

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-78

PROCEDURAL HISTORY

On June 16, 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 the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 18, 2020, OSPI received additional information from the Parent and forwarded the information to the District on June 19, 2020.

On June 24, 2020, the District requested an extension of time to respond to this complaint. OSPI granted the request and asked the District to respond by July 15, 2020.

On July 14, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on July 15, 2020. OSPI invited the Parent to reply.

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

On July 27, 2020, OSPI received the Parent's reply and forwarded it to the District 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?¹

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

¹ The Parent's original complaint included a second issue as to whether the District followed procedures to respond to the Parent's May 29, 2020 request for extended school year (ESY) services. On July 28, 2020, the Parent confirmed that she and the District had resolved this issue, the Student was attending ESY, and the Parent withdrew Issue #2 from this complaint.

IEP is accessible to each general education teacher, case manager, 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).

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 school, was in the fifth grade, 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 January 30, 2020 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The Student’s IEP included several annual goals in the areas of reading (fluency and comprehension), social/behavior (group norms/peer interaction/work completion with speech language support), study/organizational skills, and written language (power paragraph). The Student’s IEP provided the Student with the following specially designed instruction in the *special education setting* and related services in the *general education setting*:
 - Writing: 60 minutes weekly (provided by special education staff)
 - Reading: 60 minutes weekly (provided by special education staff)
 - Social/behavior: 40 minutes weekly (provided by special education staff)

- Study/Organization: 30 minutes weekly (provided by special education staff)
- Study/Organization: 15 minutes weekly (provided by special education staff)²
- Speech Language Pathology: 90 minutes monthly (provided by speech language pathologist (SLP))

The Student's IEP provided the Student with several accommodations and modifications and indicated the Student would spend 88% of his time in the general education setting.

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. Also, on March 11, 2020, the general education teacher provided his students, including the Student, with learning packets to work on during the time students were not in school.
6. 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 (on March 13, 2020, this was extended to all schools in Washington). The District, per this proclamation, extended its closure through April 24, 2020.
7. Also, on March 12, 2020, the general education teacher emailed his students, acknowledging the closure of all school facilities through April 24, 2020, and stating that over the next few weeks, he would be working to expand an attached list of suggested activities and hopefully find other ways to interact with students. The email further stated in relevant part:
 Though the District has made it clear that no work will be assigned or graded while schools are closed, students will need things to do to keep learning and growing. Here's a start:
 - Science Project: Finish researching your topic...For help, read the directions on each page carefully or see the links at this page...
 - Science Project: Plan your experiment...
 - Literature Group Assignments: Finish reading your African American historical fiction book and complete Assignment 6.
 - Making History: Research and write about new technologies and traditions, calamities you've experienced, stories about your migrations, your trading experiences, etc.
 - Math: I'd suggest Khan...for appropriate lessons and practice.

Please email me if you have any questions or if you'd like help with any of the suggestions above.

This closure is going to take a toll on everyone. If you are in need of help or can offer help to others, please reach out to us. Our school counselor is an amazing resource...

That same day, the special education teacher also sent an email to her students, stating, in relevant part:

[M]any students will have received emails from your classroom teachers about the closure. I wanted to also reach out with some additional supports...Many of the students receiving

² This additional time was often 1:1 and other small group opportunities to work with the Student because he would often hesitate to ask questions in the larger group or need more time to process.

services in the Resource Room already have accounts on ixl.com for Math and/or English Language Arts. Some students also have accounts in Readlive.³ If you are interested in learning more about those online programs, please email me and I can pass along information as well as support you with recommendations.

If you are interested in a packet of printable materials for your student to work on over this closure I can also provide some limited materials. There is no substitute for direct instruction and this is a uniquely unusual situation we must all work through. I hope you all are finding ways to creatively manage this challenging situation while maintaining your health and mental wellness. I will email with other updates periodically, please do feel free to reach out via email. If you would be more comfortable with setting up a phone conference, please also email with some potential days and times.

