

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-05

PROCEDURAL HISTORY

On January 13, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the grandparent (Parent¹) of a student (Student) attending the Steilacoom Historical 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 January 14, 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 respond to the allegations made in the complaint.

On January 18, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on January 21, 2022.

On January 25, 2022, OSPI spoke with the District's director and assistant director of special education and about the complaint.²

On January 28, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On February 2 and 3, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on February 2 and 7, 2022.

On February 3, 2022, OSPI requested that the District provide additional information, and the District provided the requested information on February 9 and 10, 2022. OSPI forwarded the information to the Parent on February 14, 2022.

On February 9, 2022, the Parent provided additional documentation and OSPI received the Parent's reply to the District's response. OSPI forwarded the reply and documentation to the District the same day.

On February 10 and 11, 2022, the Parent provided additional documentation and provided a clarification in response to OSPI's request. OSPI forwarded the documentation to the District February 14, 2022.

¹ The complaint was filed by the Student's grandparent, who based on the information reviewed in the investigation, is in the role of the Student's guardian. The complaint decision, in keeping with OSPI's standard style, will refer to the grandparent as the "Parent."

² The District and OSPI discussed questions about the complaint process. During the call, the District also shared some background information about the situation in the complaint.

On February 16 and 22, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on February 16 and 25, 2022.

On February 28, 2022, OSPI requested the District provide clarifying information and spoke with the District's director of special education via phone.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 14, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow procedures to determine the Student's need for recovery services during the summer of 2021, including determining and providing adequate recovery services?
2. Did the District implement the Student's individualized education program (IEP), specifically, did the District provide the Student with specially designed instruction in math during the 2021–2022 school year?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

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

FINDINGS OF FACT

2020–2021 School Year

1. At the start of the 2020–2021 school year, the Student was eligible for special education services under the category of other health impairment and was in the eleventh grade.
2. The complaint investigation timeline began on January 14, 2021, and at that time, the Student's October 2020 individualized education program (IEP) was in place. The IEP included annual goals in the areas of math (problem solving involving personal finance), reading (comprehension, main idea and support details), writing (purpose audience, editing/proof-reading), social emotional (compliance, self-advocacy), with progress reporting at the quarter. The IEP included several accommodations and provided the following specially designed instruction:
 - Math: 55 minutes, 5 times weekly (provided by special education staff in the special education setting)
 - Social/Emotional: 55 minutes, 5 times weekly (provided by special education staff in the special education setting)
 - Reading: 30 minutes, 5 times weekly (provided general/special education staff in the general education setting)
 - Writing: 25 minutes, 5 times weekly (provided general/special education staff in the general education setting)

The IEP noted the Student would spend 68.4% of his time in the general education setting.

3. In information sent throughout the complaint, the Parent emphasized that it was important the Student receive instruction in "financial algebra" during the next school year (2021–2022) because his instruction in that subject was interrupted by the COVID-19 pandemic.

The Student's October 2020 IEP noted he was currently enrolled in a "Resource Financial Algebra" class during the 2020–2021 school year and included information about topics covered by the math class.

4. On March 31, 2021, the District's executive director of student services (executive director) emailed special education teachers and staff regarding a message that would be sent to families and posted on the District's website regarding recovery services. The executive director stated, "During the week after break, we'd like to meet with all who are available to discuss what recovery services are and how they may be provided."

The update for families included information about "additional learning opportunities during the summer, as well as throughout the 2021-2022 school year" and that extra resources would be "allocated specifically for providing services for students with disabilities." The email stated the IEP team would determine whether a student needed recovery services. The email directed families to contact their student's case manager after spring break to discuss the possible need for recovery services and noted, "while the specifics of our summer learning program are not yet finalized we can assure you that they are in progress."

5. On May 31, 2021, the executive director emailed special education teachers and staff with more information about recovery services. In part, the email referenced OSPI's recovery services guidance, including that recovery services decisions were individualized and that there was no requirement to immediately schedule IEP meetings for all students receiving special education services. The email included more information about how to determine recovery services and information for IEP teams to consider. Finally, the email noted that the District would be "working over the summer to develop recovery services options for teams to consider, as well as sample forms and decision-making guidance for teams."
6. On June 1, 2021, the Parent emailed the District, asking whether they thought the Student "could benefit from the recovery services that this email mentions. I do. Especially reading." The Student's 2020-2021 case manager (who was also the Student's 2020-2021 special education math teacher) responded that the District had announced they were having recovery services, but that she did not know exactly what was being offered.

The Parent replied on June 3, 2021, stating, "If I understand this correctly, this is being offered to students in need" and stated she had questions about what recovery services would look like and when parents would be notified.

