the enrollment process for "K-12"<sup>2</sup> but

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<sup>2</sup> K-12 is an online school based outside of the District.

that the Student would not be able to attend until spring semester (February 1, 2021). The Parent shared a screenshot of the Student's grades and asked how "the IEP [was] being handled." The Parent stated the Student's meetings with the case manager did not "total the weekly support minutes of 780 per week according to the IEP. The IEP is not being followed at all."

The assistant principal responded, stating the Student could come back to school any time to receive services in-person and noted the case manager had created a plan to limit the IA's interaction with the Student. The assistant principal stated the IA had been spoken with and instructed to not interact with the Student. The assistant principal further stated that alternatively, as "[District staff] said in the meeting, we can look into transferring [Student] to another school where he can physically attend."

The Parent further replied that the Student would not be returning to the school in person and that she did not want the Student to attend a different school in person. The Parent continued to state the District was not implementing the IEP and not offering her options.

44. On October 29, 2021, the case manager emailed the Student and Parent with instructions for the Student's science, ELA, and social studies assignments.
45. Also, on October 29, 2021, the case manager emailed the Parent and other members of the IEP team, proposing an IEP meeting on November 4, 2021. The Parent responded, stating, "Please outline the proposed options via email before I accept this invitation."
46. On November 4, 2021, the Student's IEP team met. The IEP team discussed additional options, including the District's "Virtual Option Pilot Program (VOPP)," which had been expanded to include additional high school students.

The District noted in its response that it again reiterated it was ready and able to implement the Student's IEP at the high school at this meeting.

47. On November 10, 2021, the District reported on the Student's progress on his IEP goals. For the Student's math goal and social/behavior goal, the progress reported indicated the goal was "not applicable" as the Student had not been in attendance at school since September 23, 2021. For the Student's written language goal, the progress report indicated the Student had made "some progress" and the comments included that the Student had been submitting writing assignments and that the teacher was "particularly impressed by his citations...He is also showing the ability to synthesize, when he compares parts of texts to his own life experiences." The teacher stated she "also appreciates [Student's ability to use descriptive imagery in his writing. I believe that he is a budding writer!"
48. On November 15, 2021, the Student was accepted into and began attending the District's virtual program.
49. In its response to the Parent's complaint, the District stated that the Student's IEP team reiterated that the District could provide the Student with a free appropriate public education

(FAPE) at the high school without any contact with the IA. The District noted it held several IEP meetings to discuss the Parent's concerns and discuss the Student's return to school. The District stated that because the high school "would not agree to remove [IA], the Parent indicated she would continue to keep [Student] home." The District stated in its response that removing the IA would be a disciplinary action that would be addressed through District process, and if appropriate, would stem from the ongoing discrimination investigation.

The District acknowledged that the Parent believed the high school should be implementing the Student's IEP as written while the Student was out of school. But, the District noted that it "explained [that] while the IEP team could convene to discuss options, the District was eager for him to return to school so it could implement his IEP in-person...as called for in his IEP, with measures taken to ensure he did not interact with [IA]." The District also noted that:

When a student's individual disability or health condition prevents them from safely accessing in-person instruction, the district has a range of alternative options for the IEP team to consider so the student can access special education, including homebound services, which is significantly more restrictive than what [Student's] IEP calls for. The District also has remote schooling options due to the COVID-19 pandemic, but it is generally tied to health and/or disability related needs and ensuring the student can access FAPE while prioritizing health and safety. This school year, the District prioritized safely returning students to in-person learning and ensuring recovery from learning loss due to the COVID closure, consistent with State guidance. As such, each of the District's 100+ schools is no longer providing remote learning through synchronous lessons. Rather, for high school families wanting remote options, the District is offering [VOPP], as well assisting families explore and enroll in other virtual schools...

The District stated that while the high school is not providing remote instruction, the Student's case manager:

nonetheless worked closely with [the Student] remotely during [case manager's] preparation period to ensure he was provided homework from his classes and received daily instruction and support. [Case manager] supported him in reviewing assignments that were due through verbal and written instruction, supported him in general education classes with testing support, supported the planning of his academic schedule of assignments, ensured he had access to accommodations...and worked with teacher to ensure he was provided written and audio versions of assignments.

## CONCLUSIONS

**Issue: Individualized Education Program (IEP) Implementation** – The Parent alleged the District failed to implement the Student's IEP, including specially designed instruction and specific accommodations, beginning September 7, 2021.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. The district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

September 1–23, 2021: Upon investigation, the Parent’s primary concerns at the start of the school year related to the implementation of several accommodations, including: breaking larger assignments into smaller parts and extra time in science and social studies; having a quiet area for sensory breaks in the special education setting; and not providing multiplication tables.

According to the case manager, at the start of the year, students worked on ‘getting to know you’ style projects in physics and social studies, and that assignments “were broke down and done as a class with support from [instructional assistants (IAs)] in both classes.” The case manager noted the Student was not engaging with schoolwork at the start of the year, but was engaged in discussions and science labs, and that staff were working with the Student to remove his headphones and participate. The case manager stated there was no specific timeline for getting work done, that the Student was encouraged to get work done and turned in for grading, but that he was not penalized for timelines; that there was space provided in the Student’s communication skills class (a special education setting) for quiet and sensory breaks; and that multiplication tables were provided for all students in the math class and displayed in the classroom. There were some indications of concern around the Student wearing headphones during class, participation in physical education (PE), and the Student did communicate with the science teacher, asking how to turn an assignment in. The Parent requested an IEP meeting on September 22, 2021, and the case manager stated she would work on scheduling a meeting.

