

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-85

PROCEDURAL HISTORY

On June 17, 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 Bellevue 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 18, 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 6, 2020, the District requested an extension of time to respond to this complaint. OSPI granted the extension and asked the District to respond by July 15, 2020.

On July 8, 2020, OSPI requested additional documentation from the Parent. On July 8, 2020, the Parent provided the requested documentation and OSPI forwarded it to the District on July 9, 2020.

On July 15, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on July 16, 2020. OSPI invited the Parent to reply.

On July 29, 2020, OSPI received the Parent's reply. OSPI forwarded that reply 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?

LEGAL STANDARDS

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

between the services provided to a disabled child and those required by the IEP.” *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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

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

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

Specialty Designed Instruction: The purpose of the IDEA is to ensure that all students eligible for special education have available to them a FAPE that emphasizes special education and related

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

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

FINDINGS OF FACT

1. During the 2019-2020 school year, the Student attended a District middle school and was eligible for special education services under the category multiple disabilities. The Student was in a life skills program at her middle school.
2. The District's 2019-2020 school year began on September 4, 2019.
3. The Student's December 2, 2019 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The December 2019 IEP noted the Student "needs close adult supervision with support from a 1:1 paraeducator" when in the general education setting and the Student "also benefits from a predictable, consistent routine." The IEP stated that when the Student is in the special education setting, "she needs highly individualized instruction, and positive reinforcement." The Student's IEP included annual goals in the areas of social-emotional (functional vocabulary), adaptive (clothing management, 6 inch step, spoon, put items in a container, and request bathroom), math (sorting objects and sorting utensils), reading (matching object to word), and writing (name identification and name stamp). The Student's IEP provided the Student with the following specially designed instruction and related services:
 - Adaptive: 240 minutes weekly (to be provided by a special education teacher, in the special education setting)
 - Math: 240 minutes weekly (to be provided by a special education teacher, in the special education setting)
 - Reading: 240 minutes weekly (to be provided by a special education teacher, in the special education setting)

- Social-Emotional: 240 minutes weekly (to be provided by a special education teacher, in the special education setting)
- Writing: 240 minutes weekly (to be provided by a special education teacher, in the special education setting)
- Social-Emotional: 480 minutes weekly (to be provided by a paraeducator, in the general education setting)
- Occupational Therapy (Related Service): 20 minutes weekly (to be provided by an occupational therapist (OT), in the special education setting)
- Physical Therapy (Related Service): 20 minutes weekly (to be provided by a physical therapist (PT), in the special education setting)
- Speech Language Pathology (Related Service): 30 minutes weekly (to be provided by a speech-language pathologist (SLP), in the special education setting)

The Student's IEP also provided her with 1:1 paraeducator support during the entire school day. The Student's IEP indicated the Student would spend 33.5% of her time in the general education setting.

4. On March 11, 2020, the District closed school facilities. The closure was initially scheduled through March 27, 2020.
5. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis.
6. Between March 13 and 27, 2020, according to the District's response, the District was closed and did not provide educational services or instruction to any student in the District.
7. On March 20, 2020, the special education teacher emailed families, including the Parent, with a survey for parents to fill out. The email contained questions about communication preference (Parent responded Microsoft teams), picking up materials (Parent responded they could pick up from any location), whether families needed anything else, and a link to set up a meeting with the special education teacher (the Parent scheduled a meeting).
8. Also, on March 20, 2020, the OT and PT emailed the Parent, letting the Parent know they could provide some ideas for activities if requested. The Parent responded to the OT and asked for ideas for the Student to do at home. The Parent also responded to the PT, asking for ideas and stating that right now with the Student, they were "doing a lot of walking, some exercises on a big fitness ball, stairs. If you have some other ideas that would be great."
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. Also, on March 23 and 30, 2020, the Student's special education teacher met with the Parent, remotely, to discuss the Student's remote learning. During the March 30, 2020 meeting, the

agenda was to “look at [the Student’s] goals and brainstorm activities we can do on Microsoft Teams.”

