

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-67

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 Lake Washington School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On June 17, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On July 8, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply. The Parent did not reply.

On July 13, 2020, OSPI requested that the District provide additional information, and the District provided the requested information on July 20, 2020. OSPI forwarded the information to the Parent on July 21, 2020.

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

ISSUE

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

LEGAL STANDARDS

IEP Implementation during School Facility Closures for COVID-19: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

During the COVID-19 school facility closures, as students received general education instruction and student support services, districts must provide students with disabilities with the special

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

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

All schools were expected to have begun providing educational services for all students by March 30, 2020, which OSPI termed “Continuous Learning 2020.” OSPI Bulletin 024-20 (March 23, 2020). OSPI described the nature of instruction that students were to receive during the COVID-19 as follows: “[School districts] should avoid assuming that continuity of education outside of a typical school building can only occur through online means. Districts will provide instruction using printed online learning materials, phone contact, email, technology-based virtual instruction, or a combination to meet student needs.” *Guidance for Long-term School Closures* (OSPI, March 23, 2020).

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

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

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education citizen complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting." *In re: Mabton School District*, 2018-SE-0036.

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. IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

FINDINGS OF FACT

1. During the 2019-2020 school year, the Student attended a District elementary school, was in the second grade, and was eligible for special education services under the category of autism.
2. The District's 2019-2020 school year began on September 3, 2019.

3. The Student's September 2019 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The Student's September 2019 IEP included the following measurable goal topical areas: adaptive 1; adaptive 2; adaptive 3; social/emotional 1; social/emotional 2; academic 1; academic 2; communication 1; and communication 2.

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

- **Adaptive Skills:** 60 minutes 5 times a week (to be provided by special education team)
- **Reading:** 60 minutes 5 times a week (to be provided by special education team)
- **Social/Emotional:** 120 minutes 5 times a week (to be provided by special education team)
- **Writing:** 45 minutes 5 times a week (to be provided by special education team)

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

- **Speech and language therapy:** 30 minutes 2 times a week (to be provided by a speech language pathologist)

4. As of January 2020, the Student had made the following progress on the goals in the Student's September 2019 IEP:

- **Communication 1:** sufficient progress.
- **Communication 2:** progress demonstrated but not mastered goal.
- **Adaptive 1:** sufficient progress.
- **Adaptive 2:** progress demonstrated but not mastered goal.
- **Adaptive 3:** progress demonstrated but not mastered goal.
- **Academic 1:** insufficient progress.
- **Academic 2:** insufficient progress.
- **Social/emotional 1:** progress demonstrated but not mastered goal.
- **Social/emotional 2:** emerging skill.

5. According to the District, on March 11, 2020, it "closed schools effective due to the COVID-19 outbreak. The District ceased providing all educational services for all District students as of that date." According to the District's response:

From March 11, 2020 to April 3, 2020, all District schools were closed and no educational services were provided to any students...On March 27, 2020, [though] the District provided Parents with an update on how the District was supporting learning during the school closures. The District described the actions it had already taken, and provided a detailed outline of the actions that it would be taking through the end of the school year.

6. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis.

7. On March 17, 2020, the special education teacher emailed the Parent, stating that she would be dropping off “school work for Student to practice while [the District is] out of school. Our goal is to make these deliveries weekly for the next 6 weeks.”¹

That same day, the Parent responded, stating the family was in Florida. But, according to the emails, the Parent and the special education teacher arranged for the Student to access the materials remotely—either by the special education teacher emailing the materials to the Parent or posting it on the PowerSchool website².

8. According to the District’s response: “On March 18, 2020, the special education teacher provided Parent with a guide to assist with access [to] Powerschool, which contained online resources to support remote learning.”
9. On March 23, 2020, OSPI issued guidance, instructing districts that while school facilities are closed and not providing traditional in-person instruction, education must continue. OSPI’s guidance outlined the expectation that “continuous learning” would begin for all students by Monday, March 30, 2020.
10. The District’s response to the instant complaint included a document that pertained to a District-wide ‘Continuous Learning’ schedule (District-wide CL learning schedule).

According to the District-wide CL learning schedule, March 30, 2020 through April 2, 2020 was to be devoted to “professional learning for [the forthcoming implementation of the District’s] curriculum-based remote learning.” During this time period, “teachers [would] continue to provide supplemental, enrichment, and reinforcement resources for the week as they develop their skills and knowledge to deliver our District curriculum remotely [in the near future].”

11. According to an email, on March 31, 2020, the special education teacher asked the Parent how “accessing online resources [was] going?” From the emails provided to OSPI by the District during the course of this investigation, it does not appear the Parent responded to this email.
12. As of April 2020, the Student had made the following progress on the goals in the Student’s September 2019 IEP:
 - **Adaptive 1:** sufficient progress.
 - **Adaptive 2:** mastered.
 - **Adaptive 3:** progress demonstrated but not mastered goal.
 - **Academic 2:** insufficient progress.

