

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-69**

### **PROCEDURAL HISTORY**

On June 12, 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 Shoreline 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 June 17, 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 July 2, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on July 8, 2020. OSPI invited the Parent to reply. The Parent did not reply.

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).

**Specialty 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).

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

## FINDINGS OF FACT

1. During the 2019-2020 school year, the Student attended a District elementary school, was in the first grade, and was eligible for special education services under the category other health impairment.<sup>1</sup>
2. The District's 2019-2020 school year began on September 4, 2019.
3. The Student's June 4, 2019 individualized education program (IEP)<sup>2</sup> was in effect prior to the COVID-19 school facility closures. The Student's June 2019 IEP included several goals in the area of fine motor (coloring inside lines, shapes, grasp, scissors, coat and zipping, don/doff coat), math (one-to-one correspondence, spatial concepts), reading (letter sound correspondence, functional sight words), daily living/adaptive (hand washing, toileting), social/emotional (turn taking/sharing, self-regulation), communication (spoken word and ASL sign intelligibility, mean length of utterance), and gross motor (walking speed, school mobility and safety skill). The Student's IEP indicated the Student required direct instruction in a multi-modality communication approach, including spoken words, sign language, and AAC.<sup>3</sup> The

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<sup>1</sup> Student has diagnoses of Down Syndrome, epilepsy, apraxia of speech, and hearing loss.

<sup>2</sup> Amended September 10, 2019.

<sup>3</sup> AAC stands for "Augmentative and Alternative Communication" devices.

Student's IEP provided the Student with the following specially designed instruction and related services:

- Communication: 60 minutes weekly (to be provided by a speech language pathologist (SLP) in the special education setting);
- Communication: 190 minutes weekly (to be provided by special education staff in the special education setting);
- Communication: 30 minutes weekly (to be provided by a teacher of the deaf/hard of hearing (deaf/HH), in the special education setting);
- Gross motor: 30 minutes weekly (to be provided by special education staff but monitored by a physical therapist, in the special education setting);
- Fine motor: 30 minutes weekly (to be provided by an occupational therapist (OT)/certified occupational therapy assistant (OCTA) and monitored by an OT, in the special education setting);
- Fine motor: 190 minutes weekly, (to be provided by special education staff in the special education setting);
- Math: 190 minutes weekly (to be provided by special education staff in the special education setting);
- Daily living/adaptive: 190 minutes weekly (to be provided by special education staff in the special education setting);
- Reading: 190 minutes weekly (to be provided by special education staff in the special education setting);
- Social/emotional skills: 190 minutes weekly (to be provided by special education staff in the special education setting);
- 1:1 adult support/paraeducator, 1,700 minutes weekly, (to be provided by special education staff in the special education setting); and,
- Audiology hearing evaluation, 20 minutes 2 times yearly, (to be provided by the audiologist in the special education setting).

The Student's IEP additionally provided the Student with the following support for school personnel:

- Audiology consultation with school staff regarding Student's hearing and assistive listening technology needs (each semester, bi-annually) and upon request/need;
- Teacher-of-the-Deaf consultation with classroom staff (as requested) full-time 1:1 paraeducator support; and,
- Bus aide (daily).

The Student's June 2019 IEP additionally provided the Student with the following accommodations and modifications:

- Check for understanding/comprehension;
- Minimize auditory and visual distractions when appropriate;
- Obtain Student's attention before communicating with her and before providing instruction;
- Opportunities to rest;
- Preferential seating, close to, and in full view of instruction;
- Provide Student with consistent visual access to the instructor;
- Repetition of critical information and instructions;
- Sound Field FM system; and,
- Access/Use of Augmentative Communication system (daily).

The Student's IEP indicated the Student would spend approximately 24% of her time in the general education setting.