11. On March 25, 2020, the PT and OT emailed the Parent, letting her know they “put together a home program with suggested fine motor and gross motor activities for you to work on with [the Student].” The PT and OT stated they recommended 10-15 minutes of movement activity daily, and let the Parent know they would be checking in weekly.

On March 30, 2020, the Parent responded, thanking them for the ideas and stated she was “working hard to incorporate at least several of them into our daily routine. Right now we are doing some fine motor activities, mostly with the things which I received in a resource box from school.”

12. On March 30, 2020, continuous learning began in the District. The District posted its “Remote Learning Plan” on its website, which included the expectation that “educators are designing weekly plans for the remainder of the year, including learning activities and resources for each week, that will support students in mastering [essential] skills and concepts.” The District also posted set schedules for elementary, middle, and high school, and noted that middle and high school schedules “will include learning labs, which will provide additional connection points for students and teachers. Examples of learning lab activities during this time may include discussions, live meetings with students, video updates, additional resources, question and answer, or other small group learning support.”

13. On April 2, 3, and 7, 2020, the Student’s special education teacher met with the Parent, remotely, to discuss the Student’s remote learning.

14. The District was on spring break from April 13 to 17, 2020.

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

16. On April 24, 2020, the Student’s IEP team determined the Student qualified for extended school year (ESY) services.¹ The ESY addendum to the IEP indicated the Student’s IEP team: determined that ESY services are necessary for the maintenance of [Student’s] learning skills and school behaviors based on documented failure to progress, combined with regression and recoupment, with the consideration that due to the nature and severity of [Student’s] disability, with regard to problems with working memory, slow rate of progress...[and] demonstrated need for constant reinforcement of behaviors over time, the benefits accrued during the school year are in jeopardy.

The IEP also stated the Student needed “1:1 paraeducator support” during ESY.

¹ According to the “contact attempt report (amendment)”, the Parent gave her permission to proceed without a meeting.

17. On April 26, 2020, the special education teacher emailed families, including the Parent, the schedule for the live class sessions for the remainder of the school year (Monday and Thursday at 9 am and Tuesday and Wednesday at 11 am, functional academics and social skills). The special education teacher stated the sessions were not mandatory and “they are not anywhere near what your child was able to do in the classroom.” The special education teacher further stated, “Please understand that I feel terribly that I do not have the capacity to modify the curriculum in a way to meet your child’s needs because so much of what I do in the classroom is interactive and hands on. I actually rarely used laptops in the classroom because of this...”

The Parent responded, stating she understood “how hard this time [is] for you...I appreciate your efforts a lot and see how hard you work.”

18. On May 1, 2020, the District reported the Student’s progress on her annual IEP goals. For each goal, the progress reporting included pre-closure data and information about the Student’s progress prior to the closure (generally, the Student was making sufficient progress on most of her goals)², and then noted that data had not been collected since the school facility closures.

19. On May 8, 2020, the special education teacher emailed families, including the Parent, stating there were new resources for students for the week of May 11 posted on the Microsoft Teams class notebook.

In the email to the Parent, she attached the Student’s remote learning plan. The teacher noted the remote learning plan was “not a replacement for your child’s IEP, it is a summary of the schedule and instructional resources that were offered...please do not hesitate to contact me with any questions or if you would like to meet to discuss your student’s continuous learning plan for the closure.”

The email also included the schedule for live class sessions, with some information about the topic for each day:

- Monday 9 am: Functional Academics – “Leveled Book Read Aloud”
- Tuesday 11 am: Social Skills – “News2You”
- Wednesday 11 am: Functional Academics – “Show and Tell and Leveled Book Fill in the Blank”
- Friday 9 am: Social Skills – “News2You”

20. The Student’s remote learning plan included the following special education services:

- Adaptive: 5th period and 5th period learning lab, provided monthly by a special education teacher;
- Math: 4th period and 4th period learning lab, provided monthly by a special education teacher;
- Reading: 1st period and 1st period learning lab, OneNote resources, provided weekly by a special education teacher;
- Social-emotional: 7th period and 7th period learning lab, OneNote resources, provide weekly by a special education teacher; and,

² No progress information was included, pre-closure or otherwise, on the Student’s reading and writing goals in May 2020.

