

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-98**

### **PROCEDURAL HISTORY**

On August 27, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Lake Washington School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On August 27, 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 September 16, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on September 17, 2020. OSPI invited the Parent to reply.

On August 24, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On September 29, 2020, OSPI requested additional information from the Parent. The Parent replied on October 5, 2020 and the reply was forwarded to the District on the same day.

On October 12, 2020, OSPI requested additional information from the District. On October 13, 2020, OSPI received the additional information and forwarded the information to the Parent on the same day.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began August 28, 2019. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUE**

1. Did the District implement the Student's individualized education program (IEP) regarding: 1) speech therapy; 2) physical therapy; and, 3) occupational therapy during the 2019-2020 school year?

## LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there was sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

**IEP Implementation:** At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. 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).

**IEP Implementation During Spring 2020 School Facility Closures:** 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**

### **Background**

1. OSPI received this complaint from the Parent on August 27, 2020. The Parent, in her complaint, alleged the following:

The [District] has impeding [elementary school] and the IEP (individualized education program) team for [Student], from implementing requirements put forth in her IEP. She specifically is owed hours for the 2019-2020 school year for Occupational Therapy in the amount of 630 minutes. Physical Therapy in the amount of 60 minutes, and Speech Therapy in the amount of 420 minutes. This does not include the additional requirements of her IEP...

The complaint did not indicate how the number of minutes were calculated by the Parent. The Parent later clarified:

The complaint encompassed dates from September 2019 through June 2020. The Occupational Therapy was the most impacted due to [District] failing to secure an Occupational Therapist at the beginning of the school year. We were told the missing hours would be made up at some time, but due to Covid, the school district would only be assessing for recovery services rather than providing hours or services that were missed, due to no part on the student.

Furthermore, there were hours for Physical Therapy and Speech Therapy that were missed March 2020 through June 2020 due to Covid. I only bring up the Therapy hours for our student as I believe these will have the greatest impact on her future of accessing educational experience, and further her ability to be an independent student.

### **2018-2019 School Year**

2. On November 1, 2018, the District reviewed and revised the Student's individualized education program (IEP). The IEP (effective from November 1, 2018 to November 1, 2019) provided for annual goals and accompanying short-term objectives in the areas of social/emotional, behavior, cognitive/pre-academic, and speech and language therapy. The IEP provided for the following specially designed instruction and related services:
  - Adaptive Skills: 60 minutes, 5 times weekly (provided by the special education team in a special education setting)
  - Behavior: 60 minutes, 5 times weekly (provided by the special education team in a special education setting)
  - Cognitive/Pre-academic: 120 minutes, 5 times weekly (provided by the special education team in a special education setting)
  - Social/Emotional: 75 minutes, 5 times weekly (provided by the special education team in a special education setting)
  - Behavior: 15 minutes, 6 times weekly (provided by the special education team in a general education setting)
  - Speech/Language Therapy: 30 minutes, 1 time weekly (provided by a speech/language pathologist (SLP) in a special education setting)
  - Physical Therapy: 30 minutes, 1 time weekly (provided by a physical therapist (PT) in a special education setting)

- Occupational Therapy: 30 minutes, 1 time weekly (provided by an occupational therapist (OT) in a special education setting)

### **2019-2020 School Year**

#### **September 3, 2019 to October 28, 2019**

3. At the start of the 2019-2020 school year, the Student was a **[REDACTED]** fourth grader who attended a District elementary school and was eligible for special education services under the category of other health impairment.
4. On September 3, 2019, school began in the District.
5. On October 25, 2019, the District sent the Parent a form letter, stating that due to a shortage of staff at the beginning of the school year, the Student did not receive occupational therapy according to the Student's IEP. The letter stated a new OT had been hired and compensatory services would be provided to the Student by calculating the minutes missed and making up the services during the school year. The amount of compensatory services would be documented in a prior written notice and documentation of implementation would be done "as it is completed."
6. No prior written notice documenting the amount of compensatory services was provided in the course of this investigation.
7. On October 28, 2019, the District conducted an annual review of the Student's IEP. The IEP provided annual goals in the areas of adaptive skills, writing, math, reading, social skills, and behavior. Significantly, the Student's IEP changed the occupation therapy provider from an OT to the special education teacher. The IEP provided the following specially designed instruction and related services to the Student:
  - Adaptive skills: 45 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
  - Writing: 35 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
  - Math: 35 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
  - Reading: 35 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
  - Social skills: 35 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
  - Behavior: 35 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
  - Occupational Therapy: 30 minutes, one time weekly (provided by a special education teacher in a special education setting)
  - Speech Language Therapy: 30 minutes, one time weekly (provided by an SLP in a special education setting)