4. On March 12, 2020, the District closed its school facilities due to the COVID-19 pandemic in the District.
5. 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.
6. The Parent, in his complaint, stated the Student was not provided the following special education services as outlined in the Student's June 2019 IEP:
  - Specially designed instruction in math, reading, language, communication,<sup>4</sup> daily living/adaptive skills, fine motor, gross motor, social/emotional;<sup>5</sup> and,
  - Related services: verbal and signed (ASL), speech therapy,<sup>6</sup> physical therapy, occupational therapy, full time 1-1 paraprofessional who is ASL fluent.
7. 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.
8. On March 25, 2020, the District began implementing a District-wide continuous learning plan.<sup>7</sup> Regarding special education specifically, students receiving special education services in the District were provided access to learning opportunities through the District and building-level

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<sup>4</sup> The Student's IEP included three types of communication services, including 60 minutes weekly from a SLP, 190 minutes weekly from special education staff, and 30 minutes weekly from teacher of the deaf/HH. The Parent did not specify which of these he was referring to in his complaint.

<sup>5</sup> On the complaint filed by the Parent, the Parent reported the Student was not receiving specially designed instruction in "academic." "Academic" itself is not a type of specially designed instruction and it is accordingly believed the Parent was referring to reading and math, areas in which the Student did receive specially designed instruction.

<sup>6</sup> It is believed the Parent was referring to the specially designed instruction communication provided by the SLP.

<sup>7</sup> According to the District's response, beginning on March 25, 2020, the District made online enrichment learning activities available to all students, including grade-level packets. Around April 8, 2020, the District added access to weekly grade-level online video lessons created by District teachers, which targeted key content and skill areas. Starting around mid-April, the expectation was that each family would be contacted at least twice a week by their teacher to provide additional support. This included, but was not limited to, class letters/emails, online class meetings, office hours, and small group or individual online instruction. By the beginning of May, each school in the District had created their own remote learning website to provide online lessons to students and to streamline communications to students and families.

resources offered to all students, as well as to program specific resources located on the special education section of the District's remote learning website. The website stated:

Students receiving special education services will access learning opportunities through this page. Students' IEP case managers, teachers and any additional support services will have lessons and guidance on this page. Please select from your student's current setting/program for services. If you are unsure, please reach out directly to your student's case manager for guidance in accessing the lessons and supports.

9. The Student's program—"Blended Program"—had specific resources listed on the special education webpage for her class (provided under the teacher's last name). The webpage also included a link for "OT/PT/SLP/Visually Impaired/Hearing Impaired" where parents could select from the area of service their student received and access resources.
10. On March 26, 2020, the special education teacher emailed one of the Student's Parents with a link and login information for an account on a learning platform the special education teacher had configured for the Student, in addition to the resources provided on the District's continuous learning page.<sup>8</sup> The special education teacher explained that upon logging into the account created for the Student, the Parent would find an "orange snowflake," a "purple L3," and a "heart." The special education teacher explained that orange snowflake only contained library books, but would eventually house reading and math activities for the Student, that the purple L3 contained interactive games for skill practice, and that the heart was a program for behavior management that, at the time, was blank but might be utilized later. The Parent responded the same day that the program worked and confirmed that she had loaded it to the Student's iPad.
11. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
12. On April 14, 2020, the Student's SLP sent the parents of students she served a list of speech activities students could do at home.
13. The District was on spring break from April 20-24, 2020.
14. On April 27, 2020, the Student's special education teacher, OT, PT, and Teacher of the Deaf (TD) each began documenting their contact with the Student and her family, the services provided, Student's attendance and participation, and notes regarding the Student's engagement in learning in a "Continuous Home Learning Plan Workbook" (CHLP Workbook).<sup>9</sup> Each CHLP workbook also documented how the Parent had chosen for the

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<sup>8</sup> The links provided on the District's continuous learning page continued to house the schedule for each of the classes.

<sup>9</sup> Each "CHLP Workbook" was created as a Microsoft Excel spreadsheet.

