

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-66**

### **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 Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On 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 June 25, 2020, the District requested an extension of time to respond to the complaint. OSPI granted this request and asked the District to respond no later than July 14, 2020.

On June 26, 2020, OSPI received additional information from the Parent, which OSPI forwarded to the District on July 1, 2020.

On July 13 and 14, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on July 14, 2020. OSPI invited the Parent to reply.

On July 16, 2020, the Parent requested an extension of time to respond to the complaint. OSPI granted this request and asked the Parent to respond by August 3, 2020.

On July 22, 2020, OSPI requested additional information from the District, and received the information on the same day. OSPI forwarded the information to the Parent on July 22, 2020.

On July 24, 2020, OSPI requested clarifying information from the District, and received the information on July 24 and 27, 2020. OSPI forwarded the information to the Parent on July 27, 2020.

On August 3, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

OSPI considered all 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

### 2019-2020 School Year

1. During the 2019-2020 school year, the Student attended a District high school and was eligible for special education services under the category autism.
2. The District's 2019-2020 school year began on September 4, 2019.
3. The Student's December 7, 2018 IEP was in effect prior to the COVID-19 school facility closures.<sup>1</sup> The Student's IEP noted he also qualified for academically gifted programming in the District. The Student's December 2018 IEP included annual goals in the areas of adaptive/life skills (task completion without engaging in competing activities), social/behavior (emotional regulation and social connections), and study/organizational skills (close reading and inference skills, itemize homework, steps to complete work, multi-step projects, organizing sources, organizing school materials, and checking completion criteria). The Student's IEP provided the Student with the following specially designed instruction services in the *general education setting*:
  - Study/organization skills: 20 minutes, 5 times weekly (provided by a special education teacher)
  - Study/organization skills: 20 minutes, 5 times weekly (provided by an instructional assistant (IA))
  - Social/behavior: 25 minutes weekly (provided by a special education teacher)
  - Social/behavior: 10 minutes, 5 times weekly (provided by an IA)
  - Adaptive/life skills: 8 minutes, 5 times weekly (provided by a special education teacher)
  - Adaptive/life skills: 8 minutes, 5 times weekly (provided by an IA)

The IEP included a speech language pathologist (SLP) consultation (60 minutes a month) as a supplementary aid and service. The Student's IEP also provided the Student with extensive accommodations, including more than 50 instructional and testing accommodations for executive functioning support (e.g., visual checklists, visual schedule, use of organizers, access to notes, homework planning, etc.), responses (e.g., allow more than one response type, homework not to exceed 120 minutes per day, reduction of volume, demonstrate knowledge to adult, etc.), timing and scheduling (e.g., extra time for tests, breaks, extra transition time, etc.), and behavioral supports (e.g., encouragement to participate in pro-social activities with pro-social peers, positive reinforcement).

The IEP included a board-certified behavior analyst (BCBA) coach/mentor to support the special and general education staff in data collection, twice exceptional instruction, executive functioning strategies, alignment of systems, and differentiating instruction.

The Student's IEP indicated the Student would spend 100% of his time in the general education setting.

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<sup>1</sup> The District, in its response, outlined why there was not a December 2019 IEP in place. As the development of this IEP is not related to the provision of services during the school facility closures, the complaint decision will not detail the development efforts. A new annual IEP was finalized for the Student on June 30, 2020.

4. On March 11, 2020, the District notified families that it would be closing schools for at least 14 days, beginning on March 12, 2020.
5. On March 12, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in King, Snohomish, and Pierce counties through April 24, 2020 (this closure was extended State-wide on March 13). The District, per this proclamation, extended its closure through April 24, 2020.
6. Between March 16 and 23, 2020, the District implemented and provided resources and supports for students, including "supplemental learning" District-wide. According to the District, the Student's general education teachers posted optional learning opportunities and resources on Schoology.<sup>2</sup> The schoolwork was not required or graded.
7. On March 19, 2020 the Student's AP language and composition teacher emailed the Student (and his other students) regarding optional work posted on Schoology.

After several subsequent emails in which the Parent raised concerns (e.g., assignments being inaccessible and overly time consuming for the Student, assignments listed as missing, and assignments not being differentiated for twice exceptional students), the AP language teacher agreed to excuse the Student from several assignments and provided extended deadlines for other assignments. Additionally, according to the District's response, the "[Student] was also eventually relieved from completing [language and composition] work since [AP teacher's] class would be focused on AP test prep...(which [Student] did not take) and because [Student] would still be utilizing his language arts learning standards in History [class]."

8. Also, on March 19, 2020, the Student's math teacher emailed the class regarding distance learning. The math teacher stated, at that point, he was posting optional materials, extension activities, and assignments. He created a discussion board for student questions and provided instruction through recorded videos. The math teacher also stated he would schedule time for office hours that students could ask questions and get help.
9. On March 22, 2020, the Student's case manager emailed the Parent to provide an update about setting up a way to meet online and have "some social/behavior communication time." The case manager stated the Student could send questions via Schoology or through email. The case manager stated, at that point, she could "provide feedback on assignments...connect with teachers for modifications and accommodations...and [provide] social/behavior support for students."
10. 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.

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<sup>2</sup> Schoology is a learning management system and platform used by the District that can be used to create content, design lessons, and assess student understanding. See, <https://www.schoology.com/k-12>.

11. Also, on March 23, 2020, the District provided its educators with guidance and expectations for continuous learning. This guidance included the following for high school teachers, in relevant part:

...special education teachers were instructed to design and provide learning aligned with student goals, implement accommodations as appropriate for distance learning, hold regular office hours to collaborate with content area teachers and make modifications as needed, manage and schedule IAs, hold regular office hours and check-ins to support families and students in meeting individual goals, provide needed accommodations for distance learning, and provide strategies for students to make progress towards individual goals to support access to core class content. When possible, special education teachers were directed to host small group instruction for students with shared goals.

General education teachers...were directed to connect with students to communicate learning activities through Schoology, email, or videoconferencing. General education teachers were directed to hold regular office hours and scheduled times to meet with families and students. Moreover, teachers were instructed to consult with special education staff to coordinate tiered supports for and make any needed instructional adjustments for individual students.

12. On March 26, 2020, the Parent emailed the chief of student support services and chief administrative officer for the District with concerns about a lack of coordination between special and general education regarding posting materials to Schoology. The Parent stated materials were not accessible without the supports and services of the Student's IEP. The Parent subsequently emailed and requested a "moratorium" on general education teachers posting learning opportunities (and sent a similar email to the District's school board).
13. On March 29, 2020, the Parent emailed the Student's case manager, asking for support managing the Student's assignments and asked if there was "going to be a [homework] planner, some/any coordination and adaptive of assignments proactivity?"
14. On March 30, 2020, continuous learning began in the District, and according to the District's response, "explicitly prioritized contacting students with IEPs."<sup>3</sup> At the Student's high school, according to the District response, the school "began providing lessons, conducting virtual classes and meetings, holding office hours, streamlining communications, and providing more scheduled support." The District noted in its response that all the Student's general education teachers utilized "various strategies for continued learning, consisting of comprehensive Schoology websites for each course, office hours, and lesson plans through prerecorded videos and/or Zoom sessions."
15. Also, on March 30, 2020, the case manager emailed the Parent and AP language teacher with information on how the Student could access an assignment and further details for the essay.

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<sup>3</sup> In its response, the District stated it began developing "continuous learning plans" (CLPs) for "its 7,000 plus students receiving special education services, setting an internal deadline of May 15, 2020." The District explained that "CLPs would act as a temporary tool to help focus services and supports that would be most beneficial for student's learning objectives. The CLPS would include information about which IEP goals will be targeted during school closure and how, and how often services will be provided."

The case manager stated she would reach out to the Student and support him in “study/org on writing his essay.”

