

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-100**

### **PROCEDURAL HISTORY**

On September 1, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On September 2, 2020, 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 September 23, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on September 24, 2020. OSPI invited the Parent to reply.

On October 5, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on October 6, 2020.

On October 7, 2020, OSPI requested that the District provide additional information, and the District provided the requested information on October 16, 2020. OSPI forwarded the information to the Parent on October 19, 2020.

On October 21, 2020, OSPI received additional information from the Parent. OSPI forwarded the information to the District on October 22, 2020.

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

### **ISSUE**

1. Did the District implement the Student's individualized education program (IEP) during the March 2020 through June 2020 school facility closures?

### **LEGAL STANDARDS**

**IEP Implementation during School Facility Closures for COVID-19:** 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. 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. "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).

During the COVID-19 school facility closures, as students received general education instruction and student support services, districts must provide students with disabilities with the special education services—related services and specially designed instruction—supporting a free appropriate public education (FAPE). The U.S. Department of Education Office for Civil Rights (OCR) and Office for Special Education and Rehabilitative Services (OSERS) indicated the "exceptional circumstances" presented during the school facility closures caused by COVID-19 "may affect how all educational and related services and supports are provided" to students with disabilities. There is not an expectation that IEP services would be delivered exactly as the IEP states. *Questions and Answers: Provision of Services to Students with Disabilities During School Facility Closures for COVID-19* (OSPI March 24, 2020); *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (OCR/OSERS March 21, 2020) ("It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities...during this national emergency, schools may not be able to provide all services in the same manner they are typically provided...The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency...FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students.")

While there was not an expectation that districts implemented a student's IEP as written during school closures caused by COVID-19 in spring 2020, districts must have had a plan for how students with disabilities were to receive a FAPE, including the provision of special education. *Questions and Answers* (OSPI, March 24, 2020); *Questions and Answers* (OSPI, May 5, 2020). See also, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (U.S. Department of Education, March 13, 2020) ("SEAs, LEAs, and schools must ensure that to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under the IDEA"). All schools were expected to have begun providing educational services for all students by March 30, 2020, which OSPI termed "Continuous Learning 2020." OSPI Bulletin 024-20 (March 23, 2020).

The individualized special education services being provided to a student during the school facility closures as part of continuous learning, were to be documented in writing using a student's annual IEP, IEP amendment (particularly if services to be provided during the closure were significantly different from what the IEP indicated), prior written notice, or optional "Continuous Learning Plan" (CLP) or similar document. Districts had flexibility in how they chose to document decisions made in real-time. *Questions and Answers* (OSPI, April 13, 2020). Districts were encouraged to prioritize parent communication, including discussions of how special education services were to be provided during the closures. *Questions and Answers* (OSPI, May 5, 2020).

**Specially Designed Instruction:** The purpose of the IDEA is to ensure that all students eligible for special education have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1; WAC 392-172A-01005. Special education includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

**Continuous Learning Plan (CLP):** A CLP (or similar document) is used to document the temporary services that will be made available and provided during school facility closures for COVID-19. *Questions and Answers* (OSPI, April 13, 2020). A CLP is a temporary plan that outlines the extent to which IEP services and accommodations must be delivered differently or suspended due to emergency health and safety restrictions in spring of 2020, and documents decisions regarding services, timelines, and other student specific considerations during school facility closures. While the information recorded in an individual student CLP may come from a student's IEP, such documentation is not intended to serve as, or to replace, the most recent IEP. Districts must have a method for documenting decisions made for individual students during the spring 2020 school facility closures. *Questions and Answers* (OSPI, May 5, 2020).

**Recovery Services:** Recovery services are intended to mitigate the impact of the spring 2020 COVID-19 school facility closures and to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services during the spring 2020 COVID-19 school closures. While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services in fall 2020 and 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 the spring 2020 school building closures 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).

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

## FINDINGS OF FACT

### 2019-2020 School Year

1. During the 2019-2020 school year, the Student attended a District elementary school, was in the fourth grade, and was eligible for special education services under the category multiple disabilities.
2. The District's 2019-2020 school year began on September 3, 2019.
3. On November 22, 2019, the District completed a re-evaluation of the Student. The Student's November 2019 reevaluation report read, in part: "Parent reports that Student's vision has not deteriorated to the point that Student is considered 'legally blind'...Student is visually impaired and this impacts her ability to access the school environment."
4. The Student's November 2019 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The Student's November 2019 IEP included measurable annual goals in the following areas:
  - **Adaptive:** Ability to increase the time Student spends on a work task.
  - **Cognitive:** Ability to follow locational directives, simple 1-step directions, activate a push toy and/or communication device independently, and load and feed herself with a fork independently.
  - **Social Skills:** Ability to transition between school activities with fewer behavioral incidents.