¹ According to the District’s response, “The school work and materials delivered to the student’s home were individually tailored to his needs/levels. The students in his class were at different levels, so there was not general school work for the class. The school work provided before April 20, 2020 included reading, writing, and math assignments that addressed skills [students] had been working on at school before the closures.”

² According to the District: “PowerSchool is the student information system used by the District. It is a web-based application that allows parents and students to log into a secure account from anywhere to access assignments, lessons, resources, grades, and attendance, request reports, email teachers, etc.”

- **Social/emotional 1:** mastered.
 - **Social/emotional 2:** progress demonstrated but not mastered goal.
13. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
 14. Also, on April 6, 2020, OSPI issued guidance on Continuous Learning 2020, which included recommended guidelines for maximum student commitment each day for students in the second grade: 60 minutes.
 15. The District was on spring break from April 6 to 10, 2020.
 16. According to the District-wide CL learning schedule, April 13 through 17, 2020 was to be devoted to “planning and preparation for [the District’s forthcoming] curriculum-based remote learning.” During this time period, “teachers [would] provide the last set of supplemental, enrichment, and reinforcement resources...as [the District] prepares to transition to curriculum-based remote learning.”
 17. On April 14, 2020, the special education teacher emailed the Parent, stating she had work for the Student to complete that week and offered to deliver it to their home. Later that same day, the Parent responded, stating, in part, “If the work is not mandatory then we will pass...We have been working on academics at home.”
 18. According to emails provided to OSPI during the course of this investigation, on April 17, the special education teacher re-sent the Parent a link to the PowerSchool Learning page.
 19. On April 17, 2020, the speech language pathologist (SLP) emailed the Parent a link to the speech language pathology resources available on the PowerSchool website. The SLP also stated: “If you would rather not receive communication from me during this time, please let me know! I completely understand that this is a busy time...Please let me know if you...would like additional resources.”

On April 18, 2020, the Parent responded, stating, in part: “I’ll look at how we will work in everything with the new schedule. We’ve been doing private speech five days a week for an hour a day. Thanks for reaching out.”
 20. According to the District-wide CL learning schedule, the District’s ‘Curriculum-Based Remote Learning’ was to begin the week of April 20, 2020.
 21. The District’s response included a ‘Specially Designed Instruction Planning Template’ (planning template). According to the District, the planning template summarized the services that were to be provided to the Student from April 20, 2020 through the end of the school year.³

³ According to the District, the planning template was created sometime between April 13, 2020 and April 17, 2020.

According to both the planning template, as well as clarifications provided to OSPI's investigator, the following services were to be provided to the Student during this time:

- **Reading and Writing:**
 - Each week, the Student's teacher would assign Student both a reading and a writing assignment.
 - This assignment was accessible online, but the Student's teacher would also drop a copy of these assignments off at the Student's home "each week on Tuesdays. When the Student's teacher dropped off assignments [for the current week], she would pick up assignments from the previous week. Written instructions were provided for the [weekly reading and writing] assignments. In addition, Parent and Student's teacher would communicate via email to clarify any questions. Student's teacher was also available for online face-to-face clarification of instructions during office hours or via scheduled appointments."⁴
 - The Student would be provided with a "graphic organizer to assist writing a paragraph."
- **Social Skills/Emotional – Adaptive – Behavior:**
 - Each week, Student would participate in a 30 minute, remote (via Microsoft TEAMS software) social group meeting.
 - According to the District: "The TEAMS social group was structured. The meeting began with a discussion prompt for a student check-in. They then reviewed social emotional skills that had been worked on in class, such as conversational turn-taking, asking questions of peers, etc. The students also participated in weekly activities, which varied from week-to-week. The activities included sharing something from home, sharing work, playing social games, an online scavenger hunt for following directions, etc. The Speech Language Pathologist participated in the TEAMS social group as well."⁵
- **Speech/Language:**
 - "Provide materials for home practice of social communication and language skills as requested by the Parent...Check in with family to provide supports as requested by the family and provide emailed link to speech language pathology PowerSchool Learning page for resources. Speech language pathology PowerSchool learning page updated each week with activities and resources for Parent and Student access."^{6 7}

⁴ The District stated, though, that "Parent never attended office hours or asked Student's teacher for a scheduled appointment."

⁵ According to the District: "Student only participated in the first TEAMS social group meeting and half of the second TEAMS social group meeting. He did not participate in any other TEAMS social group meetings. Parent chose not to participate in any of the TEAMS social group meetings and did not participate with Student during instruction. She also did not request changes to the instructional model, different times for the delivery of services, or additional time for instruction."