The IEP provided the physical therapy as a supplementary aid and service: 60 minutes, one time quarterly (provided by a PT in a special education setting).

8. The prior written notice indicated no new proposals or refusals were made at the IEP meeting.

**October 29, 2019 to March 11, 2020**

9. According to the District, from October 29, 2019 to March 11, 2020, the District implemented the occupational therapy and speech/language related services to the Student, as well as the physical therapy as a supplementary aid and service as written in the IEP, as follows:
  - Speech/Language Therapy: The documentation showed that speech/language services were provided weekly when school was in session from September 17, 2019 to March 10, 2020.<sup>1</sup>
  - Physical Therapy: The "Physical Therapy Activity Chart" form showed the PT provided services to the Student starting September 16, 2019 to January 28, 2020.<sup>2</sup>
  - Occupational Therapy: The documentation showed the Student's teacher who was a long-term substitute for the special education teacher documented the weekly implementation of occupational therapy based on the Student's goals from October 28, 2019 to March 11, 2020.
10. According to the Student's progress toward her annual goals that was reported on January 23 and 27, 2020, the Student demonstrated progress in all of the annual goals, but had not mastered the goals.
11. On March 10, 2020, according to a District form listing all students receiving compensatory services, the OT indicated that 180 minutes of compensatory services in occupational therapy was provided to the Student. No other documentation of compensatory occupational therapy services was provided for this investigation.
12. According to the District, beginning on March 11, 2020, all District schools were closed due to the COVID-19 pandemic.
13. 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.
14. On March 21, 2020, the Federal Department of Education, Office of Special Education and Rehabilitative Services (OSERS) issued guidance for school districts regarding closures due to COVID-19.<sup>3</sup> The guidance, in part, stated:

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<sup>1</sup> The documentation included a note, stating from March 12, 2020 to June 19, 2020, "school closure due to COVID-19, see continuous learning plan."

<sup>2</sup> The form noted that from March 16, 2020 to June 19, 2020, "No school, mandated closure for rest of school year due to COVID-19. Please see 'SDI (specially designed instruction) Consideration and Planning Form for more information regarding continued PT support provided during closure.'"

<sup>3</sup> *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (U.S. Department of Education, March 13, 2020).

The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. Consider practices such as distance instruction, teletherapy, and tele-intervention, meetings held on digital platforms, online options for data tracking, and documentation. In addition, there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments.

15. 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.

16. An undated "SDI Planning Template" provided by the District described the skill focus and instructional plan for the Student during the school facility closures:

<b>SDI Areas</b>	<b>Skill Focus</b>	<b>Instructional Plan</b>
Reading	Matching uppercase and lowercase letters.	How: Provide letter of the week and sight word page activities on PowerSchool Reading. Who: SPED to provide. Guardian to complete with student. Duration: Complete sight word review (work sheet or flash cards) once daily. 20 minutes of Lexia Daily.
Writing	Providing name on a line or box	How: PowerSchool Name writing page. Who: SPED to provide, Guardian to complete with student. Duration: Complete once daily.
Math	Counting objects 1-10	How: Parents lead. Who: SPED to provide Guardian to complete with student. Duration: Multiple times a day. How: Use a or below level work sheet from PSL (color cut glue). Who: SPED to provide, Guardian to complete with student. Duration: Once a day.
Social/ Emotional	Using tablet-based communication system or picture symbols	How: Microsoft Teams. Who: SPED to provide, Guardian to assist in joint attention and staying at computer. Duration: Multiple times a day.
Communication	Using multi-modal communication for greeting, commenting, requesting, labeling, etc.	How: PowerSchool Learning Wednesday speech activity; parent handout on modeling. Who: Parent to complete with [SLP]. Duration: Weekly.