According to the Student's November 2019 IEP, the Student's progress on the aforementioned goals was to be reported to the Parent via a progress report each trimester.

The Student's November 2019 IEP stated, in part:

Student requires specially designed instruction in the area of communication due to a communication deficit. The speech language pathologist [SLP] is working to support Student's classroom teacher's goals of [increasing the Student's ability to understand] prepositions so that she can follow directions when trying to find an item she dropped and also be able to safely navigate the space around her, increasing meaningful vocabulary, and increasing vocabulary associated with her preferred activities. We will also be prompting her to use complete sentences as we try to increase her average utterance length...Student is legally blind and requires guidance when walking, particularly in new locations.

...

It will be difficult for Student to ever completely independently feed herself due to her blindness.

The Student's November 2019 IEP stated the Student did not require Braille instruction and/or use of Braille. The Student's November 2019 IEP included several accommodations and modifications, including, in part, the following: use of large print/Braille/recorded books; audio digital books; read class materials orally; speech to text; allow dictation to a scribe; utilize oral responses to assignments/assessments.

The Student's November 2019 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- **Cognitive:** 586 minutes per week
- **Social:** 586 minutes per week
- **Adaptive:** 596 minutes per week

The Student's November 2019 IEP provided the Student with the following related services in a *special education setting*:

- **Speech and Language Therapy:** 20 minutes per week (to be provided by a SLP)
- **Occupational Therapy:** 15 minutes per week (to be provided by an occupational therapist (OT))

The Student's November 2019 IEP provided the Student with the following supplementary aids and services in a *special education setting*:

- **Vision Support:** 30 minutes per week

The Student's November 2019 IEP stated the Student would spend 0 to 39% of the time in regular class.

5. The District's response included a progress report with entries, dated March 6, 2020. Those entries relate to the Student's November 2019 IEP goals, and they read as follows:

- **Adaptive:** Not Mastered:
  - Student is still working on behaviors during work tasks. She is having many good days where these behaviors are only 5-7 during a 3-5 minute time span. She has a difficult time participating in a task she is being asked to do, and will cooperate only about 30% of the time unless it is something she wants to do. She is still unable to load her fork independently, but will feed herself about 85% of the time when the fork is loaded for her. She cooperates with personal hygiene needs about 50% of the time.
- **Cognitive:** Not Mastered:
  - Student is doing a great job with her cognitive skills! She is able, about 50% of the time, to recognize prepositions (forward, backward, in front of, behind, next to, beside, underneath, on top of, up, and down) in phrases such as "the popcorn is in front of you" or "your chair is behind you." She is increasing her ability to follow 1 step directions, and can do so in 2/5 attempts. She can activate her push button toys in approximately 2/5 attempts. Great work Student!
- **Social Skills:** Not Mastered:
  - Student is working hard to improve her social skills! She exhibits fewer than 3 behaviors during and immediately after transitions in approximately 3/5 attempts. She has a difficult time playing purposefully with a variety of objects unless it's something that she is asking for, and depending on her mood, this can change quickly. She is getting better at moving from one activity into another in a reasonable amount of time, and can usually do so in 2/5 attempts. Her transition time is without self-harm in approximately 3/5 attempts. She has a hard time self-soothing when frustrated or upset, but is becoming frustrated less often. She will share her toys or possessions when asked about 25% of the time.

6. According to the District's calendar, March 12, 2020 represented the end of the second trimester.

7. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis.
8. The District's response included a school closure tracking form (SCTF) for the Student. The purpose of the SCTF was to track the services provided to the Student during the spring 2020 COVID disruption. According to the SCTF, the District was closed for all students from March 17 through 30, 2020.
9. On March 23, 2020, OSPI issued guidance, instructing districts that while school facilities are closed and not providing traditional in-person instruction, education must continue. OSPI's guidance outlined the expectation that "continuous learning" would begin for all students by Monday, March 30, 2020.
10. According to the Student's SCTF, the following services were to be provided to the Student from March 31, 2020 through June 18, 2020 in *a home setting*:
  - **Occupational Therapy/Physical Therapy:** 5 minutes per week (to be provided by the physical therapist (PT))
  - **Communication:** 5 minutes per week (to be provided by the SLP)
  - **Adaptive:** 99 minutes per week (to be provided by the substitute teacher)
  - **Social:** 97 minutes per week (to be provided by the substitute teacher)
  - **Cognitive:** 97 minutes per week (to be provided by the substitute teacher)

The Student's SCTF further stated: "Weekly work will be shared via texts with link to YouTube videos/channel...Speech language pathologist sending weekly video and occupational therapist/physical therapist sending weekly activity via text."