7. On June 3, 2021, the executive director replied to the Parent's email and stated the IEP team would look at the Student's progress and determine whether recovery services were needed. She stated, "the schedule/specifics for providing recovery services may be different for different students, depending on their individual needs and areas for additional support." The executive director stated she did not know exactly what was being offered at the high school over the summer, or the following year before and after school, but that the first step would be to have an IEP meeting.

The Parent replied, stating she had received a prior written notice regarding recovery services for the Student's sibling, but asked if, for the Student, "Do I need to get a Written Notice of Recovery Service for [Student]?"

The executive director responded that the prior written notice documented the decision made about recovery services and that the Parent “should be hearing from [the 2020-2021 case manager] to schedule a meeting to discuss and make a decision about recovery services.”

8. Also, on June 3, 2021, the District’s assistant director of special education (assistant director) emailed staff a link to a Google form through which case managers could submit information about specific students in need of recovery services. The assistant director noted that filling out the form with “as much specific information as possible” was important so the District could “ascertain what resources are needed for this summer and next school year.” The email further included:

It is not necessary for you to have spoken with all parents about recovery services at this point. We’re seeking information about those students for whom the decisions for recovery services (including summer Jump Start) have been made. Teams will continue to consider the need for recovery services throughout next school year. As you talk with parents, please let them know that recovery services decisions and provision will be ongoing next year, and not all services will be provided over the summer.

The form included, in part, spaces to fill in areas of required recovery services, how the decision was made, and several options to consider for services.

9. The District’s response included a prior written notice, dated June 8, 2021, which indicated the Student’s IEP team met to determine the Student’s need for recovery services and that the team agreed the Student needed recovery services in reading.³ The prior written notice indicated the 2020–2021 case manager⁴ met with the Parent on June 8, 2021⁵. The notice included the following:

At this time [Student’s] case manager and [Parent] have been told there are no teachers for recovery services this summer. They have also been informed that recovery services will be available in the fall, but in what form has not been disseminated. [Parent] also stated that [Student] should not be given recovery services that are online, as he does not perform well or learn best in online learning.

The prior written notice also addressed the Student’s needs in math, stating:

[Student] made progress this year, after remote learning, but continues to need extra support in math. He should be placed in a Resource Financial Algebra class next year or a Statistics class with support. [Student], his grandmother and his math teacher spoke at length about his current performance level and all believe that is the least restrictive environment for him given his current level of performance.

³ The District stated that the prior written notice was “not submitted to the district office. It refers to a team meeting, but there is no record of required team members being invited to the meeting.”

⁴ The District also stated that the case manager has since resigned from her position in the District. This case manager was also involved in another special education complaint, SECC 21-81. Following SECC 21-81, the District provided special education staff with training on documenting the setting of services and prior written notice procedures, among other topics.

⁵ The prior written notice did not clearly indicate who attended this meeting.

The prior written notice stated that the Parent “also wants [Student] to have recovery services in reading this summer and into the fall.” And that “providing recovery services for reading” and “placement in Resource Financial Algebra” were accepted.

10. The District stated in its response that the prior written notice contained inaccuracies. The District stated that case managers and parents had been informed that the District was in the process of staffing summer positions, but as of the beginning of June, did not have enough staff and therefore was unable to specify exactly who would provide recovery services and when.⁶
11. The Parent debated the District’s characterization of the prior written notice, stating it was accurate. The Parent also stated that they did have an IEP meeting, that the full IEP team was invited, but that not everyone attended. The Parent clarified that she attended the IEP meeting, along with a school counselor, the 2020–2021 case manager, and a general education teacher.
12. On June 11, 2021, the Student’s 2020–2021 case manager filled out the recovery services form for the Student and indicated the Student required recovery services in reading. The form noted the recovery services conversation happened “when the guardian requested recovery services” and that the following service delivery options were considered:
 - Summer jump start session 1, 2, and 3
 - Individualized program in the summer
 - Revisit need in the fall

The form further noted that instruction should consider that the Student “may want to get a job in Real Estate” and that the Student would need to “read & comprehend the material to pass the exam. He needs reading skills for adults, on the job situations, and community college programs.”

13. Also, on June 11, 2021, the Parent emailed the executive director and stated she had met with the Student’s 2020–2021 case manager and that a “prior written notice has been submitted outlining decision made concerning Recovery Services for [Student]. It is documented.” The Parent also stated that staff availability was a problem and that “no ‘plan’ was in place on what it will look like even if there were enough teachers for the summer.” The Parent expressed concern that there was not enough guidance from the District to parents and teachers concerning recovery services. The Parent stated that emails from the District were confusing and “misleading” due to a lack of detail, and that it took her “phone calls, emails and meetings to find this out on my own.”
14. The District’s 2020–2021 school year ended on June 17, 2021.