⁶ According to the District: "Parent never requested any materials for home practice of social communication and language skills."

⁷ The planning template also mentioned the following in relation to math: "online Envision math work"; and providing the Student with a "paper curriculum." OSPI notes: any services provided to the Student during the closure, in the area of math, though, do not appear to relate directly to the Student's IEP goals, as the Student did not have an academic goal for math or receive specially designed instruction in math.

22. According to the District's response: "From April 20, 2020 through the end of the 2019-2020 school year, the District implemented a curriculum-based remote learning model."

According to the District, as part of this "curriculum-based remote learning model," the following services were provided to the Student "from April 20, 2020 through the end of the 2019-2020 school year":

- **Social Skills:**
 - Weekly lessons in social skills were posted to PowerSchool;
 - Weekly social skills meetings were scheduled, using Microsoft Classroom Teams. (The areas of specially designed instruction that were worked on during these meetings were as follows: social emotional and behavior skills);
 - The special education teacher posted a weekly "must-do" social-emotional survey for Parent and Student to complete; and,
 - The special education teacher posted a weekly survey for Parents to complete to share their needs or concerns.
- **Reading:** "Student was...provided with access to instructional videos and lessons."
- **Math:** "Student was...provided with access to instructional videos and lessons."
- **Speech Language Pathology:** The SLP "provided Parents with materials and resources to address Student's language skills...and regularly contacted Parent to see how Student was doing and whether Parent needed additional supports."

According to the District's response:

Student did not attend a majority of the online social groups and Parents chose not to access most of the resources and supports that were offered by the District, the special education teacher, and the speech language pathologist. Nonetheless, the District made numerous resources available that time, continued to maintain frequent communication with Parent, requested Parent's feedback, and used its best efforts to provide Student with services and supports during the school closures. Although Parents wanted Student to receive in-person services, the District was unable to safely provide in-person services consistent with guidance from OSPI and the [federal] department of education and social distancing directives and health guidelines issued by the Department of Health.

23. The special education teacher made the following entry on the planning template for April 20, 2020:

[I told Parent] how to access online learning. Told her how to access and where to find that information in the future. Mom asked if there was going to be more lessons. I informed her this is a slow start week where we are making sure the class can access everything first before adding more work.

24. On April 20, 2020, the special education teacher emailed the Parent, stating, in part:
Today is our first day of online learning!...There are a few assignments [posted online]. Please make sure you hit submit after completing and assignment. If there are any problems, please let me know right away. The PowerSchool page has the week's expectations and how to access everything!

Later that day, the Parent responded and asked for several physical objects: "written materials and manipulatives;" a map of the United States, the Pacific Ocean, and the Atlantic Ocean; several books about geography; vocabulary cards; canvas paper; and containers of clay.

After that email, the special education teacher and the principal exchanged emails amongst themselves, wherein it was determined: the requested objects did not relate to lessons assigned by the special education teacher; the special education teacher and principal had limited access to the building and an inability to remove District property from a school and place it in students' homes if it was unrelated to assigned work; and the District could, if needed, scan textbooks requested by families.

In a separate email that same day, the special education teacher then informed the Parent of the above determinations.

25. In a separate email on April 20, 2020, the Parent emailed the special education teacher, stating she was having some difficulty finding the reading assignments posted online.

Later that same day, the special education teacher responded, stating, in part:

[As per reading, what will be provided consists largely of] reading and answering questions. You need to submit each activity Student does. The outline in the box [you see on the website]...is [what is] expected [to be completed]. This week is really about getting to know the [online learning] app and how to navigate (both for families and teacher). More will be added each week based off the district guidelines.

26. According to the planning template, on April 21, 2020, the special education teacher had a "daily check-in" with the Student and reminded the Parent "to submit all Student work so I can review Student progress."

27. On April 22, 2020, the Student's IEP team developed a new annual IEP for the Student. The Student's April 2020 IEP included the following measurable goals:

- **Communication 1:** By 04/21/2021, when given structured communication opportunities Student will formulate a sentence demonstrating accurate use of the following grammatical constructs: pronouns/possessive pronouns, plurals, regular and irregular past tense verbs improving expressive language skills from less than 50% of opportunities to 75% of opportunities as measured by SLP data.
- **Communication 2:** By 04/21/2021, when given structured language opportunities Student will ask an on topic question or provide an on topic response to maintain a conversation for 3-4 turns improving pragmatic language skills from maintaining a conversation for 3-4 turns in 60% of opportunities given 2-3 prompts to maintaining a conversation for 3-4 turns in 80% of opportunities given 2-3 prompts as measured by SLP data.
- **Adaptive 1:** By 04/21/2021, when given an question in whole group instruction Student will raise his hand and wait to be called on improving classroom participation from raising his hand and participating independently 10% of opportunities to raising his hand and participating independently 80% of opportunities as measured by daily point sheet.
- **Adaptive 2:** By 04/21/2021, when given a morning/afternoon routine Student will independently pack/unpack his backpack, folder, lunch, water, etc. improving self-direction from independently following a routine in 10% of opportunities to independently following a routine in 80% of opportunities as measured by teacher collected data.
- **Adaptive 3:** By 04/21/2021, when given a visual daily schedule Student will follow a schedule improving transitions from one activity to the next from requiring 3 adult prompts per transition to 1 adult prompts per transition as measured by daily point sheet.