The Student's SCTF also stated: "This for is...to assist districts in tracking special education timelines and services for individual students." The Student's SCTF also referenced the Student's November 2019 evaluation report and IEP.

11. During the course of this investigation, the District provided OSPI with service provider logs and emails, detailing services the Student received during the spring 2020 COVID disruption (March 30, 2020 through June 16, 2020). According to this documentation, the Student received:
  - **Speech Language Pathology:** On 6 occasions, the SLP emailed the Student a video of the SLP reading a book and doing a related language lesson on YouTube. The total time of these 6 videos was approximately 1 hour and 30 minutes.<sup>1</sup>
  - **Physical Therapy:** On 12 occasions, the PT sent the Student weekly activities to be completed at home.<sup>2</sup>

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<sup>1</sup> According to its response, the District does not have documentation confirming how many of the speech exercises and/or videos the Student actually completed during the spring 2020 COVID disruption.

<sup>2</sup> According to the District's response, "physical therapy assignments were not returned upon completion. The family was provided with a variety of fine and gross motor activities to engage in. There is no information to confirm participation."

- **Adaptive/Social/Cognitive:** On 6 occasions, the substitute teacher sent the Parent a text with a link to a YouTube video that included adaptive, social, and/or cognitive learning activities.<sup>3</sup>
- **Zoom Meetings:** Student attended anywhere from 1 - 3 zoom meetings hosted by the substitute teacher.<sup>4</sup>

12. The District was on spring break from April 5 to 9, 2020.
13. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
14. Also, on April 6, 2020, OSPI issued guidance on Continuous Learning 2020, which included recommended guidelines for maximum student commitment each day, as follows: Grades 4-5: 90 minutes.
15. The District's response included a prior written notice, dated May 8, 2020, that proposed to initiate a continuous learning plan starting that same day.
16. On June 4, 2020, the substitute teacher emailed the Parent a blank copy of the Student's IEP goal sheet, asking the Parent to "fill it out and get it back to me and we will attach it to her progress report/IEP."
17. The District's response included a progress report with entries, dated June 8, 2020. Those entries relate to the Student's November 2019 IEP goals, and they read as follows for each goal (adaptive, cognitive, and social skills):  
 Not Mastered: Due to COVID-19, distance learning was provided from 3/30/2020 - 6/18/2020. During school closure, no cumulative data was collected for Student's adaptive skills goal. Weekly work was provided via videos and zoom calls. Student participated weekly! Progress will be recorded once school resumes in the fall.
18. According to emails provided to OSPI during the course of this investigation, the Student displayed behavioral challenges at home during the spring 2020 COVID challenge that she had not previously displayed. The emails indicate the Parent shared these concerns with the District.

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<sup>3</sup>According to the District's documentation, the Parent responded to the substitute teacher's text message on four of six occasions.

<sup>4</sup> During the District's investigation of the Parent's complaint, the substitute teacher states she hosted Zoom meetings once a week at the beginning of the spring 2020 COVID disruption, but on a daily basis starting June 2, 2020. The substitute teacher further stated the Student attended these Zoom meetings "only 2 or 3 times." In a subsequent submission to OSPI, though, during the course of OSPI's investigation, the District stated the Student only attended 1 Zoom meeting during the entirety of the spring 2020 COVID disruption—an hour long "classroom zoom that was geared towards social and adaptive skills and a way for the students to see and interact with one another."

19. On May 28, 2020, the Parent texted the substitute teacher, stating, in part: "I'm sure I don't need to tell you, the odds of my daughter cooperating on zoom are slim to none."

20. June 16, 2020 was the last day of the 2019-2020 school year for the District.

21. On September 1, 2020, OSPI received the Parent's complaint. The Parent's complaint read, in part:

When school switched to distance learning in March 2020, accommodations were made for all general education kids, but Student received zero supports, zero therapies. In an attempt to 'do something' a bag of her classroom toys were delivered to our front yard. Even though the District is required to provide Student with an education in the least restrictive environment, she was expected to participate in distance learning. Student is developmentally 2 years old and completely blind. Not only was this a highly restrictive environment, but it was not possible AT ALL for Student to learn. Not to mention the therapies that were withheld, that are clearly a part of her IEP. Student missed months of education, as well as months of therapies.