⁶ The District also noted, in an interview with OSPI, that the Student’s 2020–2021 case manager did not attend a District training on recovery services. Based on emails from the District, it appears this training was scheduled for after spring break.

15. Also, on June 17, 2021, the District reported on the Student's progress on his IEP goals. The progress report included the following, in relevant part, with respect to the math goal in the Student's October 2020 IEP:
- Math (problem solving): Sufficient progress – “[Student] made progress this year, after remote learning, but continues to need extra support in math. He should be placed in a Resource Financial Algebra class next year or a Statistics class with support. [Student], his grandmother and his math teacher spoke at length about his current performance level and all believe that is the least restrictive environment for him given his current level of performance. [Parent] also wants [Student] to have recovery services in reading this summer and into the fall.”
16. On June 21, 2021, the principal emailed the Parent and proposed a schedule for summer recovery services: July 12–23 from 12–2:30 pm. The Parent responded that the schedule worked and clarified that this was for “reading/Comprehension.”
17. The Parent, in her reply to the District's response, stated that she contacted the District “throughout April, May, and June of 2021,” attempting to get an explanation of what recovery services would look like, but did not get “any clear answers.” The Parent stated that in at least one of these calls (a phone call in June of 2021), she indicated the Student continued to need help in math due to a lack of progress made during the pandemic.

Summer 2021

18. On July 8, 2021, the principal emailed the Parent to confirm the Student was starting recovery services on Monday, July 12, 2021. The principal requested the Parent let them know some of the Student's interests so that they could pull together reading materials that were of specific interest for the Student. The Parent responded that the Student liked sports, short stories, and something that will help with comprehension.
19. The documentation in the complaint indicated the Student attended recovery services daily from July 12 through 22, 2021 from 12–2:30 pm. The District response stated that services were provided in a one-on-one format from a certificated special education teacher.
20. On July 21, 2021, the Student's special education teacher and 2021–2022 case manager (case manager) emailed the Parent an update on the Student's progress during recovery services. The case manager noted that when they started, the Student “scored 5.75/10 on a passage that had reading comprehension questions both short answer and multiple choice” and that the Student continued to score “6/10-8/10 on average...throughout the week.” The case manager noted the Student “asked for more assistance on how to answer each of the questions.” The case manager stated, “this week, [Student] turned in a passage with reading comprehension questions that he completed individually on Monday and scored 10/10” and that the Student scored “7/7 and 10/10” on further passages. The case manager stated:
- [Student] has also develop the skills of reading the questions before he reads the passage, and pausing to answer the questions while he is reading when he comes across an answer. After talking with [Student] today, he stated that he is realizing that when he is reading he needs to slow down, reread parts of the passage that he doesn't understand, ask questions,

and read the questions first. Additionally, [Student] has asked me to assign him one passage a week with comprehension questions starting next week until the school year starts so that he can maintain his progress...I am very proud of the progress that [Student] has been able to make in such a short period of time.

The Parent responded, "That is fantastic...So tomorrow is the last day of him physically being there right?"

21. On July 22, 2021, the case manager emailed the Parent, stating that it was the last day of recovery services and the Student "Scored 90% on the exam that I gave him, which is fantastic!" The case manager stated she would continue to assign reading passages with comprehension questions on a platform called "ReadWorks" and that the Student has access to "a google classroom I created for reading strategies that we discussed if he would like to review them."
22. Regarding recovery services, the Parent alleged in her complaint that the District failed in the following respects:
 - "Failure to provide adequate services to my student who suffered instructional loss and clearly did not meet [his] IEP goals due to Covid." For example, the Parent stated that while "summer recovery didn't have to match the service minutes like they would during the school year, this time was not nearly enough."
 - "Failed to have timely discussions, planning and provide services in the areas that the student is eligible for according to their IEP."
 - "Failed to communicate any opportunities of a Summer Enrichment/Remediation Program (if the district couldn't provide one themselves)."
 - "Failed to provide proper notice/communication to parent on what processes needed to be met for student to be considered for Recovery Services."
 - "Failed to communicate on how they would be expanding Summer Recovery services/Summer School."

The Parent also shared in additional information that she felt the District had not followed OSPI's guidance on recovery services outlined in the "Washington's Roadmap for Special Education Recovery Services: 2021 and Beyond" (Roadmap). The Parent further indicated in additional information that the recovery services should have lasted the entire summer, "if not through the district because they had no such plan but elsewhere."