- **Social/emotional 1:** By 04/21/2021, when given a request from a peer Student will maintain socially appropriate body behavior (i.e. not nose picking, maintain personal space) improving social skills from 10% of opportunities to 80% of opportunities as measured by teacher data collection.
- **Social/emotional 2:** By 04/21/2021, when given social situations (playground, choice time, free time) Student will initiate play by using pre-taught phrases in order to engage in appropriate social play improving social/emotional skills from initiate play by using pre-taught phrases in order to engage in appropriate social play in 10% of opportunities to initiate play by using pre-taught phrases in order to engage in appropriate social play in 80% of opportunities as measured by teacher collected data.
- **Academic 1:** By 04/21/2021, when given a writing prompt and a graphic organizer (thinking map) Student will write to the prompt using relevant details improving his written expression from identifying his topic sentence and writing 5 sentences relevant to the prompt to identifying his topic sentence and writing 10 sentences relevant to the prompt as measured by curriculum based measurements and teacher collected data.
- **Academic 2:** By 04/21/2021, when given a graded fiction or non-fiction reading passage Student will read the passage and answer the related comprehension questions improving his reading comprehension skills from answering 40% of questions correctly to answering 80% of questions correctly as measured by curriculum based measurements (district reading assessments).
- **Behavior:** By 04/21/2021, when given a situation which makes the student frustrated or angry Student will advocate for his needs when frustrated or angry improving anger management skills from successfully advocating for his needs using words in 10% of opportunities to successfully advocating for his needs using words in 80% of opportunities as measured by daily point sheet.

The Student's April 2020 IEP provided the Student with the following specially designed instruction in a *special education setting* from April 27, 2020 through June 30, 2020:

- **Adaptive Skills:** 60 minutes 5 times a week (to be provided by a special education teacher)
- **Reading:** 60 minutes 5 times a week (to be provided by a special education teacher)
- **Social/Emotional:** 60 minutes 5 times a week (to be provided by a special education teacher)
- **Writing:** 45 minutes 5 times a week (to be provided by a special education teacher)
- **Behavior:** 60 minutes 5 times a week (to be provided by a special education teacher)

The Student's April 2020 IEP provided the Student with the following related services in a *special education setting* from April 27, 2020 through June 30, 2020:

- **Speech and language therapy:** 30 minutes 2 times a week (to be provided by a SLP)

28. On April 24, 2020, the District provided the Parent with a prior written notice that read, in part: The IEP team met on 4/22/20 via Microsoft Teams due to the COVID-19 school closure... The IEP team discussed additional instructional strategies that should be added to his present levels of performance and discussed the type of program supports that will enable Student to be successful...The team was in agreement to add a 1:1 aide as a supplemental aid and service (1,760 minutes per week all settings) as well as 6 hours of monthly [board certified behavior analyst (BCBA)] support as a related service to begin in the fall of 2020.

Description of any other options considered and rejected:

The IEP team considered changing Student's LRE from 0-39% of his day in general education to 40-79% of his day in general education.

The reasons we rejected those options were:

Ultimately, the team decided to keep his minutes and location of his [specially designed instruction] the same as it has been...from the previous IEP. However, the team is in agreement that the desire is for Student to increase his time in general education as he shows success in his new setting.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Recent re-evaluation feedback, teacher collected data, teacher input, parent input.

Any other factors that are relevant to the action:

The district is committing to providing a 1:1 aide for Student beginning in the fall of 2020. The district will make a good faith effort to provide a Registered Behavior Technician to fill this role, but this is dependent on hiring availability for the fall.

29. On April 25, 2020, the Parent emailed the special education teacher, stating that due to computer issues, she had "lost all my login information for Student's work. Can you please send me the login to access Student's work?"
30. On April 25, 2020, the Parent emailed the special education teacher, stating, in part:
We have a recurring challenge that doesn't appear to be correcting itself. In the first section, there were 17 words that required significant time be spent on defining, understanding and comprehension. The most recent is ecosystem. Am I correct that ecosystem hasn't been covered extensively in class? If it has, Student doesn't know what it means. Regardless, can you please share the methods you would be using if this were being done in the classroom?

From the emails provided to OSPI by the District during the course of this investigation, it does not appear the special education teacher responded to the above email.