Student to receive services in that specific teacher or service provider's instructional or service area.<sup>10</sup>

15. Beginning April 27, 2020 and continuing through June 19, 2020, the special education teacher held weekly Zoom classes in the form of small group Zoom meetings, online lessons, or other lessons/activities. Instruction was provided in the areas of reading, math, daily/adaptive living, and social/emotional skills. The Student attended seven out of eight classes. An ASL paraeducator or TD also attended each Zoom class to support the teacher. They documented their interaction with the Student and the Student's engagement in the class in the CHLP workbook.<sup>11</sup> The special education teacher's CHLP workbook, however, also noted that one of the Parents reported after almost every lesson that the ASL paraeducator's image on the screen was too small and that accessibility of the Zoom platform remained an issue throughout all classes.<sup>12</sup>
16. On April 27, 2020, the SLP emailed the parents of students she served to ask if they would like to set up regular check-ins over telephone, email, or Zoom. The Parents initially opted not to participate in check-ins.
17. On April 29, 2020, the TD emailed one of the Parents to ask how she could support the Student and to provide the ASL stories and resources for the Student. The Parent responded the same day with an update on how they were supporting the Student at home. The Parent requested an ASL game/activity for the Student to download to her iPad.

Also, on April 29, 2020, the TD responded to the Parent to provide feedback on the strategies the Parent was using and to offer links to games in ASL. She noted that she would be in touch and that she would see the Student at her special education class that week.

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<sup>10</sup> For example, the special education teacher's CHLP Workbook indicated the Parent had chosen to "continue use of interpreted videos," and had "opted out of receiving paper packets because [Student] will not do them."

<sup>11</sup> For example, during the week of April 27, 2020 to May 1, 2020, the TD documented the Student "attended the class meeting and participated using sign or pointing to the chart on the screen and voicing at times," and "[Student] watches and responds to the teacher's questions. ASL para is provided." During the week of May 11-15, 2020, the TD wrote, "[Student] enjoys seeing her peers and is very excited to participate in the lessons. During Calendar, [Student] answers using sign or pointing to the calendar. For the weather choices, [Student] uses the appropriate sign and for some of the clothing items she will often point to the screen for her choice." During the week of June 8-12, 2020, the TD wrote, "[Student] uses name signs for the staff and peers..."

<sup>12</sup> The Parents sent several emails to the special education teacher, noting that the Student was unable to see the window occupied by the ASL paraeducator and that closed captioning was not being provided. The special education teacher frequently responded and acknowledged the Parents' concerns but wrote that Zoom did not offer a way to change window sizes in recordings in Zoom, only in live meetings, and that closed captioning was not included with Zoom software. On June 17, 2020, the special education teacher wrote to the Parents that Zoom was not an ideal platform for the Student because it did not offer enough accessibility options.

18. On April 30, 2020, the Parent emailed the SLP and provided an update on the Student's progress. The SLP responded the same day, but did not receive a response back from the Parent.
19. On May 1, 2020, the SLP first observed the Student during her special education Zoom class. She documented in her CHLP workbook that the Student participated "by making choices by pointing, some single signs and some verbal words." The SLP also observed the Student on May 15, 22, and 29, 2020, and made the same observation.

Also, on May 1, 2020, the Student's PT joined the Student's Zoom class and documented in her CHLP workbook that the Student was "actively participating."