8. On March 13, 2020, a communication log provided by the Student's case manager recorded three email exchanges with the Parent, which included the following information:
 - Email regarding reading, writing, and study organization: "[R]esponded to Parent email re: literature group assignments. Parent noted that her plan was to just have [Student] read for pleasure to reduce reading anxiety. Parent had emailed the classroom teacher although [sic] [case manager] facilitated the literature group. Parent wanted to have Student complete assignment 6, [case manager] stated that it was not required at this time."
 - Email regarding all subject areas: "[R]esponded to Parent question about using ixl, [Student] not using at school because [Student] has low [specially designed instruction] minutes."
 - Email regarding reading and writing specially designed instruction: "[R]esponded to the Parent's request to add ixl for [Student] during the closure."
9. On March 17, 2020, a communication log provided by the case manager recorded an email exchange with the Parent regarding reading and writing specially designed instruction that stated, "Provided Parent with PDF of two workbooks, 5th grade Close Reading and Using Text Evidence, to support work in the general education classroom."
10. On March 23, 2020, a communication log provided by the case manager recorded two email exchanges with the Parent regarding how the Student was doing and whether the Student was using ixl.
11. 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.
12. Also, on March 23, 2020, the District provided its educators with guidance and expectations for continuous learning. This guidance included the following, in relevant part:

³ ixl.com is a personalized learning platform that includes comprehensive k-12 curriculum, learning resources, and can be used for academic help and enrichment. See, <https://www.ixl.com/>. Readlive is a platform that includes instructional programs for struggling and developing readers. See, <https://www.readnaturally.com/go-read-live>.

General education teachers...were directed to determine power standards, utilize District-adopted materials, if available, or develop lessons aligned to standard; and connect with students and their families to communicate academic learning targets and activities.

Special education teachers were instructed to design and provide learning that is aligned with IEP goals and to hold regular office hours to collaborate with content area teachers to make modification to content in accordance with the Student's IEP. Special education teachers were instructed to hold regular office hours to meet and/or communicate with families in order to provide learning support; and to check in regarding outside counseling services or community-based supports. In addition, case managers of students...who receive instruction in the general education classroom were required to hold regular and scheduled office hours for students and families to provide strategies for students to make progress toward individual goals. They were also directed to implement accommodations where appropriate for distance learning.

Additionally, according to the District, in planning for school closure and the potential distance delivery of educational services, the District designed and implemented a coordinated approach to supplemental learning for the first few weeks of closures, providing students with learning packets, and access to teacher generated videos in various subject areas. The special education department at the District also created and distributed special education specific resources and a related webpage for families.

13. On March 24, 2020, a communication log provided by the case manager recorded two email exchanges with the Parent:
 - "SLP responded to Parent's email about [Student's] home schedule. SLP supported Parent's idea of including a lot of fun, yet important activities (art, movement, games, puzzles)."
 - "Case manager responded to Parent re: removing Student from ixl due to stress for Student."
14. On March 25, 2020, a communication log provided by the case manager noted the case manager emailed the Parent regarding reading and writing specially designed instruction. The communication log stated:

Responded to Parent email re: literature group virtual meeting. [Student] had not finished reading the book, I clarified that not all students had completed the book. Clarified that during the session I adapted questions and shared prompts to allow for students who had not completed the book to still be able to engage in the conversation.
15. On March 30, 2020, continuous learning began in the District, and according to the District's response, "explicitly prioritized contacting students with IEPs."⁴

⁴ 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."

16. Also, on March 30, 2020, a communication log provided by the case manager recorded three communication exchanges: two exchanges with the Student—including a virtual meeting—for approximately 30 minutes, and one email exchange with the Parent:

- Student: Provided reading and writing specially designed instruction - "Check in with 5th grade re: access to Schoology, classroom learning menu, social-emotional wellness."⁵
- Virtual Meeting with Student: 5th grade meeting, discussed setting up learning at home, handling stress, how to find classroom learning menus and schedules ("Reading, Writing/Study Organization/Social-Behavioral")
- "[R]esponded to Parent email requesting information on how [specially designed instruction] will be provided, platforms, etc. Clarified that work is to support continuous learning and will look different from specially designed instruction, noted that all work and sessions will be posted in Schoology beginning that week. Current focus on preparing for learning at home and social-emotional wellness. Offered printable packets, mailed packets, and software options for learning. Offered to troubleshoot different options with Parent. Noted that I will base suggestions for Study Skills and Social-Emotional learning based on where Student is at in those areas. (Stress levels, changing dynamics and roles, coping strategies)."