31. On April 27, 2020, the Parent emailed the special education teacher the "Student's report about the Rocky Mountains."

Later that day, the special education teacher responded, stating: "That is great! You can always email any work he does. There are new assignments posted...now. Let me know how those go."
32. On April 28, 2020, the special education teacher emailed the Parent, stating, "tomorrow will be our first Microsoft Teams class meeting." In this email, the special education teacher provided instructions on how to access the Teams class meeting.
33. According to the planning template, on April 28, 2020, the special education teacher had a "weekly check-in" with the Student and "delivered supplemental work to assist [Student] with class assignments."

34. According to the District's response, the Student participated in the first Microsoft Teams meeting on April 29, 2020.
35. According to emails, on May 1, 2020, the SLP checked in with the Parent in regard to whether she would like additional speech language pathology resources. The Parent does not appear to have responded to this email.
36. According to the planning template, on May 1, 2020, either the Parent or the Student completed a "weekly work survey."
37. According to the planning template, on May 5, 2020, the special education teacher picked up the previous week's assignments (that had been completed by the Student) and dropped off the upcoming week's assignments (for the Student to complete).
38. According to the planning template, on May 6, 2020, there was another Microsoft Teams meeting. According to the District's response, the Student only attended the first part of this meeting.
39. According to the planning template, on May 11, 2020, the special education teacher had a "weekly check-in" with the Student.
40. The planning template contained the following entry for May 12, 2020: "Paperwork accommodations. I will start delivering work packets each week and pick up work in return to check for understanding."
41. According to the planning template, on May 13, 2020, another Microsoft Teams meeting took place, but the Student was a "no show."
42. According to the planning template, on May 15, 2020, the special education teacher had a "weekly check-in" with the Student and noted the Student was "doing good."
43. On May 17, 2020, the Student's father emailed the special education teacher and the associate director of special programs (associate director), stating the family was "running into some pretty significant dead ends with some of the reading/writing work and are hoping to get...help." Specifically, the Student's father stated himself and the Student's mother (Parent) were having difficulty knowing: how to best teach certain concepts; and the meaning of several terms in the reading and writing assignments.

From the emails provided to OSPI by the District during the course of this investigation, it does not appear the associate director or special education teacher responded to this email.

44. The planning template included the following entry for May 18, 2020: "Questions about reading vocabulary and how to do it. Gave suggestions for comprehension strategies."
45. According to the planning template, on May 19 and 27, 2020, the special education teacher delivered work for the Student to the Student's home.

46. According to the planning template, on May 20 and 28, 2020, another Microsoft Teams meeting took place, but the Student was a "no show."
47. According to emails, on May 22, 2020, the SLP checked in with the Parent in regard to whether she would like additional speech language pathology resources. The Parent does not appear to have responded to this email.
48. On May 29, 2020, the SLP emailed the Parent links to several speech/communication resources. The SLP also stated: "Please let me know if you want any additional materials for language practice. I can also send some printed materials home if that is preferable."

Later that same day, the Parent responded, stating, in part: "Thank you for checking in. Student's doing an hour of private speech four days a week. We are good."

49. The planning template included the following entry for May 30, 2020: "Weekly check-in. Parent unhappy with teaching and feels Student is not learning like in the classroom."
50. As of June 2020, the Student had made the following progress on the goals in the Student's April 2020 IEP:
 - **Communication 1:** Due to the COVID-19 pandemic and subsequent school closure, learning shifted to remote resources and instruction. As a result, progress reported is a combination of data before the closure and information obtained during the remote learning period. Prior to the school closure, Student was working on contrasting two items and formulating sentences to describe these differences. Student required models and visuals to correct grammatical errors. During the remote learning period, supplemental language materials were made available to the family via PowerSchool Learning.
 - **Communication 2:** Due to the COVID-19 pandemic and subsequent school closure, learning shifted to remote resources and instruction. As a result, progress reported is a combination of data before the closure and information obtained during the remote learning period. Prior to the school closure, Student was working on maintaining conversations with on-topic responses and questions. He was able to perform this skill given prompting. During the remote learning period, supplemental language materials were made available to the family via PowerSchool Learning.
 - **Adaptive 1:** This is a new goal since the school closure in March. However, during continuous learning, Student has worked on this skill by being offered a weekly social group with his classmates where they ask questions and take turns presenting information on Microsoft TEAMS.
 - **Adaptive 2:** Prior to the school closure in March, Student was making great progress in remembering his routine within the...classroom. Prior to the closure we had just introduced Student to the general ed classroom too. He went for math and he was in the process of learning their routine as well.
 - **Adaptive 3:** Prior to the school closure in March, Student was making a lot of progress following and transitioning with a daily schedule. As a part of his morning routine, Student would write out his schedule and cross it off as he completed activities. This goal with continue to be an important goal to continue when school resumes.
 - **Academic 1:** This is a new goal since the school closure in March. However, during continuous learning, Student has worked on this skill by being provided weekly writing prompts and graphic organizers.