22. The District's response included an email from a District vision impaired specialist, dated August 24, 2020. That email read, in part:

The vision department sent home multiple family letters via case managers offering daily availability for zoom meetings and family support as well [as] vision-related resources to our students [during the spring 2020 COVID disruption]. We did not hear from this family in response to our letters.<sup>5</sup>

The District's response also stated the District and Parent agreed that, for the fall of 2020, the Student would attend school on-site for four days each week.

23. On October 5, 2020, OSPI received the Parent's reply to the District's response. The Parent's reply read, in part:

I would like to reiterate that Student is completely blind. All of the therapists that work with Student know this and should certainly know that Student requires unique and creative ways of learning, especially when it comes to online. I also want to add that the District did, in fact, acknowledge that Student is incapable of online/distance learning, and she is receiving full time in-person schooling currently, [during the 2020-2021 school year]...Even the school district has now acknowledged that zoom/online learning was 100% not acceptable for Student. Due to vision loss, cognitive age, combined with her other special

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<sup>5</sup> During the District's investigation of the Parent's complaint, the substitute teacher stated any time she received vision updates from the District's visually impaired specialist, she forwarded these on to the Parent. The District's response contains at least one email (dated March 27, 2020) to the substitute teacher that included a letter with vision resources available to students with IEPs during the spring 2020 COVID disruption, as well as an offer from the District's vision department to set up "zoom meetings [with families] by appointment if requested." The District's response did not include an email from the substitute teacher to the Parent, forwarding this letter from the District's vision department. However, in the Parent's reply, she stated she did receive both a letter and an email from the District's vision department, outlining this offer. From the documentation provided to OSPI during the course of this investigation, there is no evidence the Student participated in a Zoom appointment with the District's vision department during the spring 2020 COVID disruption.



needs, participation [in zoom calls and in remote learning in general] was going to be a struggle. We tried a couple times...What we would like is for the District to provide Student with the minutes and therapies that are in her IEP but were not provided to her in the spring.

In her reply, the Parent further asserted:

- Parent was only provided with 3 videos related to speech language pathology exercises during the spring 2020 COVID disruption (on May 7, 2020, May 14, 2020, and June 3, 2020);
- The 3 speech language pathology videos the Parent was provided with were not sufficient to address the Student's needs resulting from the Student's disability; and,
- Parent was only provided with 1 physical therapy exercise to work on with the Student during the spring 2020 COVID disruption.

## CONCLUSIONS

**Issue One: IEP Implementation – Issue One: IEP Implementation** – The Parent alleged the District did not implement the Student's November 2019 individualized education program (IEP) that was in effect during the COVID-19 school facility closure.

During the COVID-19 closure, school districts were responsible for providing a free appropriate public education (FAPE) to students with IEPs. FAPE includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability. Due to the exceptional nature of the COVID-19 closure, though, districts were not expected to deliver IEP services exactly as stated in students' IEPs. OSPI described the nature of instruction that students were to receive during the COVID-19 closure as follows: "[School districts] should avoid assuming that continuity of education outside of a typical school building can only occur through online means. Districts will provide instruction using printed online learning materials, phone contact, email, technology-based virtual instruction, or a combination to meet student needs."

All schools were expected to have begun providing educational services for all students by March 30, 2020, which OSPI termed "Continuous Learning 2020." And OSPI guidance stated districts were to provide students with IEPs student-specific continuous learning opportunities beginning March 30, 2020. Thus, beginning March 30, 2020, the District should have begun providing the Student with opportunities to access individualized instruction.

Here, the Student's spring 2020 school closure tracking form (SCTF) reflected the services the District planned to provide to the Student during the spring 2020 COVID disruption (March 30, 2020 through June 16, 2020). Importantly, the Student's spring 2020 SCTF reflects services that were individualized to the Student. For example, with one notable exception, the Student's spring 2020 SCTF includes services in each area of need identified by the Student's latest IEP (November 2019): the Student's November 2019 provided the Student with specially designed instruction in cognitive, social, and adaptive, and related services in speech and occupational therapy, and the

Student's spring 2020 SCTF provided the Student with asynchronous learning opportunities<sup>6</sup> in each of these areas.<sup>7</sup> Furthermore, the Student's spring 2020 SCTF explicitly referenced the Student's November 2019 evaluation report and corresponding IEP. The Student's spring 2020 SCTF also mentions that the purpose of the document was to track special education timelines and services "for individual students." In sum, OSPI finds the Student's spring 2020 SCTF reflected services that were individualized to the Student's needs resulting from the Student's disability, and that were to be provided to the Student during the spring 2020 COVID disruption.