2021–2022 School Year

23. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services and was in the twelfth grade. The Student's October 2020 IEP was in effect.
24. The District's 2021–2022 school year began on September 2, 2021, and the Student's first semester class schedule was as follows:
 - Period 1: Independent living
 - Period 2: Graphic design
 - Period 3: Science
 - Period 4: Marketing
 - Period 5: History
 - Period 6: English

25. According to the District's response, the Student had met his math graduation requirements at the end of the previous school year and that the Student's IEP team agreed at an October 2021 IEP meeting that his math services would be provided both in a marketing class and in a special education setting for the first semester of the 2021–2022 school year.
26. The Parent, in her reply to the District's response, emphasized that the Student did not receive any instruction in math during the summer and fall of 2021. The Parent also stated that the Student's October 2021 testing shows the Student scoring at a "below average" score. The Parent included an email from the District, which indicated the Student scored below the level considered proficient in math on a standardized test. The email did note the following: "Keep in mind this was given early in the school year (October 18-22), when it is normally given in the Spring after students have almost 2 semesters in school before taking the tests. The tests will be offered again in the Spring this year."
27. The District stated, in response to a follow up question from OSPI, that the Student's IEP team had not engaged in further discussion regarding the Student's need for recovery services during the 2021–2022 school year, but that the "team can certainly consider this and if a need is identified recovery services will be provided." Subsequent emails indicate the District has reached out to the Parent to schedule a meeting.
28. The District's response included a statement from the Student's current special education math teacher/case manager (case manager), which provided the following information:
- Currently, the Student has been accessing [the case manager's classroom⁷] to work on [his] Marketing math curriculum a few days during the week (2-3 days). I have been working with the Student on [his] assignments and breaking down information/terms into more manageable and understandable wordings and pieces.
- In the general education Marketing class, the Student has access to an online platform in which real-world math simulations that are in the realm of Marketing are provided. The Student has been completing these simulations for their class and additional simulations simply for practice. This correlates with [the Student's] math goal of problem solving that states 'When given real world math problems involving money and investments the student will identify the correct process to follow to find a solution and use the appropriate operations effectively improving real world problem solving from 1:5 opportunities to 4:5 opportunities as measured by teacher collected data'. The Student started at being able to accurately complete one of the simulations out of 5 and is now at 3 or 4 out of 5 opportunities. Sufficient progress is being made to achieve the annual goal within the duration of the IEP.

⁷ The District stated that the case manager's room was a special education setting during the summer of 2021 and first semester of the 2021–2022 school year. For the second semester, the case manager's classroom is a special education setting during first, fifth, and sixth period. And during second, third, and fourth period, the District stated the classes are a general education setting, "As the math lab classes serve students both with and without IEPs." However, the District also noted that, "All sections of math lab are capped at 15 students. The class the Student is in has 11 students. Of these students 8 have IEPs and 3 do not."

Additionally, the Student is scoring 100/100 for reading on these Marketing simulations and 92/100 for an overall composite score for both reading and Math.

29. On October 13, 2021, the Parent emailed the case manager, the executive director, and the District superintendent, expressing her concern that “students on an IEP for the 2021/2022 school year were thrown back into the General Education setting WITHOUT PRIOR WRITTEN NOTICE to parents.” (Emphasis in original.) The Parent noted it was insufficient to add paraeducators to the classroom and that this was not meeting the “terms of some of the student’s IEP requirements.”
30. On October 19, 2021, the Student’s IEP team met. The IEP noted the Student’s expected graduation date was June 5, 2022. The IEP, in the general education teacher report and academic present levels, noted that the Student received specially designed instruction in the general education setting with support from the special education team. The IEP included annual goals in the areas of math (real world math problems involving money and investments), reading (comprehension), writing (writing skills), social emotional (self-advocacy asking for assistance) with progress reporting at the quarter. The IEP included several accommodations and provided the following specially designed instruction:
- Math: 700 minutes per month (provided by a general education teacher in the general education setting)
 - Social/Emotional: 30 minutes per month (provided general/special education staff in the general education setting)
 - Math: 400 minutes per month (provided by special education staff in the special education setting)
 - Reading: 30 minutes per day (provided general/special education staff in the general education setting)
 - Writing: 25 minutes per day (provided general/special education staff in the general education setting)

The IEP noted the Student would spend 94.2% of his time in the general education setting.

The prior written notice documenting the meeting noted that the Student was doing well and had all of his math credits, and that the Parent “hopes that working explicitly on math in the special education setting will help him to reach his post-secondary goals. The team agrees.”