17. On March 31, 2020, the District reported the Student's progress data was unavailable due to Covid-19 closure and that progress will be updated and sent home within 30 days of school resuming.⁶

18. On April 2, 2020, a communication log provided by the case manager recorded a 30-minute meeting with the Student and two email exchanges with the Parent:

- Virtual meeting with Student: "Check in on classroom writing projects, supporting research writing project, and answering questions."
- "[E]mailed [Parent] to check in on [Student.] [Student] had missed Study Skills virtual session and had not responded to writing prompt in Schoology. During an earlier session I had shared my screen to show students how to access the writing prompt assignment and wanted to be sure he knew how to do that. Also provided a reminder and link to the Writing session later that day."
- "[R]esponded to Parent email re missing Study Skills. Clarified that all assignments and learning opportunities are not graded or required at this time. Encouraged her to have [Student] engage in what he can manage but that emotional impact of pandemic closure is stressful for many."

19. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.

20. Also, on April 6, 2020, the case manager emailed families of students with whom she worked in the area of social and behavioral skills. She stated that she scheduled three social groups throughout the week and asked for families to have their student join at least one group per week. She stated, "All of the scheduled social groups are linked in the Resource Room in

⁵ 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>.

⁶ OSPI notes the March 31, 2020 progress report did include data for the Student's social/behavior goal, noting the Student had made significant progress. However, the data appeared to be pre-closure data.

Schoology. If you are having problems accessing Schoology, please reach out and let me know." That same day, the Parent responded, "This does not seem relevant to [Student's] needs at all or for very young students. [Student] does have struggles dealing with things which I have sent emails on but not in the context that you are describing. Am I to assume social group will have different topics and we can choose what is relevant?" That same day, the case manager responded that the group would address handling problems and self-advocacy. She stated, "All of our students are worrying now. This is relevant to [Student's] needs. [Student] often worries about his school work as you have stated. This is relevant to his needs."

21. Based on the documentation provided in the complaint, throughout the closure, the general education teacher continued to send weekly updates and lesson plans to families; he also stayed in contact with the Parent regarding the Student's general education program. During the closure, a typical week in the general education class was as follows:

Monday

- 9:00: Morning Meeting (whole class)
- 9:30: Math Activity (whole class)
- 10:30: Making History (small group)
- 1:00: Optional Fifth-Grade Meet Up with Counselor...
- 1:30: Literature Group Discussion (small group)

Tuesday

- 12:45: Optional Office Hours - general education teacher was available for questions, assistance, or to just chat.
- 1:30: Literature Group Discussion (small group)

Wednesday

- 9:00: Morning Meeting (whole class)
- 9:15: Roots of Empathy (whole class)
- 9:45 Science Investigation Project (whole class)
- 10:30: Making History (small group)
- 1:30: Literature Group Discussion (small group)

Thursday

- 10:30: Making History (small group)
- 1:30: Literature Group Discussion (small group)

Friday

- 9:30: Math Activity (whole class)
- 10:30: Making History (small group)
- 1:45: Class Meeting (whole class)

The case manager also stayed in contact with her families and continued responding to emails from the Parent. Her typical schedule for fifth-grade students was as follows:

Monday – 12:20-12:50: Study Skills

Tuesday

- 9:00-9:30: Office Hours by appointment
- 9:30-10:00: Social Group
- 12:00-12:20: Reading
- 12:20-12:40: Writing

Wednesday – 10:00-10:30: Math

Thursday

- 9:00-9:30: Office Hours by appointment
- 9:30-10:00: Social Group
- 12:00-12:20: Reading
- 12:20-12:40: Writing

Friday – 10:00-10:30: Math

22. Also, on April 6, 2020, a communication log provided by the case manager recorded a 30-minute meeting with the Student and an email exchange with the Parent:
- Virtual meeting with Student: "Writing session, supported classroom research writing project answered questions."
 - "[Emailed Parent and] clarified that we had to move to Zoom instead of Teams for a couple days."
23. On April 7, 2020, a communication log provided by the case manager recorded a 30-minute meeting with the Student and an email exchange with the Parent:
- Virtual meeting with Student: "Reviewed classroom reading, answered questions."
 - "Technology Support: Troubleshooting tech. Issue with meeting link [with Parent]."
24. On April 9, 2020, a communication log provided by the case manager recorded a 30-minute meeting with the Student and an email exchange with the Parent:
- Virtual meeting with Student: "Support for classroom research writing project, review of editing."
 - Email with Parent: "[C]larified that meeting links are in Schoology noted that I am supporting [Student] by reviewing the learning menu for his [general education] teacher, noted that the 5th grade teachers are all providing content, therefore [Student] may be told to watch a video the other 5th grade teacher has recorded, he is to follow the learning menu posted by his classroom teacher. I'm supporting by providing background knowledge, breaking down idioms and vocabulary, etc. for the lessons provided by the 5th grade teachers. Also suggested that if [Student] had not completed reading the literature group book he could wait to start 'The Well' until he had finished."
25. On April 10, 2020, a communication log provided by the case manager recorded a 30-minute virtual meeting with the Student. The communication log noted for the meeting: "Reminder to students of ongoing work, classroom work and lessons 'The Well,' ongoing work in ReadLive and Word Warm Ups and how to access."
26. The District was on spring break from April 13 to 17, 2020.
27. On April 17, 2020, a communication log provided by the case manager recorded several email exchanges with the Parent:
- "Responded to Parent request for most current data on IEP goals. Noted that the most current data was reflected in the Present Levels of the current IEP."
 - "Responded to Parent questions about data from January IEP."
 - "Clarified to Parent that trimester goal progress assessments had been planned to take place when school was closed due to COVID-19, therefore most recent data was January IEP."