16. On March 30, 2020, the Student tried to join his AP history class meeting on Schoology; however, there were technical difficulties with Schoology that prevented the class from meeting.
17. Also, on March 30, 2020, the Parent and school principal emailed. The principal stated, “we are all trying to figure out what [specially designed instruction] looks like in a remote learning environment.” The Parent reiterated her request for a “moratorium” on general education teachers posting assignments until they could consult with the special education teams.
18. On March 31, 2020, the principal sent out an email to the school regarding a structured school schedule. The principal noted, “One of the main purposes of the schedule is to provide students and families some predictable times when work or announcements from a particular teacher may come out, when an online discussion or online meet up may happen” but that families should not “expect that a student is going to be online at that time each day during the designated time.” The principal encouraged students to check Schoology for information from teachers.

The schedule had time blocked out for subject areas (e.g., language arts, math, arts/career and technical, health, physical education, social studies, science, and world languages) and other areas (e.g., all staff meeting, department check ins, support/tutoring, and office hours). The principal noted there was no requirement that classes have meetings during the listed times—and there was no “expectation that teachers have to provide face-to-face direct instruction in the form of a traditional class through video”—but if classes did meet, they should meet during those time slots in order to avoid conflicts.

19. Also, on March 31, 2020, the case manager connected with the Student’s AP history teacher to see if the teacher needed an assistance with modifications or accommodations for the Student.
20. On March 31, 2020, one of the Student’s IAs also emailed the Parent and Student to let them know he was available to help support the Student.
21. On April 1, 2020, the Student emailed his math teacher regarding assignments. The Student also emailed one of the IAs and asked if he could help organize the online assignments. The math teacher responded, stating the Student could modify the assignment and choose whether to write a paper or create a PowerPoint. The math teacher emailed the Student instructions and materials for the project.
22. Also, on April 1, 2020, the Student’s Spanish teacher emailed the class and stated she would be holding a class meeting to discuss assignments, expectations, and questions. The Parent responded that the class meeting time did not work for their schedule. The Parent stated, “we have already set up a schedule with [Student] wherein his academic obligations happen in the

mornings...deviations from this schedule are difficult and have many impacts on the rest of our family.”

The Spanish teacher responded that the meeting was scheduled “during World Language’s time slot in accordance with a school-wide schedule designed to help ensure that student[s] don’t have work, deadlines, and...meetings in multiple classes at the same time.” The Spanish teacher also noted the meetings were optional.

23. On April 2, 2020, one of the IAs met with the Student to assist in organizing his math assignments.
24. Also, on April 2, 2020, the Parent responded to the other IA’s emailed offer of support. The Parent stated the Student needed support around “managing assignments – making sure [Student] knows about them, knows where to find what he needs, that they’ve been adapted through the lens of his IEP, and that there is a timeline.”
25. On April 3, 2020, the case manager responded to an email from the Parent regarding assignments for AP language and composition. The case manager stated she sent teachers modification guidelines to support the Student and noted several assignments that the Student did not need to complete. The case manager also stated one of the IAs would support the Student in organizing his essay. Finally, the case manager noted that the following day, she would “look at schoology and assignments that have been posted. Everything online right now is enrichment to support continuous learning so we can design the assignments to support [the Student] when he is working independently.”
26. Also, on April 3, 2020, the case manager, Student’s school team, and the Parent emailed, discussing planner options.
27. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
28. Also, on April 6, 2020, the Student’s District BCBA provided the Student with instructions on how to add and share a google calendar to support his organization and study skills.

The Parent, in her reply, noted the Student did not open this email and that “without the supports and services in his IEP, such as pre-planning and priming tied into a reinforcement system, [Student] does not engage in non-preferred tasks such as reading school-related emails or organizing his academic assignments and materials.”

29. On April 7, 2020, one of the IAs worked with the Student on his math project. The IA also sent a summary email to the Parent and Student regarding the session.

The same day, the Parent emailed the IA and suggested the IA use a Google document to work with the Student to “make learning about note-taking a part of your work together.”



30. On April 9, 2020, one of the IAs emailed the Student regarding his AP language essay and stated he made some comments. The email indicated the IA and Student would be meeting the following day, April 10, 2020, to continue working.
31. The District was on spring break from April 13 to 17, 2020.
32. The Parent, in her reply to the District's response, stated the case manager did not begin monitoring the Student's courses and assignments until after spring break and that the "only tool that was consistently in use (assignment matrix) was used by the tutors, the [case manager], and the IA – not by [the Student]." The Parent stated the Student was not provided with "strategies combined with reinforcement systems being implemented to help [Student] grow his skills in managing an online homework planner independently."
33. On April 15, 2020, the case manager emailed her students—including the Student—regarding where to find information from her on Schoology, including the group invitation for weekly office hours and check-ins.
34. On April 17, 2020, the Parent emailed the case manager, asking whether the case manager would be "implementing a game plan this week for managing work via remote" and stated she could not be "responsible for navigating Schoology, [Student] cannot do this without support, and we never know what's for [Student] vs for the AP students." The Parent stated they needed "guidance and pre-adapted information" and that "currently [we] do not have that."
35. On April 19, 2020, the Parent requested that one of the IAs increase the amount of time he worked with the Student in math.
36. The District noted in its response that during the last two weeks of April 2020, the IA previously working with the Student on math did not work with the Student. The IA began providing instruction and support again each Tuesday and Thursday starting May 4, 2020.
37. On April 20, 2020, the case manager responded to the Parent's April 17, 2020 email and stated that she would review posted assignments and work on adaptations for the Student. The case manager stated that because the Student's home team helped support the Student, it did not seem like she (the case manager) was the best person to support the Student in entering information into his calendar, as he already had specific times devoted to each class. The case manager also responded that one of the IAs was available on Fridays to work with the Student in AP language and that the case manager would coordinate with the AP teacher regarding expectations. The other IA was unavailable for instruction or video conferences due to "technology issues," but would "email directions on where to locate information for assignments." The case manager stated she would email later in the day with a breakdown of the modified work.

The Parent responded that she could “not be in charge of [Student’s] academic calendar and neither can our tutors...Can you please define a mechanism for organizing the information with [Student]?”

The case manager texted the Parent to let her know she was working on a planner document for the Student’s assignments.

The Parent then emailed the District BCBA and private BCBA, and copied the case manager, stating that the case manager’s “suggestion – to email [Student] – will not go anywhere...He is not an information manager. That is where the supports and services in his IEP come in!”

The case manager responded stating that she was  
diligently working with my [colleagues] to modify and apply accommodations for [Student] on his classwork. I am putting together a document to introduce new assignments for him to work on with his tutors...I understand this is frustrating and this is why we had set up the check-ins to support [Student] in getting a calendar set up. Just like if we were in a class, I am scaffolding this by gathering the information and then he needs to transfer it to his calendar...I will of course continue to propose a schedule of what his week should look like.

Later that day, the case manager emailed the Parent a schedule for the week’s work, which incorporated the Student’s assignments from his classes, along with suggested days for the Student to complete the work, where to find the materials, any additional information, and scheduled school support time: Monday and Wednesday, 9:00 am with case manager and BCBA; Friday 9:00 am with IA.<sup>4</sup> The schedule also included instructions: 1. “Look at each subject and row by day;” 2. “I have put in suggested days to work on this class but of course this may need adjustment by you and your tutor;” 3. “Please add Physics in this week as you will start getting assignments and a schedule;”<sup>5</sup> and, 4. “I will review your calendar and we can discuss on Wednesday with [BCBA] at 9:00am if this works.”

38. The District noted in its response that the case manager continued emailing a weekly schedule to the Student throughout the rest of the school year.

39. Also, on April 20, 2020, in an email to the AP language teacher, the case manager noted she worked with the Student “for an hour three days a week but we are currently working on study skills.”

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<sup>4</sup> The schedule did not include class meetings for the Student’s general education class periods.

<sup>5</sup> The Student was enrolled in a physics class at a local community college through running start. In the Parent’s reply to the District’s response, the Parent stated, “the only pathway to a General Education classroom with organization and structure was through a Physics class online through [local college]. Because we were able to bring this about, using our own family resources, we could help [Student] manage his impulsivity and anxiousness and direct his intellectually [sic] energies positivity.”