20. On May 3, 2020, the OT and PT formally sent notice to the Parents that during the school facility closures, all OTs and PTs in the District would not be providing teletherapy or direct instruction, nor would they be doing one-on-one teaching with students to directly work on IEP goals. Instead, they stated the District would be offering students continuous learning plans from then until the end of the school year, which were made available on the District's special education website. The email noted that monthly fine and gross motor activity calendars would be included on the continuous learning plan page. The email concluded by asking the Parents to fill out a survey to note their preference for frequency and type of interaction they would like from the OT and PT during the school facility closures.
21. On May 5, 2020, one of the Parents emailed the PT, describing a gross motor routine at home and requesting game ideas. She did not respond to the survey provided by the OT and PT. She noted she was in frequent contact with the classroom teacher and asked the PT and OT to please send home additional ideas and resources.
22. On May 6, 2020, the PT responded to the Parent's email with a list of several activities the Parent could do with the Student at home. The list of activities was individualized to the Student's needs and based on the PT's personal knowledge of the Student, as well as information the Parent had been providing the Student through email correspondences.
23. On May 7, 2020, the special education teacher emailed the Parent login information and a tutorial for how to navigate Seesaw.<sup>13</sup>
24. On May 8, 2020, the PT emailed the Parent a gross motor calendar activity.
25. On May 12, 2020, the District contacted the Parents by phone to schedule the Student's annual IEP meeting. According to the District's contact log, the Parent responded that the Parents could not attend, but gave the IEP team permission to proceed without them.
26. On May 18, 2020, the SLP emailed the parents of students she served another list of activities they could do with students at home.

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<sup>13</sup> Seesaw is a student-driven digital portfolio that allows students to share their work with teachers to enable teachers to support a student's learning.



27. On May 19, 2020, the OT and PT emailed the Parents to inquire again about scheduling a check-in and ask their preferences for services, including how often they would like check-ins during the school closures (weekly, biweekly or monthly) and what mode of communication was preferred. The same day, one of the Parents replied to the PT with information regarding the Student's participation in fine and gross motor activities at home and stated she was comfortable keeping in touch via email but asked if the PT would like to Zoom with the Student.
28. On May 21, 2020, the PT emailed the Parent, apologizing that "the parameters of what we are able to offer has been so unclear." She stated that she and the OT had been setting up 15-30-minute Zoom appointments with students and families and could do the same with the Student if the Parent thought it would be helpful. The PT also provided some recommendations for outdoor activities with an emphasis on balance, as well as a board game that works on balance, motor planning, and coordination. The PT also provided the Parent with information regarding shoes for the Student to address an orthotic concern raised by the Parent in a previous email.
- Also, on May 21, 2020, the OT emailed the Parent and confirmed that she would be happy to set regular Zoom check-ins with the Student.
29. On May 26, 2020, the SLP included communication activities in the classroom student engagement platform. The SLP noted that in the weekly classroom meetings, the Student made choices by pointing, some single signs, and using some verbal words.
30. On May 29, 2020, the Parents emailed the OT and PT to ask about setting up check-ins for the Student. The OT responded the same day with her availability to schedule a 15-30-minute session.
31. On June 1, 2020, the Parent responded to the OT's email to schedule an OT/PT check in for 15-30 minutes weekly.
32. On June 2, 9, and 16, 2020, the Student received an hour of OT and PT provided simultaneously. The Parents were also provided a calendar of activities for fine and gross motor activities they could do with the Student. Following each session, the OT and PT each documented the services and activities provided and the Student's engagement in the CHLP workbook.<sup>14</sup>
33. On June 5, 12, and 18, 2020, the SLP observed the Student's Zoom class and noted in her CHLP workbook that the Student participated by making some single signs and verbal words.

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<sup>14</sup> On June 9, 2020, the OT CHLP workbook documented that the Student and her Parent "did cutting activity w/spring loaded scissors and straws; very successful. [Student] was able to use scissors independently." On June 16, 2020 the OT workbook stated: "OT and PT previously planned to combine [gross motor] and [fine motor] activities together. [Student] briefly worked at chalkboard but was resistant to following directions. Worked on imitating lines, making an 'H' and other pre 'HW' shapes. Reviewed tips with dad for future practice."