17. The documentation showed that the District made contact with the Parent to check on the Student's progress, provide instructional packets, and addressed the Student's interest level on the following dates:

- March 18
- March 21
- April 3
- April 16
- April 17
- April 24
- May 1
- May 8
- May 12
- May 18
- May 19
- May 22
- June 12
- June 15

18. The documentation from the District also included an undated "SDI Planning and Parent Contact" form. The form identified the PT as the provider for physical therapy. Under "Initial Contact," the form stated, "[Student's] mother reports that they are feeling overwhelmed at home and are therefore not requesting individualized instruction in the area of gross motor at this time."

19. The PT contacted the Parent on April 17 and June 8, 2020 to check in, offer services, and provide activities to the Parent.

20. The District was on spring break from April 6 to 10, 2020.

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

22. Also, on April 6, 2020, OSPI issued guidance on Continuous Learning 2020, which included recommending 90 minutes as a guideline for maximum student commitment each day, for grades 4-5.

23. On April 13, 2020, OSPI issued an updated Q&A guidance document, which said the following:  
A-5. Would the state be willing to authorize related service staff to work remotely without all of the American Speech-Language-Hearing Association (ASHA) requirements being in place?

OSPI does not have the authority to waive ASHA requirements. Both an ESA Credentialed SLP and a DOH credentialed SLP can deliver services via a telehealth model. There are no Professional Educators Standard Board (PESB) regulations which would prevent any of Washington state educator roles from practicing virtually.

There are existing resources within the state and many districts to meet the WA Telepractice Requirements for audiologists and speech-language pathologists at the current time, and OSPI recommends that districts strongly consider adapting services in this manner, to meet the needs of their students. Additionally, the U.S. Department of Health and Human Services has released notice of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency which permits flexibility to provide services using widely available communication apps such as FaceTime or Skype when used in good faith to provide telehealth treatment or diagnostic services. The accompanying FAQs on Telehealth and HIPAA during the COVID-19 nationwide public health emergency provides more guidance on this topic.



24. On April 16, 2020, the District's "Ongoing Guardian Contact" form stated:  
Sent email to [Student's] parents to describe [physical therapy] supports that could be provided for [Student] for the rest of the school year as well as to go over things that that are/are not going well at home, important areas of [specially designed instruction] to focus on, supports that family needs and best means of sharing that information. [Student's] mother replied on 4/16/2020 stating that they would not like individualized instruction in the area of gross motor right now as they are feeling overwhelmed at home. However, she requested some activity ideas from PT for [Student] to do when her sisters are out riding their bikes. What supports are needed? Family is requesting some activity ideas for [Student] to do outside, but no individualized [physical therapy] program at this time.
25. On April 20, 2020, the District began continuous learning services. According to the District, the SLP and PT offered the "Student individualized instructional activities and materials on a weekly basis" from April 20 to June 19, 2020.
26. According to a District document titled "Clarification of SLP working Conditions and Expectations During COVID-19 School Closures," dated April 23, 2020, the document stated, in part:  
What services will SLPs provide?  
  - o The SLPs can continue to implement an asynchronous learning model. Consistent with 1, F of the [District Education Association] March 27, 2020 LOU, SLPs can connect 'live'/remotely on [District] approved platforms with their students, but it is at each SLP's discretion.
  - SLPs will be required to provide parents with next steps based on present levels of each students and materials for next steps and areas of [specially designed instruction] for parents to use at home. (as per SPED job description and consistent with other special education services staff i.e., teachers...SLPs will not be required to replicated IEP services as written or provide Teletherapy, as defined by ASHA.
27. On April 23, 2020, the District's director of special education (director) emailed all special education staff about child find, instruction, a specially designed instruction planning form, technology, extended school year (ESY), and compensatory services. Regarding instruction, the email stated, in part:  
In alignment with our agreement with [union], special education staff can engage virtually with students online with Microsoft Teams. We would recommend that you consider utilizing this option as an option for providing modified [specially designed instruction] (although it is not required). We recommend working with groups of students or if you are working 1:1, please ensure that the parent is present or use a paraeducator/therapist so you are not working alone with a child.
28. June 19, 2020 was the last day of the 2019-2020 school year for the District.
29. As part of the investigation, OSPI requested the Student's special education progress reports from the District based on the October 2019 IEP. The June 15, 2020 progress report stated that because of the COVID-19 school closure, no data could be taken to measure progress towards the annual goals.