31. According to the Parent, the Student did not meet his previous math goal (in his October 2020 IEP). Additionally, the Parent emphasized in emails she provided as part of this investigation, that the Student was “2 grade levels behind.” The Parent stated that throughout the fall (and since June 2021), in phone conversations, emails, and meetings, the Parent “reiterated that [she] wanted [the Student’s] prior IEP followed. It recommended Financial Algebra. This was based on the fact that students DID NOT get to FINISH the curriculum because of the pandemic.” (Emphasis in original).
32. In additional information, the District explained that the Student’s specially designed instruction in math in the general education setting was provided in the Student’s marketing

class. The District stated the "special education math services (400 minutes monthly) were provided by a certified special education teacher in a special education setting."

33. On November 1, 2021, the Parent emailed the executive director, principal, and case manager regarding things she wanted incorporated into the Student's IEP. These requests included, the following:

That a math lab be added to the Student's IEP as "pulling [Student] out of Marketing is not in his best interest to receive his 20 mins." The Parent specified curriculum she wanted used/or that the class would be based on (e.g., financial algebra), when the math lab should occur, who would teach the class, and the frequency of the class.

34. On November 5, 2021, the District reported on the Student's progress on his IEP goals. The progress report included the following, in relevant part, with respect to the math, reading, and writing goals in the Student's October 2020 IEP:

- Math (problem solving): Sufficient progress
- Writing (editing/proof-reading): Mastered
- Reading (comprehension): Mastered
- Reading (main idea and support details): Mastered

35. On November 18, 2021, the Parent emailed the executive director, following up to a phone conference that the Parent, an ombuds from the Office of Education Ombuds (OEO), and the executive director had on November 2, 2021. In the email, the Parent documented that they had discussed a "Math *Learning Lab*" for the Student for winter quarter. The Parent stated:

I appreciated you letting me know in this phone meeting that you didn't know exactly how this modification will be met but you promised it would get done (it was agreed on as well at the Oct. 19th IEP meeting)...These goals did not get met during Covid. Here we are in his senior year, with him performing 2-3 grade levels below...[Specially designed instruction] in area of Math to access 'grade level curriculum.' Grade level Senior curriculum is important to keep [the Student] challenged. However, it is equally important for [Student] to be able to access [specially designed instruction] curriculum with where he 'left off.'...

The Parent requested the Student's IEP team meet before winter break to continue discussing the math learning lab class.

36. On December 15, 2021, the Student's IEP team met to review his IEP and placement. The IEP was amended to update his present levels, which included in part that the Student was getting a B+ grade in his marketing class. The Student's annual goals remained the same. The IEP included the following:

Although [Student] has met all of his credit requirements for mathematics in order to graduate, [Student] will be taking part in a math lab course that will be taught by a certified special education teacher with the support of a paraprofessional in the second semester of the 2021-2022 school year. The curriculum that will be used will include various levels of mathematics such as financial algebra, algebra 1, and geometry.

The IEP provided the same amount of specially designed instruction as the October 2021 IEP.

According to the prior written notice documenting the meeting, the team discussed what the math lab course would be called, the curriculum used, the setting for the course. The math lab would use a varied curriculum "based upon each student's individual needs for specially designed instruction" and that the course would be considered a general education classroom setting. The notice indicated the Student would "receive an elective credit for this course and he will decide which elective he would like to replace in his schedule with the math lab course."

37. The District was on winter break from December 18, 2021 through January 2, 2022.
38. On January 13, 2022, OSPI received the complete, signed complaint from the Parent and opened this complaint investigation. In her complaint, the Parent requested the District provide the Student a math learning lab (as discussed by his IEP team) and that the class "begin where he left off-which was in Financial Algebra." The Parent also requested compensatory resources "for a Math Learning Lab at a community college." The Parent also stated in additional information that she requested the math lab be taught in a special education setting and be taught by a certified math special education teacher. The Parent stated that this was not happening.
39. The Student's IEP team amended the Student's IEP on January 18, 2022 without a meeting, which the Parent gave permission for. The IEP indicated the Student would be taking the math lab second semester in place of an art elective. The minutes of specially designed instruction remained the same in the amended IEP.
40. The District second semester began on or around January 28, 2022, and the Student's second semester class schedule was as follows:
 - Period 1: Science
 - Period 2: Civics
 - Period 3: Math Lab
 - Period 4: Marketing
 - Period 5: Photography
 - Period 6: English
41. The Parent stated, in additional information provided, that the math lab is focused on "Algebra 1" and not financial algebra like she wanted.
42. On February 10, 2022, the District reported on the Student's IEP goal progress. On his math goal, the Student was making sufficient progress and the comments noted that the Student was "currently working on a project through the end of March that is about investments, budgeting, and other financial math scenarios in the math lab. The entire project is 60 slides, and [Student] will be asked to complete 3-5 slides a week with assistance from the teacher."
43. In additional emails from February 22, 2022 forwarded to OSPI as part of this complaint investigation, the Student's case manager responded to the Parent's question about the Student's skill levels. The case manager noted:

In Math, [Student] has participated in daily work and check-in assignments that are at an Algebra one level. He has accurately answered consistently 8 out of 10 questions and has completed 9 out of 10 slides correctly thus far on his financial math project that includes scenarios of budgeting and investments.