40. On April 21, 2020, the Parent asked if the case manager could work with the Student on written language for now, as the Parent was "not sure I see the benefit of allocating time a calendar 'check in.'" The case manager responded and agreed.
41. On April 23, 2020, the Parent emailed the case manager about the weekly schedule, stating:  
I really need you work with [Student] on an ONLINE planner that he can show his tutors, with assignments itemized just as would happen in regular school. The planner that you and [the BCBA] worked out did not include the Spanish assignments which were impossible for us to interpret and organize on our own and the [AP language] work does not map to [the Student's] realities of having no tutoring support in that subject and very nearly none in Algebra. In addition to an executive functioning-oriented [specially designed instruction] plan for [Student's] HW planner with pre-adapted/digested info on your side, we need subject-level support.
42. Also, on April 23, 2020, the case manager emailed the Parent and Student regarding a meeting set up for April 27, 2020 with the Student's math teacher. The case manager stated she would have the math teacher "review with [Student] his schoology page for the first 15 min to ensure [Student] knows where to access his materials." The case manager also stated:  
[Student] and I will then check-in to see where he is at in History and then [BCBA] and I will create his HW planner for the week offline and share it with you. We will work in Google Docs this time so that [Student] and [private tutor] can cross out work as we complete it to help him stay organized. [BCBA] is working with me to set up a check-list for [Student] for accessing his classwork and completing his work for working times when a tutor is not available.  
  
[The IA] will meet with [Student] tomorrow at 9am to complete the synthesis essay. [AP language teacher] would like to see what [Student] has so far and to provide feedback.
43. On April 23, 2020, the Student's Spanish teacher also emailed the Parent about assignments, materials, and due dates. The Spanish teacher mentioned that on Friday, she was holding "an optional Teams class meeting...where he can ask live questions and get face-to-face help."  
  
The Parent responded that she wanted to have the Student attend the class meeting, but that "it's not really how our family schedule works out but will try."
44. On April 24, 2020, the case manager emailed the Parent and the Student his schedule for the following week, which included meeting with the case manager at 9:00 am Monday, Tuesday, Thursday, and Friday (to take a math unit test), and working with the IA on language arts at 9:00 am on Wednesday.
45. On April 26, 2020, the Parent emailed the case manager and requested additional support for managing academic assignments, planning, and class specific instructional support; recommended organizational strategies; and, proposed a new schedule for the Student's support.

Regarding the new schedule the Parent suggested, the District stated in its response that the Student already received direct instruction each day of the school week from either the case manager or an IA.

46. On April 27, 2020, the Student's math teacher met with the Student and they reviewed where the Student could access his weekly math work.
47. On April 29, 2020, the case manager emailed the Parent an update with the "most current information" she had from teachers on the Student's classwork and described next steps for each class. The case manager also stated:
- ...[BCBA] and I are also going to work on a task list for [Student] to use in order to be prepared for meetings with [school] staff and for him to record information on work he needs to do outside of his time with his tutors and [school] staff support. I am in no means saying we plan to pull back support but we want to work with [Student] on systems to do some of the work on his own to follow-up with what we have been working on.
- [...On Monday] we will be following a lesson to share how to record information on it, discussing his role in his learning and the communication that he needs to provide. We in no way intend [Student] to take it and roll with it. We expect to see some release of responsibility in the systems we are going to be teaching [Student] towards the end of June so of course there will need to be some frontloading again in September.
48. On May 1, 2020, the Student's father wrote to the Student's school team, stating:
- We are having a hard time understanding the bottleneck for the minimal IA support that we are requesting for [Student] for Algebra...We are now headed into the 8th week of stay-at-home. Your staff, which includes an ACCESS caseload of 13 students supported by three IAs, is working full time from home, as are we both. We've stepped up massively to support [the Student's] continued access to learning during the school closures. Why is there any question about providing this minimal support to him?
49. Also, on May 1, 2020, the case manager emailed the IA and Parent, clarifying the Student's schedule, as follows:
- Case manager and BCBA meets with Student on Mondays for study/organizational support around his planner; and,
  - IA meets with the Student Wednesday and Fridays.
50. On May 3, 2020, the Parent emailed the District's school board directors and reiterated her concerns about the provision of an IA to support the Student. The Parent also raised concerns about the Student's continuous learning, stating "without even a partial plan beyond case manager check-ins this far into COVID-19 school closures means that our students are basically not even expected to have an education, let alone a [free appropriate public education (FAPE)]." (Emphasis in original.)
51. Also, on May 3, 2020, the case manager emailed the Parent with information about the next Spanish assignment, resources, and expectations for the week.
52. On May 4, 2020, the case manager emailed the Parent, explained that the IA (who previously work with the Student on math) would resume working with the Student, and proposed the following, revised, support schedule:
- Monday (9:00-9:40): Case manager and BCBA
  - Tuesday (9:00-9:30): IA (algebra)

- Wednesday (9:00-9:30): Other IA (LA)
- Thursday (9:00-9:30): IA (algebra)
- Friday (9:00-9:30): Other IA (LA)

According to the District, in response to the Parent requesting more time, one of the IAs additionally provided support on Tuesday, Thursday, and Friday—instead of Tuesday and Thursday, starting the second week of May.

53. Also, on May 4, 2020, the case manager emailed the Student a recap of the work they did that day in their meeting (e.g., review online spreadsheet, instruction on how to add comments and assignments, added assignments, created a portfolio for AP language and algebra). The case manager outlined instructions for the Student’s homework (e.g., creating a task list).

According to the Parent, this was another example of an email the Student did not open. In her reply to the District’s response, the Parent stated that as the Student did not open the email and the case manager did not follow up, this “illustrates how, as late as May 4<sup>th</sup>, [Student] was not receiving supports and services to help him make meaningful progress on his task and homework planning goals.”

54. On May 7, 2020, the IA supporting the Student in math emailed the Student and Parent a summary of what he and the Student worked on that day. The IA recommended extending the length of time they met from 30 to 45 minutes, and also noted that he would be present at the math teacher’s “office hours” that day.

55. On May 12, 2020, the Parent emailed the principal about the junior class talent show. The Parent stated the Student was not notified or invited to participate or contribute. In her reply to the District’s response, the Parent stated this was an example of the Student not being able to access general education offerings because his IEP was not being implemented.

56. On May 14, 2020, the IA emailed the Student a reminder about the math teacher’s office hours, stating “As I’ve stated in previous emails, [math teacher’s] Office Hours are at 11:45 today. I will be there, too- you can join from his Schoology page, or click on the hyperlink at 11:45.”

57. Also, on May 14, 2020, the case manager emailed the Parent a copy of the Student’s progress report. The progress documented the following progress as of May 14:

- Adaptive/Life Skills: “Due to Covid-19 school closure there is not school setting related data for this goal at this time.”
- Social/Behavior: Significant progress made, “...From distance learning, 1x1 work with [Student], he is showing more stamina in his short working periods with school support staff.”
- Social/Behavior: Significant progress made, “Pre-school closure, [Student] was involved in Unified sports, had made connections with students in the program, exchanged numbers and talks to these students outside school. [Student] still leans on adult support and attention at school and is often the sought after party (socially) and not looking for friends unless he has a specific thing he needs from them.”
- Study/Organization: Goal objective met
- Study/Organization: Little or no progress made, “This continues to be an area of strong intervention support from [sic]. [Student]...refused to participate in the HW planner while still

at school this year. The Covid-19 closure has given new opportunity to work with [Student] in developing systems for recording work and becoming accountable.”