34. On June 8, 2020, the Student's IEP team met via Zoom to conduct the Student's annual IEP meeting. The Parents were not in attendance. However, prior to the meeting, the Parents provided extensive written notes to the IEP team regarding the Student's educational strengths and weaknesses in each area on her IEP. The IEP team reviewed the Parents' input at the IEP meeting. No changes were made to the Student's service matrix. However, the IEP team updated the Student's present levels of performance to reflect data collected on the Student's performance during the 2019-2020 school year, which had been collected in March 2020, prior to the school closures, in the areas of math (one-to-one correspondence, spatial concepts), reading (letter sound correspondence, color words), and daily living/adaptive (toileting initiation generalization, hand washing). The present levels of performance for OT (coloring inside the line, shapes, grasp, scissors, coat and zipping), PT (walking speed, walking on stairs and curbs), and social emotional (turn taking/sharing, self-regulation) were updated using data collected in May 2020.<sup>15</sup>

Also, on June 8, 2020, the District provided the Parent with prior written notice (PWN), notifying her that it had updated the Student's IEP to reflect the Student's progress. The PWN documented the Parents' verbal consent for the IEP team to proceed without the Parents and to excuse the general education teacher, who did not attend the meeting. It also stated the IEP team agreed to meet again in November 2020.<sup>16</sup>

35. In its response, the District indicated its intention to "convene an IEP meeting once normal school operations resume to determine any services that may be necessary for Student at that time based on any effect the school facilities closure may have on her progress toward her IEP goals."

36. On June 12, 2020, OSPI received the Parent's complaint and opened this investigation.

37. June 19, 2020 was the last day of the 2019-2020 school year for the District.

## CONCLUSIONS

**Issue One: IEP Implementation** – The Parent alleged the District failed to implement the Student's individualized education program (IEP) from March 13, 2020 through June 19, 2020, during the school facility closures caused by the novel coronavirus (COVID-19). Specifically, the Parent alleged the Student did not receive her specially designed instruction in math, reading, language, communication, daily living/adaptive, fine and gross motor, and social/emotional, as well as related services in verbal and signed American Sign Language (ASL), speech therapy,

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<sup>15</sup> The District noted that it was unable to measure progress on the Student's goals through June 2020, as provided in her IEP due to COVID-19. The information added in the Student's IEP was mostly from data collected in March, prior to the school closures. The District stated it would provide additional progress updates to the Student's family when normal school operations resume, and staff are able to measure progress towards goals that cannot be fully measured in a remote learning context.

<sup>16</sup> The District's response stated the purpose of this meeting will be to review the Student's need for compensatory (recovery) services.

physical therapy (PT), occupational therapy (OT), and full time 1:1 paraprofessional who is ASL fluent.

Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs may not be implemented as written as school facilities shut down and districts transitioned to various distance learning formats. While there was not an expectation that districts implemented a student's IEP as written during school facility closures caused by COVID-19 in spring 2020, districts had to have a plan for how students with disabilities were to receive a free appropriate public education (FAPE), including the provision of specially designed instruction and related services. Accordingly, all schools were required to have begun continuous learning for all students by or around March 30, 2020, which was to include a written plan for providing special education services, including specially designed instruction and related services, to students during the school facility closures. In addition, districts were required to document in writing, the individualized special education services it was providing to each student with an IEP.

On March 25, 2020, the District developed a District-wide "continuous learning plan" whereby it housed a variety of educational tools and resources for distance learning on a website for students—including students receiving special education services. On March 26, 2020, the special education teacher emailed the Parents login information for an account the special education teacher created specifically for the Student using an online learning platform where the Student could access additional resources she customized for the Student in reading, math, writing, and behavior. One of the Parents confirmed the same day that she received the login information and had downloaded the learning platform to the Student's iPad. Three weeks later, following spring break on April 27, 2020, the special education teacher additionally began providing online Zoom classes in the areas of reading, math, daily living/adaptive, and social/emotional skills. Upon the commencement of the Zoom classes, the special education teacher and each service provider serving the Student also began documenting the nature of the instruction and services provided to the Student in their respective continuous home learning plan (CHLP) workbooks, also noting the Student's engagement during the class and any concerns raised by the Parent.