Here, it is important to note the following: the foregoing conclusion represents a determination separate from that of whether the Student's spring 2020 SCTF addressed all areas of need resulting from the Student's disability to the extent they would have normally been addressed—in other words, in a non-pandemic environment. It is facially obvious that the Student's spring 2020 SCTF differed from the Student's November 2019 IEP. And, throughout the course of this investigation, the Parent repeatedly noted her belief that the Student's spring 2020 SCTF did not adequately meet all of the Student's needs resulting from the Student's disability. Specifically, the Parent noted the Student's needs resulting from the Student's disability made asynchronous learning opportunities a poor fit for the Student.<sup>8</sup> OSPI has no reason to doubt the veracity of this position.

However, due to the public health limitations imposed by the COVID-19 pandemic in the spring of 2020, school districts were not required to fully implement IEPs. But, beginning March 30, 2020, districts were required to provide students with IEPs with services that were individually tailored to specific students. Here, that requirement appears to have been met.

Recovery services are intended to mitigate the impact of the spring 2020 COVID-19 school facility closures and to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services during the spring 2020 COVID-19 school closures.

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<sup>6</sup> "Asynchronous learning is a general term used to describe forms of education, instruction, and learning that do not occur in the same place or at the same time. The term is most commonly applied to various forms of digital and online learning in which students learn from instruction—such as prerecorded video lessons or game-based learning tasks that students complete on their own—that is not being delivered in person or in real time." <https://www.edglossary.org/asynchronous-learning/>.

<sup>7</sup> The only service area included in the Student's November 2019 IEP but missing from the Student's spring 2020 SCTF was vision support. For example, the Student's November 2019 IEP provided the Student with the supplementary aid and service of 'vision support' for 30 minutes per week. The Student's spring 2020 SCTF did not include a corresponding service. However, it is worth noting that during the spring 2020 COVID disruption, the District's vision department did contact the Parent, providing her with links to relevant resources, as well as offering to set up "zoom meetings [with families] by appointment if requested." From the documentation provided to OSPI during the course of this investigation, there is no evidence the Student participated in a Zoom appointment with the District's vision department during the spring 2020 COVID disruption.

<sup>8</sup> Communications provided to OSPI during the course of this investigation also show the Parent communicated these same concerns to District staff throughout the spring of 2020.

While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services in fall 2020 and recovery services should be determined by IEP teams on a case-by-case basis.

Here, the District's response stated the District and Parent agreed that for the fall of 2020, the Student will attend school on-site for four days each week. But, from the District's response, it does not appear the Student's IEP team has yet met to discuss whether the Student requires recovery services for any lack of progress the Student may have made on the Student's November 2019 IEP goals during the spring 2020 COVID disruption. As OSPI will be requiring the Student's IEP team to meet to discuss the Student's present levels of academic and functional performance, see below, OSPI will also require the Student's IEP team to discuss whether the Student requires recovery services due to the spring 2020 COVID disruption.

In terms of whether the Student's spring 2020 SCTF was materially implemented during the spring 2020 COVID disruption, OSPI notes the following:

The Parent asserted the Student was not provided access to many of the asynchronous learning opportunities included in the Student's spring 2020 SCTF. Specifically, the Parent asserted she was only provided with three videos related to speech language pathology exercises and one link related to a physical therapy exercise.

During the course of this investigation, though, the District submitted: a service log from the speech language pathologist (SLP); a service log from the physical therapist (PT); a communication log from the substitute teacher; and several relevant communications. On the basis of the foregoing information, OSPI concludes that it is more likely than not that, during the spring 2020 COVID disruption (March 30, 2020 through June 16, 2020), the Student was provided with the following services:

- **Speech Language Pathology:** On six occasions, the SLP emailed the Student a video of the SLP reading a book and doing a related language lesson on YouTube. The total time of these six videos was approximately 1 hour and 30 minutes.
- **Physical Therapy:** On 12 occasions, the PT sent the Student weekly activities to be completed at home.
- **Adaptive/Social/Cognitive:** On six occasions, the substitute teacher sent the Parent a text with a link to a YouTube video that included adaptive, social, and/or cognitive learning activities.
- **Zoom Meetings:** Student attended anywhere from 1–3 Zoom meetings hosted by the substitute teacher.