- Study/Organization: Significant progress made
- Study/Organization: Little or no progress made, “When school was in session there was not a lot of opportunity to work with [Student] on this very important goal. He does a great job planning out work for ceramics as it is a preferred class. As school has changed due to Covid-19 closure, [Student] has needed more support in breaking down and organizing his work load. Many factors play into this but at this time the anecdotal data from working with [Student] and parent input is that he is not proficient in this skill.”
- Study/Organization: Goal objective met
- Study/Organization: Goal objective met
- Study/Organization: Significant progress made, “When in school, [Student] would take completed assignment to his teacher to have them review before turning in.”

58. The Parent expressed concern regarding the progress reporting in a May 31, 2020 email to the case manager. The Parent stated the progress ratings were unsupported by the data and did not make sense in comparison to reports from the IEP team (e.g., “‘managing materials’ has a 7% baseline according to the IEP team but in this May progress report it’s a ‘met goal’ rating.”) The Parent also stated the progress was being reported on skills that the goal was not targeting (e.g., emotional regulation, peer friendships, and work completion) and that the context for several goals was missing.

The Parent clarified in the reply to the District’s response that the ratings in the progress report did not match the present levels the Student’s IEP team had established for the draft June 30, 2020 IEP.

59. On May 19, 2020, the Parent emailed the case manager regarding opportunities for social emotional support and connection. The Parent stated the Student “is being left behind in the GenEd membership department. He doesn’t see the various ‘hi class’ emails from teachers. He doesn’t drop in on meetings where he can say hi (he tried with Spanish two weeks ago but nobody was there)...Since he cannot independently navigate Schoology and needs assistance for that engagement, he’s sort of become like a ghost student.” The Parent asked the case manager to review Schoology with the Student and calendar class meeting times.

The Parent noted in her reply to the District’s response that the Student’s IEP targets his “significant executive functioning challenges” and that without the supports in the IEP, the Student could not access Schoology and general education offerings independently.

60. On May 21, 2020, the case manager emailed the Parent regarding meeting with the Student the following Wednesday and Thursday, the Student’s spreadsheet and homework planner, and an opportunity for social emotional connection on Tuesdays.

The Parent responded, asking about opportunities for social-emotional, the continuous learning plans (CLPs), and whether she would be involved in the development of the CLP.

61. During the week of May 25, 2020, the case manager emailed the Parent the Student's CLP. The CLP included the following information under its initial plan for closure:

- "Formulate how student can create a work schedule with student using [assistive technology]"
- "Plan a schedule with student using a web-based calendar"
- "Family requested we try something like what student used as a homework planner/Spreadsheet to organize work"
- "Send a schedule to family assignments and reviewed with student on how to use planning-family voiced obvious concern with distance learning in that navigating Schoology is very distracting and time consuming for student and family."
- "Weekly review of Teacher's schedules for communication with other peers to present to family for student to join."
- "Accommodation of adult when needed for support in academic classes-Navigate with parent input on student's tutoring schedule for Physics and [high school] class work. Start with Monday mornings with [BCBA] and [case manager], Tuesday and Thursday with [IA], and Friday with [another IA]."
- "4/15 [IA] has issues with Technology that needs to be taken care of as well as support in setting up distance learning tracking (google docs)"
- "4/27 After completing Synthesis essay, [IA] started to work with [Student] on a Ceramic's project until team decided that...time would be better focused on other studies."
- "Plan with BCBA on modification to assigned work per student needs and times provided by student of their distance learning availability"
- "Weekly invitations to meet with peers using [Microsoft] teams for social connection with Unified sports team and students that [Student] ate lunch with."<sup>6</sup>
- "Support in facilitating connections with general education."
- "Alternative to AP US History, student is given NewsELA.com work to complete content of US History"
- "Currently we are trying to support student as much as we can with his schedule. Important for student to have breaks with preferred activities and exercise. Family has set up"
- "Student will continue US government through articles in NewsELA"

Additionally, under related services, the CLP included:

- Speech language pathologist (SLP) and case manager continue to coordinate.
- "SLP attends weekly 'office hours' as well as open office hours of SLP three days a week."
- "[SLP] is at weekly 'office hour' meetings for social connection with students."

And, under supports for parents and staff, the CLP noted:

...[Student] needs support accessing his studies-adult to facilitate task management, work avoidance and stamina. Goals in his IEP that are manageable to some extent through [specially designed instruction] in school with adults available but not at home without school support or parent provided tutors. Example: When asked to engage in 'office hours' with the math teacher, [Student] needs support from an adult in keeping track and

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<sup>6</sup> The Parent noted in her reply that the Student's IEP focused on the Student generalizing his social skills to a general education environment, and that a social connection with only other students with IEPs does not address the Student's needs or his IEP goals. The Parent also noted the Student only participated in two of these meetings at the Parent's insistence. The Parent also noted the Student felt cut off from his friends in the general education classes and that there was no support provided to help the Student connect with other peers.

managing his time and finding the resources to join the [Microsoft] teams meeting. Checking emails for links to meetings is distracting and having access to many distractions when online can keep him from accessing the supports that might be easily accessed for neurotypical peers when he does not have an adult present.

...

For electives that could not be dropped and classes that have similar work-discussed with Jazz, Ceramics and PE teachers that their curriculum over distance learning does not register for [Student]. [Student] is active daily and filling out a form each day is busy work to him, [Student] found playing his instrument into the computer and navigating all of the technical challenges of using the music app for Jazz to not hold a lot of interest to [Student] and he is actively practicing music, [Student] loves working with clay in ceramics and doing non ceramics projects and losing the social connection with his teacher...All teachers will follow the district guidelines for engaged students as [Student] is still incorporating his learning in his daily life and frees his time up for core content [sic].

Parents are discouraged by the lack of communication from general education teachers. With distance learning [Student] is losing social connections with his peers and teachers.

62. On May 31, 2020, the Parent emailed the principal regarding the CLP and raised concerns that she was not involved in the process of developing the CLP. The Parent stated,

[The Student's father] and I are the team's eyes and ears right now. Whenever [Student] is online...one of us is sitting next to him. We are overseeing **\*all\*** of his access to [District] learning opportunities right now...As parents, we should be involved **in the formulation of any plan for our student** during school closures. It's amazing that not only have our inputs into this CLP not been solicited, the already filled out document arrived in a format that is not editable...**What is the purpose of these documents and how and when will they be used, by whom?...**

(Emphasis in original).

63. On the following dates in May 2020, the Student met with either the IA or the case manager and BCBA via Microsoft teams and discussed or worked on the following, summarized:

- May 7: Discussed progress and reviewed bar graphs and histograms;
- May 11: Reviewed how to find math resources, instruction on how to message teachers, view Schoology calendar, and set up portfolios in Google documents;
- May 12: Math instruction and assignments;
- May 14: Discussed previous assignments, math video and notes;
- May 15: Reviewed math definitions, took notes, video, worked on assignment;
- May 18: Reviewed schoolwork matrix with Student;
- May 19: Math notes, vocabulary, support provided to access materials, downloaded instructions and outline for Spanish assignment, support to upload completed work, met with peers during weekly check-in;
- May 21: Math review, notes, discussed next assignment;
- May 22: Postponed at Parent request;
- May 26: Postponed at Parent request;



- May 27: Reviewed best practice for recording information, locating information on Schoology<sup>7</sup>;
- May 28: Reviewed math progress and continued math; and,
- May 29: Reviewed videos and took math notes, discussed homework.

64. On June 3, 2020, the Parent emailed the principal, reiterating her concern that “Schoology is unnavigable without supports and services in IEPs...[and] few if any GenEd teachers are taking extra steps to notify our students about real time [opportunities] to reconnect with peers and teachers in GedEd classes and there is no push in activity from the SpEd side either.”

65. Also, on June 3, 2020, the Parent emailed the case manager regarding some systems they were using at home (e.g., Google document for notes, reminder application on phone). The Parent stated they were working on the goals of having the Student get to “his appointments on time with fewer/fading adult reminders and prompts” and using “the shared google doc to write things down that he needs to do in order to follow up on with [tutor].”