- Writing: Concurrent with reading, OneNote resources, provided weekly by a special education teacher.

The remote learning plan also provided the following related services:

- Occupational therapy: "Bi-weekly (every other week) skilled check-ins with progression/modifications of activities monitored by [occupational] therapist;"
- Speech-language pathology: Monthly, 30 minutes embedded into weekly classroom activities; and,
- Physical therapy: Bi-weekly gross motor program, provided by a physical therapist.

For each service (specially designed instruction and related services), the remote learning plan noted an "initiation date" of April 20, 2020. The plan noted that prior to April 20, 2020, the schedule for the Student "followed district schedule of periods, and sign up for check in via Sign Up Genius," and listed the previous schedule. The remote learning plan noted several of the Student's goals that would not be addressed during the closure, including several of the adaptive goals (clothing management, 6-inch step, spoon, put in, and request bathroom).

The remote learning plan noted the following regarding special education services:

Remote learning opportunities during these times can possibly include, but are not limited to, Teams meetings, practice activities, small group work, video messages, question and answer sessions, or other methods as appropriate. Learning labs are optional for both students and staff...Students have the option to join those learning labs offered for their classes.

Occupational therapy will continue check in via email to offer additional resources, learning opportunities, answer questions, and modify activities to meet family/student needs as appropriate.

Physical Therapy: A gross motor program is provided in PDF format and includes a variety of gross motor activity suggestions which can be performed in the home environment. The gross motor program is voluntary and can be completed at family's own unique pace. Bi-weekly (every other week) skilled check-ins with progression and modification of gross motor activities monitored by therapist have been offered to this student via parent email and/or Microsoft Teams. Physical therapist is available to answer any specific questions about programming, goals, and progress.

The remote learning plan also noted the District's plan once "normal school operations" resumed, as follows: "We recognize that students may not be receiving all services documented in the IEP during the closure caused by COVID-19. Information will be collected on learning opportunities provided during the school closure, and baseline data will begin to be collected when normal school activities resume." Further, the District stated in the plan that the Student's IEP team would need to meet when school reopened, to "address student-specific needs resulting from the closure. Meetings will include discussions of services needed to address any inability to fully implement a student's IEP. This information will be used to inform IEP teams, including parents, regarding any amendments that may need to be made to IEPs."

21. The District, in its response, stated the Student's special education teacher reported the Student regularly attend the online class meetings via Microsoft Teams.
22. On May 26, 2020, the Parent emailed the special education teacher, declining ESY services. The Parent stated that it was "not worth all the efforts from you and your team" because "remote learning doesn't work for [Student]." The District accordingly recorded that decision in a prior written notice. The prior written notice stated, "[Student] qualifies for ESY services but the online format is not beneficial to [Student's] needs."

The Parent also clarified, in the reply to the District's response, that they turned down ESY because "remote learning showed minimal to no benefit to [Student]" and that "ESY could have been an opportunity to address the serious regression that [Student] experience but only delivered in person." The Parent stated, "distance learning didn't work for [Student] during the school year so there were no indications that it would be different during summer."