30. On August 22, 2020, OSPI received the Parent's complaint and opened this investigation.

## **CONCLUSIONS**

**Issue: IEP Implementation** – The Parent alleged the District failed to provide the services in conformity with the Student's individualized education program (IEP), by refusing to implement and provide occupational therapy, speech/language therapy, and physical therapy to the Student during the 2019-2020 school year, including the period of school facility closures due to COVID-19 in spring 2020.

Under normal circumstances, a district must implement IEPs as written. However, during the spring 2020 school closures due to the COVID-19 pandemic, because of health and safety concerns, districts were not necessarily expected to implement IEPs as written. IEP services should have been implemented to the extent possible, including the provision of specially designed instruction, based on the student's individualized needs. If a service was not implemented, a district should have documented why it could not be implemented and what other options were considered. Districts should have clearly communicated to parents what services were being offered and were expected to collaborate with parents about the implementation of the services, including parent capacity to assist in service implementation and the potential need for parent training. Special education services must have begun by March 30, 2020, as districts began "continuous learning," per expectations from OSPI.

### **September 3, 2019 to October 27, 2019**

Here, the Student's October 2019 IEP provided occupational therapy one time weekly by an occupational therapist (OT). The District acknowledged no OT was available to provide services to the Student during the first part of the 2019-2020 school year. The District offered to provide compensatory services, but it was unclear from the documentation what amount of services would be provided as there was no prior written notice, documenting the offer, despite the District's statement that the offer would be followed by prior written notice. The Student missed approximately 240 minutes based on the IEP providing 30 minutes weekly and the Student missing approximately eight weeks of occupational therapy services due to the staffing shortage. Ultimately, the documentation stated 180 minutes of compensatory services were provided, although the District included no contemporaneous documentation of implementation in its response. The Parent stated no compensatory occupational therapy services were provided, and that by her calculation, the Student was owed a total of 630 minutes of compensatory services during the 2019-2020 school year (although it is unclear what the calculation of 630 minutes is based on).

Although the District did not have an affirmative obligation to contemporaneously document the implementation of the occupational therapy services, a note on a document indicating 180 minutes were provided is not sufficient to substantiate the implementation of the compensatory services, when the Parent alleged the minutes were not provided and that more than 180 minutes were owed, especially as the District had an obligation to provide written prior notice of the decision. Therefore, a violation is found.

### **October 28, 2019 to March 10, 2020**

On October 28, 2019, the District reviewed and revised the Student's IEP. No changes were made to the provision of speech/language therapy and physical therapy. The occupational therapy provider was changed to the special education teacher. Regarding the implementation of the October 2019 IEP during this period of time, the District's documentation showed that physical therapy, occupational therapy, and speech/language therapy was provided in conformity with the Student's IEP. No violation is found.

### **March 11, 2020 to March 29, 2020**

According to the District, from March 11, 2020, all District schools were closed due to the COVID-19 pandemic. On March 23, 2020, OSPI issued a directive that "continuous learning" would begin for all students by March 30, 2020. The District was required to implement the Student's IEP to the "extent possible" while maintaining health and safety. Because no instruction was provided to all students in the District, there was no obligation to provide the Student with services at this time and no violation is found during this time period.

### **March 30, 2020 to June 19, 2020**

Despite OSPI's directive to begin continuous learning by March 30, 2020 for all students, the District did not begin continuous learning/remote learning for the Student until April 20, 2020. Taking into account spring break from April 6 to 10, 2020, this means the Student was not offered or provided services for two weeks after continuous learning should have begun. In determining how students' IEPs would be implemented in the District, the District's agreement with speech/language pathologists (SLPs) stated SLPs could continue the "asynchronous model" and it was at each SLP's discretion to provide live/direct, remote therapy to students. The District provided similar guidance to all special education staff for making decisions about how services would be implemented. While the District had discretion on what services were to be provided and how they were implemented (instructional modality), the decision about services for each student with a disability was required to be based on the students' disability-related needs and the IEP services were required to be implemented to the extent possible.