66. On June 3, 2020, the Parent also emailed the case manager detailed input on the Student’s CLP, including “more details and context than that one you sent plus a fuller communications log.” The Parent also stated, “any action on a clp is on hold so far as we are concerned, pending [the school] addressing the important questions we have asked” in the Parent’s May 31, 2020 email to the principal.

The Parent’s input described the Student’s need for a “sufficiently challenging academic program” and the barriers in the remote learning environment, including that the Student “cannot participate in academics without 1:1 support in finding, interpreting, organizing, completing and submitting work.” The Parent stated they asked the school to “pre-adapt and prioritize assignments...and to implement a system online for managing this information...[and] an online tracking planner was presented on May 4<sup>th</sup>” and stated they asked for “activities such as teacher office hours or class ‘drop ins’...be a part of this system,” but that these had not been on the Student’s schedule. The Parent acknowledged that as of May 10, 2020, the school agreed to “provide three 40-minute sessions per week with an IA to supplement” algebra and that as of May 26, 2020, the case manager “agreed to notate when [general education] teachers are having drop-ins or team meetings.”

The Parent listed strategies she wanted the District to consider, including: 1:1 support, sharing screens, having the Student demonstrate his “take aways” in a Google document, prevent engagement in “competing or parallel activities,” and pre-planning and priming. The Parent expressed concern that the Student’s social/emotional skills—“ability to meet and manage his sensory needs”—were regressing. The Parent stated she had requested that the general education class meetings be added into the Student’s weekly schedule. Further, the Parent

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<sup>7</sup> According to the Parent, in her reply, this session was mostly just the Student and case manager chatting. The Parent stated, “there is really no way to overstate how this chitchatting dominated [Student’s] meetings with the district BCBA and the [case manager]. He likes them and he loves to talk. He derived minimal study/org benefit in terms of beginning to internalize and manage online tools for the purpose of tracking academic assignments independently.”

stated "no materials on Schoology are pre-adapted through then lens of his IEP. This is why we asked for help moving to an online planner system and the [case manager] pre-adapts and streamlines assignments so that the home tutors and [Student] have a digested game plan."

The Parent also listed several "continuous learning goals" for the Student and supports the Parent and staff needed. Finally, the Parent listed the special education supports she thought the Student needed:

[Student] needs at least once weekly (45-60 minutes) meeting time with the...case manager to facilitate IEP goal instruction and support for existing general education content/classes. Daily meeting time with a special education support staff...to assist [Student] with accessing the general education content, support executive function needs for time management, work completion for quality and timeliness, assistance for engagement and emotional regulation, and general support for content that may require further accommodations or modifications. Para support should also be provided during general education class instruction to facilitate engagement. Special education staff will meet with general education staff to support accommodations and modifications prior to assignments being delivered for [Student] to complete.

67. On the following dates in June 2020, the Student met with the IA and discussed or worked on the following, summarized:

- June 2: Continued math notes and assignments;
- June 5: Phone call with Student to review work to be completed;
- June 9: Continued math notes, videos, and assignments;
- June 11: Phone call with Student to review work to be completed;
- June 9: Continued math notes, videos, and assignments;
- June 12: Completed sample problems for math;
- June 16: Completed problem sets for math; and,
- June 18: Completed sample problems for math.

68. On June 12, 2020, the Parent filed this complaint. The Parent, in her complaint, stated the District was not providing the following services as outlined in the Student's individualized education program (IEP): "instruction in staying on task, work completion, managing academic materials, managing assignments, project planning, emotional regulation, peer/friendship skills, locating evidence, managing sources and showing steps." The Parent stated the Student was supposed to spend 100% of his time in the general education setting, and that during the school facility closures, "he did not receive any push in services to GenEd and this...completely cut [him] off from formal (e.g., class meetings) and informal ('drop ins') learning and social class membership opportunities with GenEd peers."

The Parent stated the District did not "offer any services other than a weekly 'check in' with the IEP case manager" and that the Student's case manager "stated she had received conflicting info from District and union about whether they could provide [specially designed instruction]."

The Parent stated that eventually, the case manager “streamlined and adapted Schoology information for [Student] and provided an online assignments management tool” and that the school “eventually agreed to supplement home tutoring in Algebra with an IA.”

69. In her reply to the District’s response, the Parent emphasized that the District did not implement the Student’s social friendship goal, noting this goal is supposed to be implemented in the general education setting and that one of his IEP accommodations is “encouragement to participate in pro-social activities in the all school environment.” The Parent also stated there was “no [specially designed instruction] plan to systemically provided [specially designed instruction” for the Student’s “homework planner and managing assignments” goals, his “on task” goal, and his “task completion” goal. The Parent’s reply emphasized that “none of the foundational aspects of [Student’s] IEP supports and services – the need for curriculum at his cognitive level, the need for executive functioning and attentional supports in order to access the curriculum, and, supporting positive peer interactions in the dynamic all school setting – were implemented.”

The Parent further stated the Student “was not able to participate in any context where the [District] provided his general education peers continuous learning opportunities, due to the absence of supports and services in his IEP.” The Parent noted throughout her reply that the Student does not open emails (unless they are about a preferred activity), and that the District staff attempts to communicate with the Student via email were ineffective and inaccessible. The Parent also noted the Student was not able to stay on task unless the Parent was sitting next to the Student during his sessions and without that the Student would be multi-tasking or not paying attention, and also noted the IAs were “not prepared with strategies addressing [Student’s] IEP goals in managing his assignments, completing them, and staying on task.”

Additionally, in her reply, the Parent highlighted the confusion communicated about whether staff were supposed to be providing specially designed instruction during the closure. The Parent highlighted emails from the Student’s case manager that stated the District told them “we are not expected at this time to design [specially designed instruction] or take data when we are working with students” (April 1, 2020 email) and “we aren’t technically doing [specially designed instruction...but we are helping students get access to their curriculum and assignments” (April 20, 2020 email). The Parent stated this shows the “District’s assertions that [Student] was provided with continuous direct instruction” are inaccurate.

70. In the Parent’s reply, the Parent calculated her estimate that the Student received 250 minutes of specially designed instruction, and that the Student—per his IEP—should have received approximately 65 hours of special education services in the general education setting. The Parent noted the Student had approximately 1,100 minutes of contact time with the case manager, BCBA, and IAs, but that apart from the 250 minutes, the rest was tutoring in content areas (e.g., algebra) or “general contact without [specially designed instruction] plans or systematic implementation strategies or data taking.”

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

72. On June 30, 2020, the Student's IEP team met and completed the Student's annual IEP. The prior written notice recorded that at the IEP meeting, the team agreed to focus on finalizing the Student's IEP as it was overdue. The team agreed to reconvene before school started to discuss continuous learning supports for the fall.

73. On August 25, 2020, the Student's IEP team is scheduled to meet.

74. In its response, the District acknowledged that the Student's IEP was not implemented as written. However, the District stated the high school team "nonetheless provided [Student] all needed accommodations, support, and [specially designed instruction] to fully access his education and make progress." The District stated the following, in part:

[The case manager], with assistance from [the BCBA] and IAs...worked diligently to ensure [the Student's] IEP was implemented during the statewide closure. [Case manager] and her team worked with [Student], the Parent, [the Student's] private tutor, and [the Student's] general education teachers to ensure [Student] received all needed modifications and accommodations. [Case manager] monitored...[the Student's] general education courses to ensure that [Student] understood the assignments and deadlines. She worked with general education teachers to make sure all assignments had been appropriately modified. She proactively helped [Student] and the Parent manage [the Student's] work through organizational tools, adjusting them as needed. Furthermore, [case manager], [and the IAs] provided direct instruction on [the Student's] goals...The team regularly provided notes of their meetings to the Parent and maintained a Google document which consolidated summaries from the meetings held so the Parent could easily access the information. The [school] team actively collaborated with [the Student's] home team...