In his ELA course, [Student] has increased his comprehension to a 4 out of 4 on a 1 to 4 rubric, or 100% thus far on his comprehension assignments.

Additionally, [Student] is currently working on an assessment in the form of an essay that will accurately tell us how he is performing on a 1 to 4 rubric in the upcoming weeks. However, in the previous semester AJ performed at a 3 out of 4 on a 1 to 4 rubric, or 75%.

CONCLUSIONS

Issue One: Recovery Services – The Parent alleged the District failed to follow procedures to determine the Student’s need for recovery services and failed to provide adequate recovery services. Specifically, the Parent alleged the District did not follow OSPI’s recovery services guidance and the District failed to have timely planning discussions regarding recovery services, communicate options for recovery services, and communicate the process for determining recovery services.

General Process for Determining Need for Recovery Services

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

Here, the Parent argued the District failed to communicate the details of recovery services plans to parents. However, District communications indicated that in the spring of 2021, the District was communicating to staff, special education case managers, and families as they had information about recovery services. This included information that there would be additional learning opportunities during summer 2021 and throughout the 2021–2022 school year, and that IEP teams would determine whether a student required recovery services. Families were encouraged to contact their student’s case managers to discuss. In June 2021, the District sent forms to staff through which staff could submit information about students who needed recovery services and offered several different options for services. While the Parent may have wanted more detailed information sooner, there was no requirement that districts had a fully developed recovery services plan in spring of 2021 and thus a lack of detail is not a violation.

OSPI acknowledges that the Parent did have to ask for more information and initiate the discussion regarding recovery services for the Student. Ideally, the District and the Student’s case manager would have been more proactive in scheduling an IEP meeting. For example, on June 1, 2021, the Parent emailed the District, asking whether the District thought the Student “could benefit from the recovery services that this email mentions. I do. Especially reading.” However, the

Parent ultimately met with the case manager and discussed recovery services shortly after her June 1 email. Overall, OSPI finds no violation with respect to the District's general recovery services planning.

Student Specific Need for Recovery Services

The Parent also alleged the District failed to provide recovery services in the Student's areas of need, the services were insufficient, and argued that the recovery services should have lasted the entire summer (and if the District could not provide this, the District should have found another entity to provide services). The Parent maintained that the Student should have received recovery services in all areas outlined in his IEP, as the IEP itself indicated the Student's needs. However, a student is not automatically entitled to recovery services in all areas on their IEP; instead, the IEP team should make a student-specific decision based on student-specific data about the impacts of the COVID-19 pandemic.

Based on the information in the complaint, it appears the Parent was largely concerned that the Student did not receive recovery services in math. Yet, based on the documentation, the Parent and case manager determined that the Student needed recovery services only in reading.⁸ The prior written notice, after stating the Student required recovery services in reading, did indicate that the Parent and case manager believed the Student required extra support in math but did not indicate a need for recovery services in this area. The form filled out by the case manager only indicated that the Student required recovery services in reading and ultimately, the Student received approximately 22.5 hours of recovery services in reading (July 12 through 22, 2021 from 12-2:30 pm). If the Parent also wanted the Student to receive recovery services in math, it is unclear why this was not discussed at the meeting or clearly documented by the case manager.

At the same time, it is not clear what data the Student's IEP team used to determine the type and amount of recovery services. It is not clear whether the amount was sufficient or whether the Student continued to need services, although the Student did make progress in reading during the summer 2021 recovery services. It also does not appear the Parent and case manager discussed whether the Student needed recovery services in other areas like writing and social emotional. The prior written notice and recovery services form indicated that the Parent believed the Student continued to need recovery services during the 2021–2022 school year, and the Parent has continued to express concern that the Student is below grade level in math (and other areas).