- **Academic 2:** During continuous learning, Student has worked on this skill by reading 2nd grade passages and answering detailed questions to guide the comprehension process. Student is also working on vocabulary comprehension to help with his story comprehension.
- **Social/emotional 1:** During continuous learning, Student has worked on this skill being offered weekly social groups with his peers and teachers.
- **Social/emotional 2:** During continuous learning, Student has been offered weekly social groups with his classmates and teachers to play games via video conferencing to practice social engaging.
- **Behavior:** During continuous learning, Student has been assigned weekly social emotional surveys to assess how he is feeling. He is also invited to a weekly social group with his peers and teachers where he can practice what to do if he feels frustrated. This will continue to be an important goal when school resumes.

51. According to the planning template, on June 2, 2020, the special education teacher delivered some work for the Student to complete to the Student's home.

52. On June 3, 2020, the special education teacher and the Parent exchanged emails, wherein they discussed whether the Parent had all paperwork related to the Student's recent vocabulary assignment. Three other emails exist, all dated June 3, 2020, wherein the special education teacher provided the Parent with PDFs related to the Student's recent vocabulary assignment.

53. According to the planning template, on June 3, 2020, another Microsoft Teams meeting took place, but the Student was a "no show."

54. According to the planning template, on June 9, 2020, the special education teacher delivered some work for the Student to complete to the Student's home.

55. The planning template included the following entry for June 10, 2020: "Last class meeting!" The planning template did not include whether the Student attended.

56. On June 12, 2020, OSPI received the Parent's complaint. The Parent's complaint stated the Student's September 2019 and April 2020 IEPs were not implemented while in-person instruction was suspended during the COVID-19 closure. The Parent's complaint further stated, in part:

[During the COVID-19 closure], Student was given paperwork and access to online learning. There was no instruction or step-by-step process to do the work. There were no videos or demonstrations. It was only dropping off work. There was no defining of vocabulary words except to a minimum which was provided by the curriculum workbook. But there wasn't nearly enough. The teacher had access to create videos, or do a step-by-step instruction to each lesson...[such as providing] clarification [for] vocabulary words, demonstration of idioms, fiction symbols, and so on. [But] none of this [was] done...Student and I would never [have been able to] leave the house if it [was] expected to have all this work completed because I (Parent) had to do the research myself [and] find definitions of words to make sense [and] so on.

57. On June 17, 2020, the SLP emailed the Parent, asking the Parent if she wanted printed language materials for the summer. She also told the Parent that the SLP PowerSchool

Learning page had other printable resources as well. That same day, the Parent responded, stating, in part: "Thank you for reaching out we are good."

58. On June 17, 2020, the special education teacher and the Parent coordinated over email for the special education teacher to stop by the Student's house to pick up some of the Student's school work, as well as a textbook.

59. The District's last day of school in the 2019-2020 school year was June 19, 2020.

60. On July 8, 2020, OSPI received the District's response. The District's response read, in part: "When schools reopen, Student's IEP team will meet to determine whether compensatory services are needed at that time."

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged the District did not implement the Student's individualized education programs (IEPs) that were in effect during the COVID-19 closure—those IEPs being the Student's September 2019 and April 2020 IEPs.

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. On March 23, 2020, though, OSPI communicated the expectation that districts would begin—if they were not already—providing educational services to all students by March 30, 2020 (OSPI utilized the phrase 'continuous learning' in articulating what was expected of districts as of March 30, 2020); 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.

The Student's IEPs In Effect During the Closure

Here, the Student's September 2019 IEP provided the Student with the following specially designed instruction and related services in a *special education setting*:

- **Adaptive Skills:** 60 minutes 5 times a week (to be provided by special education team)
- **Reading:** 60 minutes 5 times a week (to be provided by special education team)
- **Social/Emotional:** 120 minutes 5 times a week (to be provided by special education team)
- **Writing:** 45 minutes 5 times a week (to be provided by special education team)
- **Speech and language therapy (related service):** 30 minutes 2 times a week (to be provided by a speech language pathologist (SLP))

On April 22, 2020, the Student's IEP team developed a new IEP for the Student. The Student's April 2020 IEP provided the Student with the following specially designed instruction and related services in a *special education setting* from April 27, 2020 through June 30, 2020:

- **Adaptive Skills:** 60 minutes 5 times a week (to be provided by a special education teacher)
- **Reading:** 60 minutes 5 times a week (to be provided by a special education teacher)
- **Social/Emotional:** 60 minutes 5 times a week (to be provided by a special education teacher)

- **Writing:** 45 minutes 5 times a week (to be provided by a special education teacher)
- **Behavior:** 60 minutes 5 times a week (to be provided by a special education teacher)
- **Speech and language therapy:** 30 minutes 2 times a week (to be provided by a SLP)

Services Provided and Accessed During the Closure

Here, the District acknowledges—and the record shows, that the Student’s IEPs were not fully implemented from March 11, 2020, when the District closed school facilities, through the end of the 2019-2020 school year.