Throughout the remainder of the school year, at a minimum, [Student] attended the following meetings with his special education team: On Mondays and/or Wednesdays, [case manager] and BCBA...met with [Student] for 45 minutes. They focused on study/organization and adaptive life skills, assisting [Student] with staying on task, slowing down and working through his assignments, organizing his weekly work through creating schedules and checklists, using Schoology, and practicing general executive functioning strategies.<sup>8</sup> However, [case manager] often made herself available for additional instruction throughout the week to assist [Student] with organization and specific assignments.

Each Tuesday, [the case manager] held a one-hour videoconference session for her Access students, which [Student] participated in. Generally, five to ten students would also participate. During the calls, the students would primarily focus on social/behavior and study skills. [Case manager] and supporting staff would work with students on how to connect with peers, adapt to current the reality during closure, and continue practicing socialization...Other school staff, such as [school's] librarian and general education teachers

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<sup>8</sup> The Parent, in her reply, stated she believed this assertion by the District to be incorrect. The Parent stated, "The only topic that they covered with [Student] – and we know this because we were there with him or in earshot during these sessions – was figuring out options for an online planner and calendar/scheduling tool."

would periodically join calls so students could practice socializing with individuals outside of the Access community.

[Student] received [specially designed instruction] and support throughout the week from [the IAs] and/or [case manager]...In general, [one IA] worked with [Student] on Tuesdays and Thursdays supporting [Student] in managing his algebra (and later, also on Fridays). [The other IA] worked with [Student] on LA and organizing his writing on Wednesdays and Fridays. Special education staff would work with [Student] to ensure he was organized and staying on task, understood the assignments and deadlines, and had a plan to complete the work. [IA] and [case manager] would help organize [the Student's] writing and prompt him to slow down and organize his sources.

...

[The Student's] general education teachers also worked hard to ensure [the Student's] accommodations were implemented and his work was appropriately differentiated. [The math teacher] frequently corresponded with [the Student's] tutor to support curriculum modification and accommodations, such as flexible pacing and deadlines, reduced work, and modified grading practices. He also offered office hours twice a week or by appointment for [Student] to join for extra support or one-on-one instruction. [The Student's] course load was modified so that he could work at his own pace without penalty or not complete certain assignments, consistent with [the Student's] IEP accommodations. [AP language teacher] excused and modified assignments and provided extensions when needed. [AP history teacher] similarly modified assignments for [Student] and provided flexibility in due dates. [The Spanish teacher] allowed for all assignments to be submitted up until the last day of the semester.

Although [the Student's] general education teachers in Jazz Band, Ceramics, and P.E. also made modifications to assignments, ultimately, [case manager] arranged for a larger modification, allowing [Student] to stop completing elective course work so he could focus on his other courses....As such, to accommodate [the Student's] Running Start physics class and because the teachers believed [Student] would be earning a 'A' under the District's temporary grade policy during closure, the teachers agreed to waive [the Student's] assignments for the remainder of the year so he could focus on his core classes and physics, with [the Student's] last ceramic writing assignment taking the place of his LA work.

The District acknowledged that remote learning presented challenges for the Student, but stated the Student's team provided specially designed instruction and ensured the Student had access to distance learning. The District further stated that, given this, the Student's team will "certainly review the educational impact of the closure when school resumes, and examine whether [Student] has experience a loss of skills and/or lack of progress and if recovery services are needed."

## CONCLUSIONS

**Issue One: IEP Implementation** – The Parent alleged the Student was not provided certain services in his individualized education program (IEP), including: "instruction in staying on task, work completion, managing academic materials, managing assignments, project planning, emotional regulation, peer/friendship skills, locating evidence, managing sources and showing

steps.” In her reply to the District’s response, the Parent further emphasized that she believed the District did not provide specially designed instruction to address the Student’s social friendship goal, homework planner and managing assignments goals, his on task goal, and his task completion goal. Further, the Parent alleged the Student did not receive his special education services in the general education setting, which meant he could not participate in formal (“class meetings”) and informal (“drop ins”) general education learning and social opportunities. The Parent explained in her reply that the Student could not navigate Schoology and would not open or read emails without support (e.g., the Student did not read the BCBA’s April 6 email with instructions on a google calendar or the case manager’s May 4 email with a summary of the meeting and instructions for homework), and therefore, the District’s efforts to provide the Student access to the general education setting were ineffective and inaccessible.

Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs could not be implemented as written as school facilities closed and districts transitioned to distance learning. Here, the Student’s December 2018 IEP was in place prior to the school facility closures and the IEP included goals in the areas of adaptive/life, social/behavior, and study/organizational skills, including task completion, emotional regulation, social connections, close reading and inference skills, itemize homework, steps to complete work, multi-step projects, organizing sources, organizing school materials, and checking completion criteria. The IEP required the Student receive the following specially designed instruction and related services, summarized as totals per week:

- Study/organization skills: 200 minutes weekly (provided by a special education teacher and an instructional assistant (IA))
- Social/behavior: 75 minutes weekly (provided by a special education teacher and IA)
- Adaptive/life skills: 80 minutes weekly (to be provided by a special education teacher and IA)

The IEP included extensive accommodations and modifications, support from a board-certified behavior analyst (BCBA) coach/mentor for staff, and noted the Student would spend 100% of his time in the general education setting.

After the District closed school facilities on March 11, 2020, the Student’s IEP was not implemented as written, which alone, during this time, does not represent a violation of the IDEA. However, that does not end the analysis as the District still had an obligation to provide special education services during the school facility closures. On March 23, 2020, OSPI communicated the expectation that districts would begin—if they were not already—providing educational services to all students by March 30, 2020 (“continuous learning”); and, as instruction was being provided to all students, districts must have a plan for how students eligible for special education would receive a free appropriate public education (FAPE), which consists generally of specially designed instruction and related services. Thus, OSPI will look at whether the Student was provided continuous learning, including special education services, starting on March 30, 2020.

#### Specially Designed Instruction & Accommodations/Modifications

After March 30, 2020, the documentation in this complaint shows the Student was provided direct, individualized instruction, accommodations and modifications, and special education support.

The Parent raised a concern that the District did not “offer any services other than a weekly ‘check in’ with the IEP case manager” (e.g., Parent’s May 3, 2020 email that the Student did not have “even a partial plan beyond case manager check-ins”) and only “eventually agreed to supplement home tutoring in Algebra with an IA.” The Parent further stated in her reply that based on her observations of the Student’s sessions with District staff during many of the sessions, the staff and Student merely chatted, but that there was minimal instruction focused on the Student’s goals or that the sessions—with the case manager for example—focused only on “figuring out options for an online planner and calendar/scheduling tool” and not the other goals.<sup>9</sup> In her reply, the Parent calculated that the Student should have received approximately 65 hours of special education services in the general education setting, and instead received approximately 18 hours of “contact time” with the case manager, BCBA, and IAs—of this time, the Parent stated, only 250 minutes were specially designed instruction.

The documentation indicates the Student received instruction from his case manager, BCBA, and IAs on his IEP goal areas (e.g., instruction in creating task lists, organizing materials, managing assignments, planning and completing work, and using Schoology) and instruction related to general executive functioning strategies. The instruction did not address every goal in the Student’s IEP, but the documentation indicates several of the goals were specifically targeted and that instruction was provided generally in study/organizational, adaptive, and social/behavioral skills. The Student also received instruction and support from the case manager and IAs in the areas of written language and math, which throughout the closure period, the Parent requested (e.g., April 21 email from Parent, asking if the case manager could work with the Student on written language as the Parent did not see the “benefit of allocating time for a calendar ‘check in’” and emails requesting additional IA support time in algebra). The Student’s case manager provided support in managing and organizing the Student’s schedule—and streamlining communications—although, OSPI acknowledges that it did take some time to get this support organized and that managing the communications and assignment were initially confusing and overwhelming. The case manager also worked with general education teachers to ensure the Student received accommodations and that the Student’s assignments were appropriately modified; again, OSPI notes that the accommodations ultimately provided to the Student were not necessarily the same as the accommodations outlined in the Student’s IEP, but instead were accommodations appropriate for the remote learning environment, such as extended deadlines and modified assignments. And while the schedule varied throughout the closure, most weeks the

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<sup>9</sup> The Parent also raised a concern based on the confusing and contradictory statements staff provided about whether there was an expectation to provide *specially designed instruction* during the closure. OSPI notes staff statements that they were not expected to provide specially designed instruction or take data when working with students are *incorrect*. There is no waiver of the IDEA or a district’s obligation to offer a free appropriate public education (FAPE), which includes the provision of specially designed instruction and related services. However, there is an understanding that IEPs would not be implemented as written during spring 2020 and special education services may look different than those provided in a traditional school setting. Regardless, a district should still be providing special education services, individualized to a student’s needs. Here, though—despite the District’s emailed statements—based on the documentation provided, the District did offer the Student the *opportunity* to receive special education services in a virtual special education setting.