23. On June 13, 2020, the Parent emailed the special education teacher, stating she wanted to let the teacher know they were filing a special education complaint and requesting compensatory services. The Parent stated, "This is not because we are angry at you...I actually think you did great," but that it "just seems impossible to make remote learning work for [the Student]." The Parent stated they were grateful to the special education teacher and the Student's team, but they were "very concerned that [Student] doesn't have access to education right now and we think that she should get what she is entitled to."
24. On June 17, 2020, the District reported the Student's progress on her annual IEP goals (and emailed the progress report to the Parent on June 19, 2020). The progress reporting noted the following for the Student's goals:
 - Adaptive (Clothing management): "Due to limitations of remote learning, progress towards this goal will be assessed when in-person services resume. Services have been provided as outlined in the Continuous Learning Plan and progress reporting reflects that plan."
 - Adaptive (6-inch step): "PT: Services have been provided as outlined in the Continuous Learning Plan and progress reporting reflects that plan."
 - Adaptive (Spoon): "Due to limitations of remote learning, progress towards this goal will be assessed when in-person services resume. Services have been provided as outlined in the Continuous Learning Plan and progress reporting reflects that plan."
 - Adaptive (Put in): "Goal not addressed via remote learning, per Continuous Learning Plan. Student progress will be assessed when in-person services resume."
 - Adaptive (Request bathroom): "Goal not addressed via remote learning, per Continuous Learning Plan. Student progress will be assessed when in-person services resume."
 - Reading: "Student had difficulty accessing and participating in remote learning sessions and online classroom instruction. [Student] signed into classes and said hi, but was unable to interact with the computer due to cognitive, social, and motor."
 - Writing: "Student had difficulty accessing and participating in remote learning sessions and online classroom instruction. Limited opportunities for student to demonstrate goal progress."
 - Writing: "OT has been providing family with remote learning activities. Progress towards goals will be addressed when in person services resume."

- Math: "Weekly lessons and activities were provided on Microsoft Teams, per Continuous Learning Plan. Unable to collect data during remote learning. Student progress will be assessed when in-person services resume."
- Math: "Weekly lessons and activities were provided on Microsoft Teams, per Continuous Learning Plan. Unable to collect data during remote learning. Student progress will be assessed when in-person services resume."
- Social-Emotional: "SLP related service – Student participated regularly in joint online classroom instruction. Annual goal may not be achieved. Limited opportunities for student to demonstrate goal progress."

25. Also, on June 17, 2020, OSPI received the Parent's complaint and opened this investigation. The Parent, in her complaint, stated, "after schools closed in March 2020, my child did not receive ANY of the instructions and services required by the IEP." The Parent also stated that the remote learning did not work for the Student and that a "consistent daily routine and personal presence" was "mandatory to follow [the Student's] IEP." The Parent stated she observed "serious regression in skills, which [the Student] managed to gain before."

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

27. On July 29, 2020, OSPI received the Parent's reply to the District's response to her complaint. In the reply, the Parent stated she understood that the Student's IEP was not implemented as written given the pandemic but emphasized that she still believed the District did not meet its obligation to provide the Student a free appropriate public education (FAPE). The Parent stated that the Student's special education teacher and therapists "tried very hard to give us services. I received a lot of different materials, websites to use and opportunities to check in virtually. However, even with those items, [Student] was not able to access her learning."

The Parent gave several examples of challenges the Student faced, summarized as follows:

- Student could not independently, or even with Parent's help, complete assignments.
- Student could not use the laptop provided by the District as the Student "was supposed to use the touch screen mode but due to many uncontrolled movements [related to the Student's disability] each time she touched the screen the program would shut down, or session disconnected, or another application would open. In that situation it will take time to set up everything back but when that would happen she would not concentrate due to short attention span [sic]."
- Student could not participate in group session activities. In the classroom, the Student received instruction that was "specifically adapted and designed for her and provided with 1:1 paraeducator support...[however] these accommodations were impossible to receive and provide remotely even with a real presence of a parent or caregiver, because the sessions weren't structured that way, and there were no tools and resources to adapt each individual assignment or activity [sic]."
- PT and OT recommendations "were very professional but they were just recommendations not the therapies. So it was assumed that her parents/caregivers would work with [Student] on a daily basis and deliver educational services. Unfortunately, with 2 working parents and 2 other small kids at home we didn't have enough resources to do that job." (Emphasis in original.)
- The Student exhibited regression in her skills, and her behavior and mood changed.

The Parent stated she thought the “only way on-line learning could work for [Student] is if she would be accompanied by a professional educator all the time who would know the scope of the sessions and be prepared to provide additional physical materials to give individualized instructions and support her learning.” The Parent stated the Student needed a plan for the fall, given that the District is continuing remote learning. The Parent stated she hoped the Student could either learn in-person, at the school with health and safety precautions; have in-person professional support in their house or other “safe environment;” or, “consider options [for] sending [Student] to other educational organizations who continue to work during [the] pandemic.”