28. On April 20, 2020, a communication log provided by the case manager recorded an email exchange with the Parent, as follows: "Responded to Parent email regarding incorrect link, corrected the link for the session and Student was able to attend."

29. On April 21, 2020, a communication log provided by the case manager recorded an email exchange with the Parent, as follows: "Emailed Parent to check-in since Student had missed Reading and Writing sessions that day. Noted what he had missed."

30. Also, on April 21, 2020, the Parent responded to the case manager's email:

I am sorry this email may come across a bit curt but taken in context with the lack of meaningful communication with [Student] and I since school closed...I understand staff is working hard. However, I notice the primary concern is if he is having issues with connecting with the group schedule, not how he is doing or where he is at or better yet why he is behind, do you even know he is behind?...I have sat in the same room as some of the Teams meetings never heard any inquiry of [Student] where he is at and if there is something he is struggling with. Thanks for letting me know that you reviewed using note-taking or a graphic organizer to aid memory while reading. For [Student] a graphic organizer is best, have I been provided with that tool to use at home? No, I have not. I am pretty sure you have no idea where [Student] is at on his Making History writing or his challenges working on this. This is the reason [Student] did not make it to reading, writing and social group today...Meltdowns, a lot of prompting, lots of breaks, etc....After working with [Student] since school closed, I will say NO he is not independent [and] the 'he is fine' I keep getting from the school is wildly inaccurate based on my data...

31. On April 23, 2020, a District student support services supervisor responded to the Parent's April 21, 2020 email to the case manager:

I understand that you are frustrated and maybe feeling a bit overwhelmed at the effort it is taking to support [Student] in his work while schools are closed. You are free to choose work that you think is more important to [Student]. This work is to support continued learning during the closure; it is not a replacement of the school setting, and does not need to mirror traditional instruction either in structure or in time spent doing the work. For students in fifth grade, 2-3 hours per day is ideal. As his parent you are free to pick and choose the assignments he will complete each day. It may be that the amount of work that is offered is more than [Student] would be expected to complete. None of the work is required and it is not graded. This is intentional, so that no students are left behind during the closure.

[District] is in the process of developing our 'continuous learning plan' form as a result of OSPI guidance for continued learning during the school closure. As soon as it is ready, we will draft a learning plan for [Student]. I think this will help in understanding the parameters of teacher responsibility during closure. Specially designed instruction looks significantly different during the closure. Teachers are doing their best to support families, as families are carrying the load of instruction...It will be helpful if you are specific in the supports you are requesting; for example, you could have asked [case manager] for a copy of a graphic organizer as well as outlined what the specific difficulties [Student] is having with lessons so she could help...

...If you would like to discuss your concerns further with [principal] and I, we can arrange a meeting. As always, please feel free to reach out to me in an email or phone call if you would like to follow up.

32. Also, on April 23 and 30, 2020, a communication log provided by the case manager recorded two approximately 40-minute meetings with the Student, wherein they reviewed syllabication and close reading strategies at one meeting, and "close reading strategies, support for classroom reading & writing, multiple graphic organizers for writing" at the second meeting.
33. On May 4, 2020, a communication log provided by the case manager recorded an approximately 30-minute meeting with the Student, wherein they review social-behavioral skills, including: "Age-appropriate interaction with peers and on chat."
34. On May 5, 2020, a communication log provided by the case manager recorded an approximately 40-minute meeting with the Student, wherein they worked on reading/writing and reviewed: "ear as /air/, paragraph editing."
35. On May 6, 2020, a communication log provided by the case manager recorded several email exchanges with the Parent:

SLP contact with [Parent], asking how often she wants me to check-in. Also, I asked if [Student] accessed the optional, free social thinking videos on [web]site and gave guidance on how to select videos in the future. (Videos change each week). I proposed office times with either 4th and 5th or just 5th grade, and said I would email links 'office time' to [Parent] by the middle of next week. [Parent] responded that she would also like a weekly email check-in.
36. On May 7, 2020, a communication log provided by the case manager recorded an approximately 18-minute session with the Student, wherein they worked on social-behavior skills and reading, as follows:
 - Social-Behavioral: "Student had participated in Tuesday social group, coming on Thursday is not necessary. Checked in about literature group and class work."
 - Reading: "[Student] logged in for reading part of meeting, syllabication and prefixes/suffixes, he sent text that he was not able to handle it today and left group."
37. On May 12, 2020, the principal emailed the Parent and stated, in relevant part:

I was reaching out to provide some support for filling out the [continuous learning plan] CLP documents. I understand that [case manager] had also emailed a survey out to families on her caseload last Friday with some questions that would help her document and capture family input in the CLP. The CLP's are intended to be practitioner documents to help those of us on the team understand the school plan and supports that families are needing.

...It would be great to have your input for the third section of the document addressing the question: What supports are needed for parents during the continuous learning plan? Whether you want to send this to me or directly to [case manager], either is fine...
38. Also, on May 12, 2020, a communication log provided by the case manager recorded an approximately 25-minute meeting with the Student and email exchanges with the Parent:

- Meeting with Student: “[R]eading anxieties, note-taking strategies while reading, graphic organizers for reading and writing. [Student] left early after saying in the chat that his reading anxiety is not like what others talked about. Said graphic organizers were too complicated. Said in chat that his brain was about to explode, that it was too much for him so he was going to leave and he did.”
 - “[R]esponded to Parent email about [Student] leaving a session early. I acknowledged that he should always listen to his mind and body when he is stressed and that he is always welcome to take a break and return to a session when he is able. I let the Parent know I had let him know it was ok to leave since he reported he was stressed and included an invitation for him to rejoin if he could later. I had also told [Student] that I would message him on Schoology later to check-in. The reading session that day had some discussion around stress and anxiety about reading. Students shared feelings about this and I shared some strategies for coping and for aiding themselves in reading work. One strategy suggested was to note-take periodically when reading. This session had been planned to support multiple students who experience anxiety about reading for school.”
39. On May 13, 2020, a communication log provided by the case manager recorded several email exchanges with the Parent, wherein the Parent shared she was not able to access the survey link to provide input into the CLP. The case manager updated the link and sent it to the Parent.
40. On May 14, 2020, a communication log provided by the case manager recorded an approximately 40-minute meeting with the Student and an email exchange with the Parent:
- Meeting with Student: “[Student] stayed for entire session, syllabication rules, practice of syllabication for decoding words.”
 - “SLP sent email to Parent. Asked how often she would like communication from the SLP. [Student] was also invited to office hours on Fridays from 12:00-12:30 for 4th and 5th grade students.”
41. On May 19, 2020, a communication log provided by the case manager recorded an approximately 40-minute meeting with the Student and an email exchange with the Parent:
- Meeting with Student: “Student stayed entire session, -tion, -sion, -cian and word endings that change part of speech.”
 - “Sent an email, checking in on [Student] and asking Parent how he's doing. She reported that he made it through an online Resource class. Parent will let me know if she needs anything from me. I told her I will check back in with her next week unless I hear from her sooner.”
42. On May 20, 2020, a communication log provided by the case manager recorded several email exchanges with the Parent regarding the Student missing the study skills session and stated the case manager “caught him up after social group the next day.”
43. On May 21, 2020, a communication log provided by the case manager recorded several email exchanges with the Parent:
- “Responded to Parent comments on input survey for CLP planning. Suggested individual student sessions in lieu of general Study Skills session to review learning menu from classroom teacher for the week, set a weekly schedule with reminders for Student. Session would include SLP. Clarified that elementary students are not expected to independently organize their time and plan to complete assignments or message teachers, these things are all reliant on parents giving reminders.”