The Student's IEP team has not met to discuss recovery services during the 2021–2022 school year, despite the Parent's continued concerns. As of late February 2022, the District has reached out to the Parent to schedule a meeting to discuss recovery services. As there is still a potential need for recovery services and because it is not clear the decision regarding summer 2021 was

⁸ OSPI notes there is disagreement between the District and Parent as to whether the June 8, 2021 meeting was a properly constituted IEP meeting and whether the prior written notice was submitted to the District office. Regardless of whether it was an IEP meeting, the Parent and case manager made decision about recovery services and those recovery services were provided during summer 2021.

based on Student specific data, OSPI finds a violation. The Student's IEP team will be required to meet and determine if he requires further recovery services.

Issue Two: IEP Implementation – The Parent alleged the District failed to implement the Student's IEP and specifically, the Parent stated the Student did not receive any instruction in math during fall 2021 and was grade levels behind in his math skills. 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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

2021–2022 School Year: First Semester

September 2-October 19, 2021 (October 2020 IEP): On September 2, 2021, the District's 2021–2022 school year began, and the Student's October 2020 IEP was in place. The IEP included, in relevant part, a math goal (problem solving involving personal finance) and 55 minutes a day of specially designed instruction in math to be provided in the special education setting. The IEP noted the Student was enrolled in a "Resource Financial Algebra" the previous school year.

During the 2021–2022 school year, the Student was enrolled in a general education marketing class. The Student's special education math teacher/case manager (case manager) stated that she generally worked with the Student two through three days each week, in a special education setting on his math curriculum and working "assignments and breaking down information/terms into more manageable and understandable wordings and pieces." It appears the Student was pulled out of his marketing class to work with the case manager on math.

Based on this information, the Student's IEP was not implemented as written between September 2 and October 19, 2021 (when the IEP was updated), as the IEP indicated the Student would receive 55 minutes of specially designed instruction in the special education setting daily and instead, he received an amount less than 55 minutes, two through three times per week in the special education setting. This represents a violation of the IDEA. No Student specific corrective actions are required to remedy this violation as progress reporting on the October 2020 IEP goals from November 5, 2021 indicates the Student made sufficient progress on his math goal and the District subsequently addressed the Parent's concerns by adding a "math lab" class to the Student's schedule.

OSPI notes the Parent raised concerns that the Student's math instruction was changed without notification or Parent input. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Here, the Student's IEP was not implemented as written and only updated after his math services has deviated from the October 2020 IEP.⁹ Thus, to remedy the identified violation, the District will be

⁹ The District noted the Student had already met his math requirements for graduation; however, if a student's IEP team determines a student continues to require specially designed instruction in a particular area and the IEP includes those services, the special education services must be provided, even if graduation requirements have been met.

required to undergo training on IEP implementation and documentation of services. OSPI notes that following a previous complaint (SECC 21-81), staff received training on a variety of special education topics, including documenting the setting for services. However, based on this complaint, it appears there are still areas of concern in the District's practices.

October 19, 2021–January 2022 (October 19, 2021 IEP): On October 19, 2021, the Student's IEP team met and developed his new annual IEP. In relevant part, the IEP included a math goal (real world math problems involving money and investments) and provided the following specially designed instruction in math: 700 minutes per month in the general education setting and 400 minutes per month in the special education setting. The prior written notice indicated the Student's IEP team agreed he should have time in the special education setting to explicitly focus on math.

Based on the Student's schedule, the hour-long daily marketing class would have allowed for both the 700 minutes per month of specially designed instruction in math in the general education setting and pull-out instruction to receive the 400 minutes per month in the special education setting. The Student's case manager provided information that the Student's work in the marketing class correlated with his math goal, stating:

In their general education Marketing class, the Student has access to an online platform in which real-world math simulations that are in the realm of Marketing...This correlates with their math goal of problem solving that states 'When given real world math problems involving money and investments the student will identify the correct process to follow to find a solution and use the appropriate operations effectively improving real world problem solving from 1:5 opportunities to 4:5 opportunities as measured by teacher collected data'. The Student started at being able to accurately complete one of the simulations out of 5 and is now at 3 or 4 out of 5 opportunities.

OSPI finds that the October 2021 IEP was implemented and finds no violation.

2021–2022 School Year: Second Semester

In January 2022, the Student's IEP, which had been amended in December 2021 and January 2022 to document the math lab class, still included the same math goal and minutes of specially designed instruction in math. The Student, based on the Parent's request, began taking a "math lab" course in addition to his general education marketing class. The Parent stated that she requested the math lab be a special education setting and alleged the math lab was not a special education setting. The District stated the math lab was a general education setting, "As the math lab classes serve students both with and without IEPs." However, the District also noted that, "All sections of math lab are capped at 15 students. The class the Student is in has 11 students. Of these students 8 have IEPs and 3 do not."