28. The District, in its response, stated that in accordance with OSPI’s guidance, it “plans to convene a meeting of the Student’s IEP team...to discuss any needs resulting from the period of school facility closures” and that the IEP team would make an individualized determination, based on the Student’s needs, at that time.

The Parent, in her reply, noted she wanted the District to “consider options for compensatory services as soon as possible,” given that “there is no understanding [of] when normal operations would resume.”

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged the District failed to provide the Student with the special education services outlined in her individualized education program (IEP) and that the District failed in its obligation to provide the Student a free appropriate public education (FAPE). The Parent stated that the Student was not able to access learning in a virtual learning environment and that the Student experienced a “serious regression in skills.”

Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs could not be implemented as written as school facilities closed and districts transitioned to distance learning. Here, the Student’s December 2019 IEP was in place prior to the school facility closures and the IEP required the Student receive specially designed instruction in adaptive skills, math, reading, social-emotional, and writing. The Student also received occupational therapy, physical therapy, and speech language pathology as related services. The Student had a 1:1 paraeducator throughout the school day and attended a life skills program at her District school.

After the District closed school facilities on March 11, 2020—and remained closed, providing no services to any student through March 27, 2020—the Student’s IEP was not implemented as written, which during this time alone does not 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 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.

Overall, the District did not implement the Student's IEP as written, which, as discussed above, is not a violation during this time period. The District did develop a remote learning plan and made instruction available to the Student; however, due to the Student's disability, the instruction offered was largely inaccessible.

The Student's special education teacher met with or had discussions with the Parent on March 23, 30, April 2, 3, and April 7, 2020, about the Student's remote learning. Based on the Student's remote learning plan and the special education teacher's weekly schedule, the Student was provided the opportunity to attend live virtual class sessions Monday through Thursday, which addressed functional academics and social skills. The Student's remote learning plan included a period for adaptive skills, although the plan also noted the Student's adaptive goals would not be addressed during the closure. The remote learning plan also noted that resources would be provided via OneNote. The Student's speech services were "embedded into weekly classroom activities" and the Student's occupational therapy and physical therapy were offered as a "bi-weekly...skilled check-in with progression/modifications of activities," provided and monitored by the occupational therapist (OT) and physical therapist (PT)—in other words, the OT and PT provided the Parent a document with activities that could be performed at home. The OT and PT would then check in regarding progress, discuss modifications, and answer questions.

The documentation indicates the Student was able to access some of the learning activities, with Parent support. In late March 2020, the Parent stated the Student was doing a lot of walking and some exercises on a fitness ball and they were incorporating the OT and PT's recommendations into their daily routine, including fine motor activities using a "resource box" the school provided. The District, in its response, stated the Student's special education teacher reported the Student regularly attended the online class meetings.

However, the Parent, in her reply, noted the Student faced several barriers to engaging with instruction in a remote learning environment—despite the special education teacher's efforts. For example, given the Student's disability, the Student was not able to independently complete assignments. The Student's disability prevented her from successfully using technology to access virtual instruction (e.g., the Student was supposed to use the touch screen on her computer, but "due to many uncontrolled movements [related to the Student's disability] each time she touched the screen the program would shut down, or session disconnected, or another application would open...") The Parent stated the Student could not really participate in group session activities and that normally, in the classroom, the Student received instruction that was "specifically adapted and designed for her and provided with 1:1 paraeducator support;" however, "these accommodations were impossible to receive and provide remotely even with a real presence of a parent or caregiver, because the sessions weren't structured that way, and there were no tools and resources to adapt each individual assignment or activity [sic]." The Parent also noted that while the PT and OT recommendations were helpful, they were not therapy and the Parent could not work with the Student on a daily basis given her job (and the Student's father's job) and their two other children at home.