For example, according to the District, from March 11, 2020 through April 3, 2020, “all District schools were closed and no educational services were provided to any students.” And from April 6 to 10, 2020, the District was on spring break, meaning no services were provided to any student. According to the District-wide continuous learning (CL) schedule, from March 30 through April 3, 2020, students were to be provided with ‘supplemental enrichment resources’ while teachers developed “their skills and knowledge to deliver [the District’s forthcoming]” remote curriculum. And, here, emails show the special education teacher provided the Parent with access to online learning resources beginning March 17 and 18, 2020, and that the special education teacher checked in with the Parent on March 31, 2020 to see how “accessing online resources [was] going?”

According to the District-wide CL schedule, from April 13 through 17, 2020, students were to be again provided with ‘supplemental enrichment resources’ while teachers prepared for the “transition to curriculum-based remote learning.” Here, the District appears to have adhered to this plan. On April 14, 2020, the special education teacher emailed the Parent, offering to drop a hard copy of school work off at the Student’s home. (The Parent refused this offer.) On April 17, 2020, the special education teacher sent the Parent the link to the PowerSchool website, where the Parent could access certain remote instructional services. In a separate email on April 17, 2020, the SLP emailed the Parent a link to speech language pathology resources available on the PowerSchool website.

According to the District-wide CL schedule, beginning April 20, 2020, the District’s ‘curriculum-based remote learning’ was to be implemented. Here, the District created a ‘curriculum-based remote learning’ plan that was specific to the Student, which was summarized in the planning template. The District’s response also included services that were to be provided to the Student beginning April 20, 2020 that were not found within the planning template.

According to the planning template and the District’s response, the following is what was to be provided to the Student from April 20, 2020 through the end of the 2019-2020 school year:

- **Writing**
 - Student was to be provided with a graphic organizer for assistance in drafting paragraphs.
 - Student was to be provided with one weekly writing assignment, to be completed by Student at home with the assistance of Parent. (Instructions for the writing assignments were to be found within the assignments themselves and the special education teacher was to be periodically available for “clarification of instructions,” if needed.)
- **Reading**

- Student was to be provided with one weekly reading assignment, to be completed by Student at home with the assistance of Parent. (Instructions for the reading assignments were to be found within the assignments themselves and the special education teacher was to be periodically available for “clarification of instructions,” if needed.)
- Student was to be provided with “access to instructional videos and lessons.”
- **Speech Language Pathology**
 - The SLP was to “provide materials for home practice of social communication and language skills as requested by the Parent.”
- **Social Skills/Emotional – Adaptive – Behavior**
 - One 30-minute Microsoft Teams social meeting each week.
 - Weekly lessons in social skills were to be posted to PowerSchool.
 - The special education teacher was to post a weekly ‘must-do’ social-emotional survey for Parent and Student to complete.

In terms of what services the Student actually accessed from April 20, 2020 through the end of the 2019-2020 school year, the record supports the following:

- **General**
 - From April 20, 2020 through the end of the 2019-2020 school year, the special education teacher ‘checked in’ with the Student almost every week.⁸
 - On May 1, 2020, either the Student or the Parent completed a ‘weekly work survey’ and provided the same to the special education teacher.
- **Reading and Writing**
 - It appears District provided Student with a weekly assignment in both reading and writing throughout this time period, and that the Student completed the same.
- **Speech Language Pathology**
 - On several occasions (April 17, May 1, May 22, May 29, and June 17, 2020), the SLP provided the Parent with links to online speech resources. On these occasions, the SLP also asked the Parent if the Student needed additional support in the area of speech. The Parent does not appear to have taken the SLP up on these offers.⁹
- **Social Skills/Emotional – Adaptive – Behavior**
 - The Student participated in the first Microsoft Teams meeting, on April 29, 2020. The Student participated in the first half of the second Microsoft Teams meeting, on May 6, 2020. The Student did not attend any additional Microsoft Teams meetings prior to the end of the 2019-2020 school year.

Analysis

During the COVID-19 closure, school districts were responsible for providing FAPE to students with IEPs. FAPE includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student’s disability; and to ensure access of the student to the general curriculum.

⁸ Including, at the least, on the following dates: April 21, April 28, May 11, May 15, and May 30, 2020.

⁹ During the school closure, the Parent paid for the Student to receive “an hour of private speech four days a week.”