While the special education services provided during distance learning did not mirror exactly the services in the Student's IEP and may not have addressed each of the Student's IEP goals, the District was not required to implement the IEP exactly as written due to exceptional circumstances presented by COVID-19. Instead, as previously stated, the District was required to maintain written documentation of the individualized special education services it did provide the Student beginning around March 30, 2020—which the District did. Accordingly, OSPI finds no violation regarding the special education services provided during the school facility closures.

However, the District was unable to provide any progress data that described the impact of the provided special education and related services on the Student's IEP goals. While the District updated information in the Student's IEP under present levels of performance to reflect some new information gathered by the OT and PT in May 2020, it was not included in the Student's progress report and the District was still unable to determine progress on the Student's individualized goals. OSPI accordingly finds the District to be in violation. The District indicated its intention of holding

an IEP meeting to discuss the impact of school facility closure on the Student. The District will be required to hold this meeting and to monitor and measure the Student's progress during the school facility closures prior to the IEP meeting. This could include a review of existing data, Parent input regarding progress at home during the closures, and new assessments to reestablish the Student's baseline on her goals. At the IEP meeting, the IEP team must consider if, based on the results of the updated progress reporting, the Student requires any additional special education services to lessen the impact of the school facility closures. The District must submit the progress report and the team determination of any additional services are needed based on the progress report to OSPI for review and approval.

The District will also be required to develop a training on measuring progress during non-traditional instruction and provide training to staff.

The Parent raised additional concerns in her complaint regarding inaccessibility of the interpretation services provided to the Student—specifically that the Student did not receive verbal and signed ASL or an ASL fluent 1:1 paraeducator. As stated above, there was no expectation that the Student's IEP be implemented as written during the school facility closures. However, the District was still required to provide the Student with special education services—including accommodations and related services designed in part to make instruction accessible—required for the Student to receive a free appropriate public education (FAPE). Here, beginning April 27, 2020, for each Zoom class, the District provided the Student with either a teacher of the deaf or ASL interpreter. Documentation showed the Parent expressed concerns after each Zoom class that the viewing window was too small for the Student to see—a concern acknowledged by the Student's teachers. However, notes of the Student's engagement in class maintained by the paraeducator, teacher of the deaf, as well as other service providers indicated the Student was still able to participate in class and access some learning despite the size of interpreter box being small. Because the Student appears to have still been able to access some learning despite the interpretation services not being ideal, OSPI finds no violation. However, if the District will be using distance learning at any point moving forward, OSPI encourages the District to explore alternative interpretation services that may be more accessible for the Student and others with hearing impairments., including the use of a third party captioning program.

### **CORRECTIVE ACTIONS**

By or before **August 28, 2020, October 2, 2020, and November 6, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **IEP Meeting**

By or before **October 30, 2020**, the Student's IEP team will meet to discuss the Student's progress and the impact of the school facility closures from March 30, 2020 to June 19, 2020. Prior to the meeting, the District will need to monitor and measure the Student's progress. This could include

a review of existing data, Parent input regarding progress at home during the closures, and new assessments to reestablish the Student's baseline on her goals.

At the meeting, the Student's IEP team must discuss her progress and the impact of the school facility closures on that progress. The team must also discuss what, if any, additional special education services are necessary to help lessen the impact of the closures.

By **November 6, 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, if applicable; 7) prior written notice; and, 8) any other relevant documentation.

### **DISTRICT SPECIFIC:**

#### **Training**

By **September 25, 2020**, the District will develop and conduct training for administrators and special education certificated staff, which focuses on conducting progress monitoring during non-traditional instruction. The training may be conducted remotely.

By **August 28, 2020**, the District will submit a draft of the training materials to OSPI for review. The training materials will include examples. OSPI will approve the materials or provide comments by September 4, 2020 and additional dates for review, if needed.

By **October 2, 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.

### **RECOMMENDATIONS**

If the District will be using distance learning moving forward, OSPI recommends the District explore ways to increase the accessibility of the interpretation services used, including adding closed captioning to its videos. OSPI is available to provide technical assistance to the District on improving access to distance learning for students with disabilities.

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