This is concerning on two points. First, if both the marketing class and math lab are general education settings, then the Student's IEP is not being implemented as written because he is supposed to receive 400 minutes per month of specially designed instruction in math in the special education setting. In actuality, the math lab appears to be a special education setting. A special education setting is defined in relation to the students in the class and whether they have

IEPs: a special education setting is a group of students consisting primarily of (51% or more) students with IEPs.¹⁰ Therefore, the Student's class, with more than half the students having IEPs, is a special education setting. As the Student's IEP is being implemented as written—despite the District's statement that the math lab was a general education setting—OSPI finds no implementation violation. However, the above ordered corrective action will address the District's misunderstanding of setting for services.

In communications throughout the complaint, the Parent specified the curriculum she wanted for the class, when the math lab would occur, who she wanted to teach the class, and the frequency of the class. For example, the Parent in information provided as part of the complaint emphasized that the Student receive instruction in "financial algebra" during the next school year (2021–2022) because his instruction in that subject was interrupted by the COVID-19 pandemic. The Parent alleged the math lab was not focused on financial algebra like she wanted.

The Student's previous IEP did include a goal related to problem solving involving personal finance and various special education documents referenced a financial algebra class—for example—the June 8, 2021 prior written notice¹¹ stated the Parent and 2020–2021 case manager decided the Student "should be placed in a Resource Financial Algebra class next year or a Statistics class with support" and the case manager also included this language in the Student's June 17, 2021 progress reporting. However, the October 2020 IEP does not conclusively state the Student will be in a financial algebra class during the 2021–2022 school year, nor does it specify that the specially designed instruction in math would be provided in a specific class. Importantly, specially designed instruction does not necessarily equate to a particular class; for example, math or reading specially designed instruction does not always need to be provided in a math or English class. Further, in general, parents and students generally do not have the right to make decisions about methodology, specific curricula, and educational philosophy.

And while the math lab may not be a class focused entirely on financial algebra, according to a prior written notice from a December 15, 2021 IEP meeting, the math lab would use a varied curriculum "based upon each student's individual needs for specially designed instruction" The Student's amended IEP noted—and the District confirmed—that the class would be taught by a special education teacher and the curriculum will include various levels of mathematics, such as financial algebra, algebra 1, and geometry.

Overall, the District was responsive to the Parent's request that the Student be enrolled in an additional math class and the Student began taking the class during second semester of the 2021–

¹⁰ See, for reference and guidance OSPI's LRE Case Studies document (<https://www.k12.wa.us/sites/default/files/public/specialed/pubdocs/LRE-Case-Study.pdf>) and the IDEA, Part B Data Dictionary (<https://www2.ed.gov/programs/osepidea/618-data/collection-documentation/legacy-data-collection-information/data-dictionary/b-datadictionary.pdf>).

¹¹ Again, OSPI notes there is disagreement between the District and Parent as to whether the June 8, 2021 meeting was a properly constituted IEP meeting and whether the prior written notice was submitted to the District office.

2022 school year in addition to his marketing class. While the Student may not currently be working on the exact type of math the Parent would like, the District has discretion in how it provides instruction and what curriculum to use. The documentation in the complaint indicates the math lab class will be covering a variety of topics—including topics such as budgeting and investment—that the Student is receiving instruction toward his IEP goals, and that the Student is doing well and making progress. OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **April 7, 2022** and **April 22, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **March 31, 2022**, the Student's IEP team, including the Student if he would like to attend, will meet to discuss the Student's needs for any further recovery services. OSPI recommends the IEP team review the following sources of data and any other information the IEP team would find beneficial:

- Recovery services provided during summer 2021 and progress information;
- Progress reporting;
- Teacher observations and Parent concerns;
- Student's progress in light of the additional math class; and,
- Whether the Student is on track to graduate on time.

By or before **April 7, 2022**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) the plan for recovery services if determined appropriate; and, d) any other relevant documentation.

OSPI notes that while finalizing this complaint, it received emails indicating a meeting was scheduled with the Parent on March 7, 2022. It is unclear whether that meeting satisfies the requirements of this corrective action. If it does, the District should submit documentation from that meeting. However, OSPI notes the IEP team may need to meet again following this complaint decision.

DISTRICT SPECIFIC:

Training

By or before **April 15, 2022**, all special education staff in the district (certificated teachers, special education administration, and related service providers) will complete a training module on "Service Delivery in the Special Education Process". The training module has been developed by OSPI special education division and eLearning for Educators in Canvas, an online learning management system. Access to the training module in Canvas can be found here <https://www.evergreen.edu/elearningforeducators/>.

By or before **April 22, 2022**, the District will submit documentation that required staff have completed the training module.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ___ day of March, 2022

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.)