Furthermore, due to the exceptional nature of the COVID-19 closure, school districts were not expected to deliver IEP services exactly as stated in students' IEPs. Additionally, OSPI described the nature of instruction that students were to receive during the COVID-19 as follows: "[School districts] should avoid assuming that continuity of education outside of a typical school building can only occur through online means. Districts will provide instruction using printed online learning materials, phone contact, email, technology-based virtual instruction, or a combination to meet student needs."

Finally, OSPI guidance stated districts were to provide students with IEPs student-specific continuous learning opportunities beginning March 30, 2020.

Here, from roughly March 17, 2020 through April 17, 2020, the District provided the Student with access to 'supplemental enrichment resources' that were "individually tailored to [the] Student's needs." Under the applicable OSPI guidance, this represented a permissible form of individualized instruction, and no implementation violation is found for this time period.

From April 20, 2020 through the end of the school year, the District provided the Student with services in accordance with a Student-specific planning template. In accordance with OSPI's guidance, this planning template referenced instruction specific to the Student's IEP goals. Furthermore, OSPI finds that the planning template was materially implemented from April 20, 2020 through the end of the school year. Thus, for this period, also, OSPI finds no violation related to the provision of services.

Finally, in its response, the District stated: "When schools re-open, Student's IEP team will meet to determine whether compensatory services are needed at that time." OSPI notes that such an action would be in accordance with both the IDEA, as well as guidance promulgated by OSPI during the spring 2020 closure. OSPI notes, though, that the Student's IEP team will need to answer the following two questions: i) how did the COVID closure affect the Student's ability to make progress on his IEP goals?; and, ii) if the COVID closure did negatively affect the Student's ability to make progress on his IEP goals, is additional recovery education warranted?

Regarding the Student's progress, prior to the COVID-19 closure, the Student was making progress on most all of the goals in his September 2019 IEP. For example, as of the beginning of April 2020, the Student had 'mastered' or made progress on most all of his September 2019 IEP goals. The only goal the Student did not make progress on was academic 2. However, in relation to progress reporting on the goals in the Student's April 2020 IEP, while the District provided a progress report in June 2020, the entries did not actually report on the Student's progress and instead summarized some of the services the Student received during the closure. This is a violation of the IDEA, as districts must follow IEPs in regard to how a student's progress toward his or her 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.

Therefore, the District will need to collect progress data or conduct new assessments to determine the Student's progress and then hold an IEP team meeting. After the Student's IEP team meets,

the District will provide OSPI with a copy of the prior written notice that documents the IEP team's answers to the following questions:

1. Where does the Student currently stand on the goals in his April 2020 IEP? For example, has the Student's ability in the April 2020 goal areas regressed, stayed the same, or progressed?¹⁰
2. Based on the foregoing answers, does the Student require recovery services and/or compensatory education, and, if so, how much and in which areas?
3. Does the Student's April 2020 IEP need to be revised in any way?

Furthermore, the District will be required to create a detailed, District-wide plan for how it will gather and report progress on IEP goals for all students with IEPs during the 2020-2021 school year, as the unique circumstances present in the spring of 2020 are likely to also be present during the 2020-2021 school year. The District will also be required to develop, and present, a training that informs certain District staff of the detailed, District-wide plan for gathering and reporting progress on IEP goals for students with IEPs during the 2020-2021 school year.

CORRECTIVE ACTIONS

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

STUDENT SPECIFIC:

IEP Meeting

By or before **October 30, 2020**, the Student's IEP team will meet to discuss, and answer, the following questions:

1. Where does the Student currently stand on the goals in his April 2020 IEP? For example, has the Student's ability in the April 2020 goal areas regressed, stayed the same, or progressed?¹¹
2. Based on the foregoing answers, does the Student require recovery services and/or compensatory education, and, if so, how much and in which areas?
3. Does the Student's April 2020 IEP need to be revised in any way?

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

¹⁰ This question will need to be answered by gathering existing data and communicating with the Parent and the Student. It is possible the District will be required to seek consent from the Parent for a partial or complete reevaluation to determine the Student's current standing on the April 2020 goals.

¹¹ This question will need to be answered by gathering existing data and communicating with the Parent and the Student. It is possible the District will be required to seek consent from the Parent for a partial or complete reevaluation to determine the Student's current standing on the April 2020 goals.

DISTRICT SPECIFIC:

Create District Policy on Progress Reporting and Training on the Same

By **September 25, 2020**, the District will develop a detailed, District-wide plan for how it will gather and report progress on IEP goals for all students with IEPs during the 2020-2021 school year. Also by **September 25, 2020**, the District will develop a training that incorporates and summarizes this plan.

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

By **October 6, 2020**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet; and, 2) a roster of who should have attended so OSPI can verify that staff participated.

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

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.)