Therefore, OSPI concludes the District did materially implement the Student's spring 2020 SCTF.

Finally, districts must provide parents with progress reporting on the student's measurable annual goals. The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. Here, the Student's November 2019 IEP stated progress on all goals was to be reported to the Parent via a progress report each trimester. June

16, 2020 was the last day of the 2019-2020 school year for the District, and consequently, the end of the third trimester.

On June 4, 2020, the substitute teacher emailed the Parent a blank copy of the Student's IEP goal sheet, asking the Parent to "fill it out and get it back to me and we will attach it to her progress report/IEP." From the documentation provided to OSPI during the course of this investigation, it does not appear the Parent responded to the substitute teacher's request of June 4, 2020, although there was no requirement that the Parent do so. Then, on or about June 8, 2020, the District provided the Parent with a progress report that included the same entry for each of the Student's November 2019 IEP goals (adaptive, cognitive, and social skills):

**Not Mastered:** Due to COVID-19, distance learning was provided from 3/30/2020 - 6/18/2020. During school closure, no cumulative data was collected for Student's social skills goal. Weekly work was provided via videos and zoom calls. Student participated weekly! Progress will be recorded once school resumes in the fall.

The June 8, 2020 progress report did not include any information on the Student's progress on the Student's November 2019 IEP goals. This is a violation of the IDEA. Even during any potential period of COVID disruption, districts must have a plan to gather progress data for each student with an IEP. As a corrective action, the District will be required to create a detailed, District-wide plan for how it will gather and report progress on IEP goals for all students with IEPs during the 2020-2021 school year, as the unique circumstances present in the spring of 2020 are likely to also be present during the 2020-2021 school year. The District will also develop, and present, a training that informs certain District staff of the detailed, District-wide plan for gathering and reporting progress on IEP goals for students with IEPs during the 2020-2021 school year. Finally, the Student's IEP team will be required to meet to discuss the Student's progress, present levels of academic and functional performance, and impact of the spring 2020 school facility closures.

### **CORRECTIVE ACTIONS**

By or before **November 6, 2020, November 9, 2020, and November 18, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **IEP Meeting**

By or before **November 6, 2020**, the Student's IEP team will meet to discuss the following issues:

1. Where does the Student currently stand on the goals in Student's November 2019 IEP? For example, has the Student's ability in the November 2019 goal areas regressed, stayed the same, or progressed?<sup>9</sup> The District will provide the Parent with an updated progress report.

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<sup>9</sup> This question will need to be answered by gathering existing data and communicating with the Parent and the Student. It is possible the District will be required to seek consent from the Parent for a partial or complete reevaluation to determine the Student's current standing on the November 2019 goals.

2. In accordance with OSPI's recent guidance (*Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020*), does the Student require recovery services to mitigate the impact of the spring 2020 COVID disruption? If so, what is the plan for the recovery services?

By **November 9, 2020**, the District will provide OSPI with the following documentation from the IEP meeting: 1) Invitation or scheduling documentation; 2) Agenda or meeting notes; 3) Information used to determine the Student's progress on IEP goals during school facility closures; 4) Updated progress report; 5) IEP or amended IEP, if applicable; 6) Plan for additional special education services (i.e. recovery services), if applicable; 7) prior written notice; and, 8) any other relevant documentation.

OSPI will review the documentation and approve or revise the plan for recovery services, as needed.

#### **DISTRICT SPECIFIC:**

##### **Create District Policy on Progress Reporting and Training on the Same**

By **November 6, 2020**, the District will develop a detailed, District-wide plan for how it will gather and report progress on IEP goals for all students with IEPs during the 2020-2021 school year. Also by **November 6, 2020**, the District will develop a training that incorporates and summarizes this plan.

By **November 6, 2020**, the District will submit a draft of both the plan and the training materials to OSPI for review. The training materials will include examples. OSPI will approve the materials or provide comments by November 11, 2020 and additional dates for review, if needed.

By **November 18, 2020**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet; and, 2) a roster of who should have attended so OSPI can verify that staff participated.

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.

#### **RECOMMENDATION**

Special education and related services must be provided by appropriately qualified staff. Other staff, including general education teachers and paraprofessionals, may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff, or for related services, a certificated educational staff associate.

Dated this \_\_\_\_ day of October, 2020

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.)