Student received at least 30-45 minutes of instruction from this case manager and BCBA on Mondays and/or Wednesdays, and 30-45 minutes of instruction and support from one or two IAs (generally one IA supported the Student in written language and organization on Wednesdays and Fridays, and the other IA supported the Student on Tuesdays and Thursdays (and later Fridays) in math<sup>10</sup>). The case manager also held weekly sessions for students to focus on social and behavioral skills, which the Student participated in at least some.

The District was also responsive to the Parent's concerns, although the Parent was not always satisfied with the response. For example, after the Parent expressed concern about managing the Student's schedule and assignments in late April 2020, the case manager and BCBA created a weekly schedule for the Student that incorporated his assignments from his classes, along with suggested days for the Student to complete the work, where to find the materials, any additional information, and scheduled school support time. While the Parent was not happy with the format (she wanted an online planner for the Student), the case manager emailed the weekly schedule to the Student throughout the rest of the school year. The case manager also acknowledged the Parent's frustration with pulling together all the information about classes and assignments, but noted that was why they scheduled weekly check-ins with the Student to support the Student in setting up a calendar and managing information. The case manager noted, "just like if we were in a class, I am scaffolding this by gathering the information and then he needs to transfer it to his calendar." School staff working with the Student also began using a Google document to help the Student organize his workload and notes, per the Parent's request, and created a task list for the Student to use in order to prepare for meetings with school staff.

On May 25, 2020, the case manager emailed the Parent the Student's continuous learning plan (CLP), which summarized the services the Student had been accessing and other supports provided. This included: working with the family to develop a schedule and planner (weekly schedule provided by the case manager) to support the Student in tracking classes and assignments; one-on-one instruction and support on with case manager, BCBA, and two IAs; accommodations and modifications of general education assignments, including waiving some assignments and alternative assignments (e.g., a ceramics writing assignment was completed in lieu of AP language and composition work and jazz band work was waived). The CLP noted the SLP continued to coordinate with the case manager and holds office hours. The CLP also noted the team worked address Parent input regarding the Student's schedule, including his schedule with his private tutors and the physics class he was taking through running start. The CLP also acknowledged that the Student needed adult (Parent or private tutor) support to engage with

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<sup>10</sup> One IA stopped working with the Student during the second half of April and began working with the Student again on May 4, 2020 two days a week. This IA subsequently added Fridays and increased the amount of time with the Student from 30 minutes per session to 40-45 minutes. Given the other support the Student received in April from his case manager, BCBA, and the other IA, the gap in service from one IA does not alone represent a violation.



remote learning and noted the Parent's concern that the Student was losing social connections with peers and teachers.<sup>11</sup>

It is clear the Student had challenges engaging in the remote learning format without a significant degree of supervision and prompting to engage and stay on task. OSPI also notes it was initially confusing as to what services and supports were being offered to the Student, but that the case manager made efforts to organize the Student's assignments and streamline communication, which were increasingly organized and effective throughout the last several months of the school year. OSPI finds that the documentation supports that the District provided the Student special education services—direct individualized instruction, supports, and accommodations and modifications—to the extent possible during the remote learning. While the services did not look like the pre-closure services, address every one of the Student's IEP goals, or match the Student's IEP in the number of minutes of instruction provided or setting (discussed further below), the Student was provided one-on-one remote instruction, and accommodations and modifications for various assignments. The District acknowledged that remote learning presented a challenge for the Student and stated that, given this, the Student's IEP team would "review the educational impact of the closure when school resumes, and examine whether [Student] has experienced a loss of skills and/or lack of progress and if recovery services are needed." OSPI notes the Student's IEP team is scheduled to meet on August 25, 2020 and encourages the District to consider recovery services for the Student as the school facility closures undoubtedly had an impact. OSPI additionally encourages the District to consider the Parent's input into the CLP and suggested strategies in planning for the fall. Overall, OSPI finds no violation regarding the provision of special education services.

### Progress Reporting

As progress monitoring and progress reporting is part of IEP implementation, OSPI expected that districts would continue monitoring and reporting progress to the extent possible during the closure. While OSPI does not expect this would necessarily include progress on every IEP goal (as the district may not have worked on every goal, given the understanding that IEPs were not necessarily implemented as written), or that it would necessarily look the same as pre-closure progress reporting. However, if a district provided special education services, OSPI expected districts to be able to report some information about a student's progress during continuous learning.

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<sup>11</sup> The Parent raised concerns regarding the Student's CLP, including that she was not involved in the creation of the CLP and that she did not understand the purpose of the document ("how and when they will be used, by whom?..."). The Parent, in an email to the case manager, provided significant input to the CLP and stated, "any action on a clp is on hold so far as we are concerned." OSPI notes, several of the items the Parent wanted the District to consider—such as 1:1 instructional support, creating a Google document for notes, a weekly meeting with the case manager, daily meeting time with special education support staff, etc.—were supports already being provided to the Student during the school facility closures. Other things the Parent requested, did not appear to be currently provided, such as paraeducator support during general education remote classes or the use of split screens to ensure the Student was staying on task during sessions.

The Student's access to instruction and support during the school facility closures is also supported by *some* of the Student's progress reporting, even those goals where a lack of progress was noted. For example, for the area of social/behavioral, the progress reporting indicated significant progress was made (e.g., "From distance learning, 1x1 work with [Student], he is showing more stamina in his short working periods with school support staff"), and for other study/organizational goals, the Student made little or no progress (e.g., "This continues to be an area of strong intervention support...[Student]...refused to participate in the HW planner while still at school this year. The Covid-19 closure has given new opportunity to work with [Student] in developing systems for recording work and becoming accountable" and "...[Student] has needed more support in breaking down and organizing his work load. Many factors play into this but at this time the anecdotal data from working with [Student] and parent input is that he is not proficient in this skill").

For other goals, the District stated "Due to Covid-19 school closure there is not school setting related data for this goal at this time" or reported only pre-closure information. Finally, for other goals, the District indicated the Student met some of his study/organizational goals. However, the Parent raised legitimate concerns about the progress reporting that were not addressed by the District when she raised them. For example, the Parent stated there was not data or information that supported the Student meeting some of the goals, especially given the challenges the Student faced during the closure (e.g., struggle to monitor assignments, track deadlines, manage a homework planner or calendar, etc.). Further, the Parent stated that for several goals, the rating in the progress report did not match the present levels the Student's IEP team had established for the draft June 30, 2020 IEP. It is unclear how the Student could have both met a goal and be at a 7% baseline (see, Parent's May 31, 2020 email raising concerns regarding progress reporting).