- “Replied to Parent email about Student missing Reading and Writing groups, provided her with the handouts from the sessions. Made suggestions on helping Student develop more independence with scheduling alarms or other reminders. Made arrangement to begin individual sessions for weekly overview with Student given that the following Monday was a holiday.”
- “Clarified for Parent that sometimes the Study Organization minutes in the general education setting served as 1:1 conversation with Student due to his anxiety about sharing things when peers are around. This is in the delivery of instruction not formalized as 1:1 time in his IEP.”

44. On May 21, 2020, the Student’s case manager sent the Parent a copy of the Student’s CLP. The plan for services included the following:

Initial Plan for Services for Closure

- Study Skills Sessions once weekly to review learning menus, resources for those activities, and schedules.
- Social Group sessions once weekly to include Student emotional check ins, mindfulness techniques, self-care tips, and strategies for managing during changing times.
- Reading and Writing group twice weekly to support the learning menu options provided by the classroom teachers and to provide continuous opportunities to practice multisyllabic word work, vocabulary, language comprehension, executive function strategies for organizing writing and recall of reading material, and editing practice.
- Graphic organizers and other materials are available on case manager's Schoology page, the materials as well as how to access and use them have been shown to the student through virtual meetings.
- Asynchronous materials are available on Schoology and how to access them have been shown to the Student through virtual meetings.
- Office hours available by appointment throughout the week.
- Special education teacher, classroom teacher, and SLP are available for Student to message through Schoology.
- Special education teacher, classroom teacher, and SLP are available for Parent to email.
- Weekly and occasional update emails from case manager to family.

Plan for Coordination and Services with Related Service Providers

- Weekly email check-ins from SLP (related service provider).
- At least 2 ‘office time’ periods will be offered with SLP where Student can drop in and chat with peers and/or SLP.
- Meeting links will be shared by SLP via email.
- Ongoing SLP collaboration with case manager.

Staff and Family Needs

Family Needs:

- Student needs Parent support to initiate and manage Reading and Writing assignments.
- Family needs to establish a daily schedule with reminders of when to check Schoology, do Reading work, do Writing work, along with the times for live sessions.
- Daily Schedule could also include a reminder for Student to message his teachers on Schoology if he is unsure of his next steps.
- Due to Student anxiety and perfectionism, Parent may need to remind Student that work is not being graded at this time.
- Parent requests 1:1 instruction in Reading and Writing, 1:1 instruction/support is not included in Student's IEP and is not being offered.

- Parent requests instructional assistant (IA) support for Writing and Study/Organization Skills, this support is being provided by the case manager.

Staff needs: Case Manager requires access to classroom teacher's learning menu by 12pm on Mondays in order to review with Student during Study Skills.

Adjusted Plan for Services for Closure

- SLP office time with Student will be on Mondays at 10 so he can talk about social communication. Per Parent report, he's having a hard time verbalizing why he's struggling with virtual meetings with peers. This time with both special education teacher and SLP will support him in brainstorming solutions, understanding his schedule/project due dates, and identifying how he can successfully navigate virtual meetings.
- Set up shared individual Student support time on Monday mornings to help Student orient himself for the week's learning. Case manager and CLP will meet with Student prior to the group Study Skills time or later, in lieu of Student attending group Study Skills session. Session will include going over the classroom learning menu, setting up daily reminders on a schedule for the week including group sessions, assignments broken down into parts as needed, and prompts to ask for help. Each session will result in a week schedule with reminders to be emailed home after the session for the Parent and Student to print.
- Case manager also offered to be available for individual sessions with the Student to go over his writing for the general education classroom.
- Case Manager also offered to start sending Reading/Writing support materials to Parent's email prior to the group support sessions so that Student will have time to review those materials before group sessions. This is in response to Parent concern about Student anxiety over engagement with new material during group support sessions.

45. On May 22, 2020, a communication log provided by the case manager recorded an email exchange with the Parent and noted: "Offered to provide Parent with handouts for Reading and Writing sessions ahead of time for Student to review, to relieve some stress about engagement with new material."

46. On May 24, 2020, a communication log provided by the case manager recorded an email exchange with the Parent and noted: "Provided a link to free social thinking resources/videos for Student during closure."

47. On May 25, 2020, a communication log provided by the case manager recorded an email exchange with the Parent and noted: "Provided learning materials ahead of time for Reading and Writing sessions, reminder for social group."

48. On May 26, 2020, a communication log provided by the case manager recorded a brief meeting with the Student and an email exchange with the Parent:

- Virtual interaction with Student: "Student sent in chat that he could not handle another meeting and left."
- "Replied to Parent email that Student was tired from lack of sleep, Student had shared in group that he was tired and cranky."
- "Emailed Parent individualized weekly schedule to print at home."