The District also seemed to recognize that remote learning was not working for the Student. In the prior written notice, documenting the Parent's declination of extended school year (ESY)

services, the District wrote: “[Student] qualifies for ESY services but the online format is not beneficial to [Student’s] needs” and the Student’s progress report, for several goals, noted “Student had difficulty accessing and participating in remote learning sessions.” Further, the special education teacher stated the sessions were not “anywhere near what your child was able to do in the classroom” and stated she felt “terribly that I do not have the capacity to modify the curriculum in a way to meet your child’s needs because so much of what I do in the classroom is interactive and hands on. I actually rarely used laptops in the classroom because of this...”

Thus, while recognizing the efforts of the special education teacher, OT, and PT, during the closure, the Student did not receive educational services outside of the virtual group class sessions, during which—given the Student’s disability and related challenges—the Student does not appear to have received specially designed instruction. Further, the Student only received minimal occupational and physical therapy as these services were dependent on the Parent’s ability to provide them. Given the challenges the Student had engaging with remote learning, which the documentation shows the District was aware of, OSPI finds these barriers remain unaddressed. This Student likely needed some amount of in-person services or supports, which—at minimum—the Student’s IEP team should have discussed if and whether some in-person services could have been provided (considering all health and safety guidelines). Given the failure to consider alternatives to address the challenges the Student was facing, in addition to the fact the Student received very little to no specially designed instruction, OSPI finds the District in violation and compensatory services are warranted. Here, the Student’s IEP team will be required to meet to determine how much compensatory education, and in which areas, the Student requires. OSPI will then review this determination and approve or revise it as necessary. Given the failure to provide accessible services, the IEP team will also discuss the plan for providing the Student instruction during the 2020-2021 school year and consider the options proposed by the Parent in her reply to the District’s response in this complaint.

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

Here, the District provided progress reporting. The Student’s May 2020 progress report only reported pre-closure progress and data (although there was no reporting on reading and writing). The Student’s June 2020 progress report noted for most goals that “due to the limitations of remote learning, progress...will be assessed when in-person services resume,” or that services were not provided, per the Student’s remote learning plan. For a few, like the reading and writing goals, the progress reporting indicated “Student had difficulty accessing and participating in remote learning sessions and online classroom instruction. [Student] signed into classes and said hi, but was unable to interact with the computer due to cognitive, social, and motor.” For other goals,

the progress reporting stated that services had been provided per the remote learning plan. However, as discussed above, the Student received very little instruction, and therefore, there were limited goals the District could report on. OSPI finds that the District could not report progress given that no instruction was provided. Thus, OSPI finds no violation related to progress reporting. However, OSPI strongly recommends that during the required IEP meeting, the team discuss the plan for monitoring the Student's progress during the 2020-2021 school year.

CORRECTIVE ACTIONS

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

STUDENT SPECIFIC:

By or before **September 15, 2020**, the Student's IEP team will meet to discuss the Student's progress and the impact of the school facility closures. Prior to the meeting, the District will need to monitor and measure the Student's progress. This could include a review of existing data, Parent input regarding progress at home during the closures, and new assessments to reestablish the Student's baseline on her goals.

At the meeting, the Student's IEP team should discuss and consider the following:

- The progress and the impact of the school facility closures on that progress.
- What compensatory services the Student requires—how much, in what areas, and whether compensatory services can be provided in-person. OSPI notes that corrective actions must be completed within a year of the complaint decision, meaning the District's plan for compensatory services could extend into the summer of 2021, in order to address the changing public health situation and consider the Student's need for in-person services.
- The plan to provide the Student with accessible special education instruction and related services during the 2020-2021 school year, given that remote instruction was not successful for the Student in the spring of 2020.
- The plan to conduct progress monitoring and provide progress reporting in the fall of 2020.
- The options proposed by the Parent in her reply, including:
 - In-person services provided at school, with health and safety precautions;
 - In-person services provided at the Student's home or other "safe environment," with health and safety precautions; and/or,
 - Options for sending the Student to another educational organization that is providing in-person services.³

By **September 18, 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 compensatory services; 7) Prior written notice; and, 8) Any other relevant documentation.

³ OSPI notes that while the Parent did not specify other educational organizations, this could include exploring a private placement, a nonpublic agency, a community service provider, or other contracted service provider.

By September 30, 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.)