Special education case law provides that if a 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 student’s IEP. There is no indication that the Student’s IEP was not implemented during the first few weeks of school. While there were some concerns emerging about the Student’s participation, this does not necessarily mean the IEP was not being implemented. A material failure occurs when there is more than a minor discrepancy between the services provided and those required by the IEP. During the first few weeks of the 2021–2022 school year, even if the IEP was not implemented perfectly, there is no indication of a material failure. OSPI finds no violation.

September 23, 2021: On September 23, 2021, the Parent alleged that an IA failed to provide frequent positive reinforcement of appropriate behavior (one of the Student’s IEP accommodations). Based on all the documentation reviewed in the complaint, there was an incident on September 23, in which the IA made a comment that the Student and Parent felt was threatening and discriminatory. Following the incident, the District stated the Student reported this to the Parent, the Parent picked the Student up from school, and the Parent spoke with the case manager and assistant principal about her concerns. The District noted the Parent indicated the Student would not be attending school until her concerns were remedied.

Within the scope of special education, the IA’s statement was not a positive reinforcement of appropriate behavior (the IA instead seemed to call the Student out for not being about to handle his workload and insulting teachers). However, as described above, a minor deviation from an IEP

is not necessarily a violation of the IDEA. Here, a one-time failure to provide a positive behavior reinforcement is not a material failure to implement the IEP and OSPI finds no violation.<sup>3</sup>

After September 23, 2021: Following the incident on September 23, the Parent kept the Student home from school and expressed concern that the Student was not being provided the full minutes of specially designed instruction in his IEP or being provided all the accommodations, given the ad hoc nature of the case manager's support. The documentation does reflect that the case manager provided support when she could and that at times, she was out sick or had schedule conflicts.

The documentation indicated the District attempted to resolve the Parent's concerns; for example, following a meeting between the Parent and school personnel on September 27 about the incident, the Parent stated the Student "would not return until schedule changes were made to ensure [Student] would not be working with the school personnel any longer" and on September 28, 2021, "staff changes were made so that [Student] would have different support in his classes. [Parent] was emailed that staff changes were made, emails between [case manager] and [Parent] explained that the staff member would not speak to [Student] in the hallway or be present in [Student's] scheduled classes." Information about the change to the IA schedule and who was supporting the Student was provided to the Parent on September 30, October 7, 11, 12, 20, and 28, 2021. Unfortunately, the Parent and school found themselves at an impasse, resulting from the fact that the Parent wanted the school to guarantee zero contact between the IA and Student, which the school explained it could not guarantee, but the school emphasized that the IA would not support the Student and had been instructed to have no contact. While OSPI understands the Parent had concerns, OSPI finds the District's attempts to resolve the situation to be appropriate.

The District told the Parent that a free appropriate public education (FAPE) was available for the Student at his high school and that the District stood ready to serve the Student (the District notified the Parent of this on October 7, 11, 12, 20, 21, 28, 2021, and November 4, 2021.) The Parent continued to keep the Student at home.

Districts have an obligation to offer students eligible for special education a FAPE, and the COVID-19 pandemic has illustrated that districts must sometimes consider whether remote services provide FAPE for a particular student. Like consideration of a homebound placement (a special education placement wherein a student receives services at home due to a disability related need), any consideration of a change of placement or change to a student's education program must be based on a disability related need. Here, there is no indication that the Student had a disability related need for remote services, or alternately, that there was a disability related reason that the Student could not attend the high school in person. The District does not have an obligation to implement the Student's IEP when the Student is absent. The District has an obligation to attempt to reengage the Student, offer FAPE, stand ready to provide FAPE, and determine whether the Student had a disability related need to alter his educational program, all of which the District did.

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<sup>3</sup> OSPI notes the Parent also filed a complaint with the District's civil rights office and that there is currently an ongoing District investigation. OSPI does not have authority to investigate discrimination and thus makes no comment on the incident on September 23, 2021 within that context.

However, the District is not out of compliance for failing to fully implement the Student's IEP while he was absent due to the Parent's choice to keep him home, given that the choice was not related to the Student's disability.

Nonetheless, the District, despite not being required to, attempted to provide the Student special education services and help him stay caught up with schoolwork during this time; this included the Student's case manager going above and beyond to provide direct 1:1 support when she could and preparing materials on her personal time before and after school. The documentation and emails in this complaint provided examples of the case manager providing:

- Provided instructions and information about assignments via email and schoology;
- Worked with and communicated with the science teacher, Parent, and Student about turning in assignments, more time, and assignment/test retakes;
- Modified assignments for the Student in science and provided support to assist the Student in submitting assignments; and,
- Provided direct 1:1 support during 5<sup>th</sup> and 6<sup>th</sup> periods on several days during October 2021 via Microsoft Teams (e.g., October 5, October 11, October 14, October 26, and October 28).

At the beginning of October 2021, the Parent began requesting a virtual option for the Student. The District responded, noting that the Student was in the process of being reevaluated and that any change to the Student's educational program (such as virtual school) could be addressed by the Student's IEP team. The Student's IEP team met in October and November 2021, discussed a virtual option, and the District reiterated that its offer of FAPE was at the Student's high school or at another District high school in person. However, the Parent stated she would be exploring and applying for other virtual options, and that the Student would not be returning to the high school or another school in person. Ultimately, the Student was accepted into and started attending the District's virtual academy option in mid-November 2021.

Overall, as the District was not required to implement the IEP as written while the Student was absent, OSPI finds no violation.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

Dated this \_\_\_\_ day of December, 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.)