49. On May 28, 2020, a communication log provided by the case manager recorded an approximately 40-minute meeting with the Student, wherein they reviewed figurative language, close reading, and language comprehension (word associations).
50. On May 29, 2020, a communication log provided by the case manager recorded several email exchanges with the Parent regarding extended school year (ESY) services and summer learning programs.
51. On May 31, 2020, a communication log provided by the case manager recorded an email exchange with the Parent and noted: "Emailed Parent materials for Reading and Writing sessions ahead of time for Student to review."
52. On June 1, 2020, a communication log provided by the case manager recorded an approximately 30-minute meeting with the Student and email exchanges with the Parent:
- Virtual session with Student: "Reviewed and updated schedule for the week. Set reminders for tasks and events. Discussed how to handle video instruction overload. Pausing as a strategy to avoid being overwhelmed."
 - Emailed Parent: "Rescheduling individual session for Student, he was overwhelmed by math session earlier."
 - "Emailed Parent individualized weekly schedule to print at home after session with Student."
53. On June 2, 2020, a communication log provided by the case manager recorded an approximately 30-minute meeting with the Student and an email exchange with the Parent:
- Virtual session with Student: "Weekly Social-Emotional Check-In, Mindfulness techniques, strategies for self-care."
 - "Replied to Parent email explaining why Student logged into a session late."
54. On June 4, 2020, a communication log provided by the case manager recorded an approximately 70-minute meeting with the Student where in the covered close reading, text evidence, syllabus rules, and practice with suffixes that start with vowels.
55. On June 7, 2020, a communication log provided by the case manager recorded email exchanges with the Parent regarding rescheduling individual sessions due to the Student's stress.
56. On June 9, 11, and 16, 2020, a communication log provided by the case manager recorded several email exchanges with the Parent:
- "Emailed Parent to check on Student stress level, see if they thought we could try end of year assessments."
 - "Agreed to check in later about scheduling an individual session for the next week and any assessments."
 - "Checking in on Student stress, scheduled only reading fluency assessment."
57. On June 16, 2020, OSPI received the Parent's complaint and subsequently opened this investigation.

58. On June 18 2020, the District reported the Student's progress data was unavailable due to Covid-19, and stated on the progress report for all goals, except one: "Due to the state-wide COVID-10 school closure, and resulting remote learning, the team was not able to obtain measurable data on this goal. Progress will be updated when schools re-open and team is able to collect current performance data."

The Student's progress on his reading goal was reported as "little or no progress made" and the report noted: "[Student] read a mid-year 6th grade passage at 104 correct words per minute with 99% accuracy. [Student] would benefit from working in ReadLive or Word Warm Ups during the Summer to build his fluency."

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

60. The District stated in its response to this complaint that it will engage in recovery planning for the Student in an individualized manner when school resumes, and the team is better able to determine the educational impact of the closure on the Student.

CONCLUSIONS

IEP Implementation – The Parent alleged the Student was not provided the services outlined in the Student's individualized education program (IEP), including specially designed instruction in social-behavioral, study organization, reading, writing, and speech therapy. The Parent alleged that because special education services were not provided, the Student was not able to access the general education instruction offered.

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. While 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, there is an understanding that 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, the Student's January 2020 IEP was in place prior to the school facility closures and the IEP required the Student receive the following specially designed instruction in the *special education setting* and related service *in the general education setting*:

- Writing: 60 minutes weekly, (provided by special education staff)
- Reading: 60 minutes weekly (provided by special education staff)
- Social/behavior: 40 minutes weekly (provided by special education staff)
- Study/Organization: 30 minutes weekly (provided by special education staff)
- Study/Organization: 15 minutes weekly (provided by special education staff)
- Speech Language Pathology (related service): 90 minutes monthly (provided by a speech language pathologist (SLP))

After the District closed school facilities on March 11, 2020, the Student's IEP was not implemented as written, which during this time does not alone represent a violation of the IDEA. However, that does not end the analysis as the District still had an obligation to provide students with 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 services would receive a FAPE, which consists generally of specially designed instruction and related services. Also, on March 23, 2020, the District outlined expectations for its teachers, including that case managers would design and provide learning that is aligned with IEP goals, collaborate with content area teachers to modify content in accordance with the student's IEP, hold office hours for students and families to provide strategies for students to make progress toward individual goals, and implement accommodations.