Thus, given these inconsistencies and valid concerns raised by the Parent, the progress reporting does not sufficiently document the Student's progress during the school facility closures or sufficiently describe the impact of the special education services that were provided on the Student's IEP goals. Thus, OSPI finds a violation for the failure to provide sufficient progress reporting. The District will be required to provide the Parent a revised progress report.<sup>12</sup>

#### Least Restrictive Environment: Access to General Education

The Parent also raised concerns regarding the Student's access to his general education classes. The Student's IEP, in place prior to the school facility closures, stated the Student would spend 100% of his time in the general education setting. As discussed above, the Student received some special education services during the closure, although the direct instruction was provided one-on-one by the case manager, BCBA, and IAs, and not in the general education setting. Given all the circumstances—including that the various ways general education teachers were offering instruction and assignments meant the "general education setting" was fundamentally altered for some classes—the fact that the Student's special education instruction was not provided in the

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<sup>12</sup> OSPI will not order District level corrective action related to this violation as training related to progress reporting has already been ordered in another special education complaint filed against the District. The training ordered in the other complaint will sufficiently address the violation noted here.

setting specified on his IEP is not alone a violation. However, again, this does not end the inquiry as access to a general education setting is part of a FAPE for the Student.

### *General Education Curriculum and Assignments*

On March 31, 2020, the principal emailed the whole school schedule for continuous learning. The schedule had time blocked out for each subject area (e.g., English, social studies, math, science, etc.) and noted while there was no "expectation that teachers have to provide face-to-face direct instruction in the form of a traditional class through video," that if classes did meet, they should meet during those time slots in order to avoid conflicts. The District noted in its response that all the Student's general education teachers utilized "various strategies for continued learning, consisting of comprehensive Schoology websites for each course, office hours, and lesson plans through prerecorded videos and/or Zoom sessions."

While the Parent noted in emails to the District and emphasized in her reply to the District's response, that the Student, given his disability, could not independently navigate Schoology and would not open or read emails that were not about preferred subjects; thus, the Parent stated the Student could not access general education opportunities.

However, the documentation indicates the District made efforts to facilitate the Student's access to general education curriculum and assignments. Throughout continuous learning, the Student continued to work on and complete assignments for his general education classes, with the support of his Parents, the case manager, BCBA, and IAs. The Student received specially designed instruction in adaptive skills, social/emotional, and study/organization, and only had general education classes, which meant that the assignments he worked on were all general education curriculum (although, many assignments were modified for the Student to address his disability-related needs). While OSPI strongly encourages the District to plan for how assignments will be organized and communicated to the Student in the fall, given the Parent's concerns about Schoology and email, overall, OSPI finds that the Student was provided access to general education assignments and curriculum.

### *General Education Class Meetings and Social/Emotional Connection*

Additionally, the Parent raised the concern that the Student was not supported in accessing peer interactions, general education extracurricular opportunities, and formal and informal class meetings, and that the Student's peer/friendship goal was not implemented. In a May 19, 2020 email to the case manager, the Parent stated the Student "is being left behind in the GenEd membership department. He doesn't see the various 'hi class' emails from teachers. He doesn't drop in on meetings where he can say hi..." The Parent noted in her reply to the District's response, that the Student's IEP targets his "significant executive functioning challenges" and that without supports, the Student could not access Schoology and general education offerings independently.

Based on the documentation, the Student's peer friendship goal was not implemented in the way contemplated in the IEP (i.e., instruction in the Student generalizing his social skills to a general education environment). The case manager's social connections meetings did not target the goal

specifically, and while the Student was provided the opportunity to connect with his peers with disabilities during these meetings, the Student did not have an opportunity to or support in generalizing these skills and connecting with general education peers.

Regarding general education class meetings, the documentation indicates the Student's teachers offered instruction in a variety of ways. For example, the Student's Spanish teacher emailed the class regarding class meetings to discuss assignments, expectations, and answer questions. The Parent responded, that while they would like to participate, the class meeting time did not work with the schedule they set up for the Student. The Spanish teacher responded that her meetings were during the "World Language's time slot in accordance with a school-wide schedule" so that the Spanish meetings did not conflict with students' other classes. Other classes, based on the documentation provided, did not appear to have regular class meetings. The math teacher's assignments were provided online along with instructional videos. However, the math teacher remained in communication with the Student, was responsive to questions from the Student and his IAs, the Student was encouraged to attend the math teacher's office hours, and the math teacher met with the Student at least once.

The weekly schedule created by the case manager did not include the time slots or class meetings for the Student's general education classes; however, this information was available in the school schedule, Schoology, and emails—although it is clear the Student had challenges compiling and tracking these different sources of information. There was no single document that clearly outlined the format each general education class would take (e.g., weekly meetings, prerecorded video instruction only, etc.), which in this case, would likely have been helpful for the Student. The case manager agreed to "notate when [general education] teachers are having drop-ins or team meetings" on the weekly schedule and the Student's CLP indicated the District provided "support in facilitating connections with general education" in late May.

While the Student was provided access to general education assignments (with accommodations and modifications), OSPI finds the support provided to the Student to access general education peer connections (per his IEP goal) and the general education setting—through class meetings and teacher office hours—was limited, especially given the Parent's multiple communications that the Student was unable to access these opportunities independently and her requests for additional support. It is notable that the case manager only agreed to start adding the general education class meetings to the Student's weekly schedule in late May. Thus, on this element of access to the general education setting, OSPI finds the District in violation.

The District and Parent have an IEP meeting scheduled for August 25, 2020, the IEP team will be required to discuss strategies for providing more of the Student's specially designed instruction in a general education setting, even while doing remote learning, and other strategies and supports that would allow the Student increased access to general education.

### **CORRECTIVE ACTIONS**

By or before **August 31, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

## STUDENT SPECIFIC:

### IEP Meeting

On **August 25, 2020**,<sup>13</sup> the Student's IEP team will meet and discuss the impact of the school closures on the Student. The team will discuss the following, in addition to any already agreed upon topics:

- The Student's progress and the impact of the school facility closures. This should include reviewing existing data and discussing the Parent's input regarding the Student's progress at home. The team should also discuss any new assessments that are needed to reestablish the Student's baseline on his goals. This could also include discussing a draft progress report and plan for further progress monitoring (see progress monitoring and reporting corrective action below).
- The Student's educational program for the fall, including strategies and supports necessary to help the Student be successful in a remote learning environment.
- Strategies for providing more of the Student's specially designed instruction in a general education setting, considering the circumstances of remote learning, and other strategies and supports that would allow the Student increased access to general education. This can include strategies and supports to help the Student access class meetings, teacher office hours, and inclusion in formal/informal general education activities. This should also include a discussion of the how to provide instruction related to the Student's social skills (peer connection) goal.
- What additional special education or recovery services the Student requires to mitigate the impact of the school facility closures, and in particular, services to support the Student in peer interaction, given the lack of support in this area in spring 2020.

By **August 31, 2020**, the District will provide OSPI with the following documentation from the IEP meeting: 1) Agenda or meeting notes; 2) IEP or amended IEP, if applicable; 3) Plan for additional special education services, if applicable; 4) prior written notice; and, 5) any other relevant documentation.

By **September 11, 2020**, OSPI will review the Student's IEP, as well as any plan proposing additional services (including amount, when services will be provided, and timeline for delivering services), and will either amend or approve the proposal. At that point, OSPI will provide additional deadlines for review if necessary.

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<sup>13</sup> OSPI notes the District and Parent already have an IEP meeting scheduled for August 25, 2020. As this meeting has already been scheduled, the Parent and District may already have an agenda for the meeting. If the Student's IEP team determines it needs more time than available at the already scheduled IEP meeting, the District and Parent may request a short extension of the corrective action timeline to schedule a second meeting if necessary.

## **Progress Monitoring & Reporting**

By **August 31, 2020**, the District will provide the Parent with a revised version of the Student's May 2020 progress report. The progress report should be based on any information the Student's IEP team has about the Student's progress during the closure, considering information and observations provided by the Parent. For goals where there is no progress information from spring 2020, the District will note that on the progress report and will provide the Parent with its plan to monitor and collect progress data for the remaining goals.

By **August 31, 2020**, the District will provide OSPI with a copy of the progress report and progress monitoring plan for the Student. OSPI will review and provide additional deadlines for review, if necessary.

### **DISTRICT SPECIFIC:**

None.

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 August, 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.)