Per the case manager's communication log, the Student was receiving weekly special education services as of March 24, 2020, and as of April 6, 2020, the case manager posted her class schedule and availability for support. Although the Student's continuous learning plan (CLP) was not available until May 21, 2020, documentation provided by the District supports the conclusion that the Student's CLP documented services he had been receiving since late March.

Overall, the District did not implement the Student's IEP as written, which, as discussed above, is not a violation during this time period. Although the District did not have a written plan to provide the Student with special education services until May 21, 2020—over a month after the District was required to have a plan and offer special education services to students, the Student's general education teacher, case manager, and SLP had been consistently working in tandem to provide services for the Student from March 24, 2020 until the end of the school year. Further, based on the documentation, the case manager, SLP, and principal contacted the family regularly and the support offered included both general activities provided by the general education teacher and specific supports directly aligned with the Student's goals by the case manager. Further, the SLP made activity suggestions to the Parent, conducted check-ins with the Parent and the Student, and was available for office hours.

In the Parent's reply to the District's response and emails sent to the District, the Parent repeated her concern that the teacher did not check in with the Student for understanding of the material, and that contact with the school was continuously global and not individualized to the Student. Further, the Parent alleged that due to this lack of individualized attention, the Student would become overwhelmed or anxious and terminate his involvement in online participation. The case manager and principal clarified several times that during distance learning, the Parent was free to choose the assignments the Student would complete each day, and that this flexibility was intentional, so that no student would be left behind. The case manager stated that the amount of work offered may be more than the Student would be expected to complete normally, but that none of the work was required. Additionally, the documentation indicates that the case manager attempted to address the Parent's concerns as the case manager's log indicates several sessions, working with the Student to address anxiety, social-behavioral skills, stress management, and that

the case manager let the Student know it was okay to leave sessions if he felt overwhelmed and was always invited to rejoin later. The case manager checked in with the Student and shared strategies around coping, especially in the area of stress and anxiety around reading.

Here, the District did offer the Student the opportunity to receive special education services in a virtual special education setting. Between March 24 and June 19, 2020, the District offered the following, provided by the case manager outside of hours and services offered in general education:

- 330 possible minutes of study skills and organization support (the Student's IEP included 45 minutes a week in a special education setting);
- 660 possible minutes of social behavioral support (the Student's IEP included 40 minutes a week in a special education setting);
- 440 possible minutes of reading support (the Student's IEP included 60 minutes a week in a special education setting);
- 440 possible minutes of writing support (the Student's IEP included 60 minutes a week in a special education setting); and,
- 660 possible minutes of additional individual support available during case manager weekly office hours.

Further, the case manager's log shows that the Student was able to access approximately 600 minutes of virtual specially designed instruction with the case manager, in addition to the time the case manager spent in communication with the Parent, providing instructional support. While not identical to the IEP in number of minutes, OSPI finds the Student was appropriately offered access to individualized instruction and OSPI finds no violation with respect to the provision of services.

However, despite the District providing the Student access to learning and special education instruction, the District provided very little progress documentation. Except for one goal (reading), the District instead provided a standard statement for each goal that it was unable to obtain data on the Student's progress. While overall, the Student accessed less specially designed instruction during this period than he would have in the normal course of a school year, as the Student was being provided some services, the District should have been able to provide some progress information during the closure for more than just the reading goal. Thus, OSPI finds a violation for the failure to provide adequate progress reporting for skills addressed during the school facility closures. The District will be required to collect updated progress data and hold an IEP meeting to discuss the Student's progress.⁷

CORRECTIVE ACTIONS

By or before **October 7, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

⁷ 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.

STUDENT SPECIFIC:

By or before **September 30, 2020**, the Student's IEP team will meet to discuss the Student's progress and the impact of the school facility closures from March 30 to June 19, 2020. Prior to the meeting, the District will need to monitor and measure the Student's progress. This could include a review of existing data, Parent input regarding progress at home during the closures, and new assessments to reestablish the Student's baseline on his goals.

At the meeting, the Student's IEP team should discuss his progress and the impact of the school facility closures on that progress. The team should also discuss what, if any, additional special education services (recovery services or compensatory services) are necessary to help lessen the impact of the closures and provide that recommendation to OSPI for approval.

By **October 7, 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.

By October 14, 2020, OSPI will review the data used by the IEP team to determine the Student's need for additional services, 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.

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).