Regarding the implementation of the Student's IEP services, the District proposed providing the Student with individualized instructional activities and materials on a weekly basis and periodic contact with the Parent. There was no indication that the Parent disagreed with the learning plan at its inception or during its implementation. The Parent had requested that physical therapy not be provided because the family was already overwhelmed by the circumstances presented by COVID-19. The documentation showed that the instructional activities were individualized to the Student's needs and consistently provided. Despite the fact that no real-time (or synchronous) related services were provided to the Student, an individualized learning plan was developed and implemented in light of the Student's abilities and needs under the circumstances. However, because the District failed to begin services by March 30, 2020, a violation is found for that two-week period until services started on April 20, 2020.

## Progress Monitoring

Districts were expected to continue to monitor student progress toward annual goals and report progress to parents. Like special education services, the district may not have been able to measure progress in the method stated in the IEP because of remote services. However, districts should still have reported what progress they could, even if an alternative method was used to gather progress monitoring data.

Along with the discretion granted to the District regarding how services would be provided, the District was also required to monitor progress toward the Student's goals that were being addressed during remote learning. The District was required to collect and monitor the progress data, the purpose of which was to establish the Student's new present levels for the October 2020 IEP and use the data to determine the need for recovery or compensatory services, if appropriate. The Student's June 2020 progress report stated that no progress monitoring had been conducted because of COVID-19. This does not necessarily mean that the Student did not make progress, but the failure to monitor the Student's progress constitutes a violation.

In order to determine how the school facility closures have affected the Student, the District will be required to determine the Student's current present levels and discuss what compensatory services, if any, are needed to ensure the Student has received a free appropriate public education (FAPE).

## CORRECTIVE ACTIONS

By or before **November 30, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

### STUDENT SPECIFIC:

#### IEP Meeting

By or before **November 20, 2020**, the Student's IEP team will meet to discuss the Student's progress and the impact of the school facility closures, the delay in starting in continuous learning, and the occupational therapy services that were not provided at the beginning of the school year. 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.

Based on the new baseline information, the Student's IEP team must address the impact of the following for determining what compensatory education services or recovery services<sup>4</sup> the Student is required to receive:

- School closure.

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<sup>4</sup> Recovery services are intended to mitigate the impact of the spring 2020 COVID-19 school facility closures and to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services during the spring 2020 COVID-19 school closures.

- Not beginning continuous learning on March 30, 2020.
- The Parent's request not to receive physical therapy during school closure.<sup>5</sup>

The compensatory services calculation must include the 240 minutes of occupational therapy, as the District was not able to verify the amount of compensatory services that were offered and provided in response to the occupational therapy the Student missed at the beginning of the 2019-2020 school year.

By **November 30, 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) Amended IEP; 6) Plan for additional special education services, if applicable; 7) Prior written notice; and, 8) Any other relevant documentation.

By **December 11, 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:**

### **Written Guidance**

#### **Create District Policy on Progress Reporting and Training on the Same**

As required in SECC 20-67, the District must develop a District-wide plan to ensure that progress towards annual goals is monitored for all students with disabilities during the 2020-2021 school year. The District must also provide training to staff. Please refer to SECC #20-67 for specific requirements and timelines. *Note:* The corrective action in SECC 20-67 addresses the violation found here. In referencing the corrective action in SECC 20-67, OSPI is not adding any additional requirements to what is already required by the previous complaint decision.

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.

## **RECOMMENDATION**

Related services must be provided by appropriately qualified staff. Other staff may *assist* in the provision of related services, provided that the instruction is designed and supervised by a certified educational staff associate. Student progress in related services must be monitored and evaluated by a certified educational associate. OSPI recommends the Student's IEP team ensures

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<sup>5</sup> While the Parent requested that the Student not receive physical therapy during the schools and thus the District is not at fault for not providing physical therapy, there still may have been an impact on the Student. The Student's IEP team should consider whether the Student's progress was impacted by not receiving physical therapy for several months.

that the occupational therapist is monitoring the progress and supervising the special education teacher's assistance in the provision of occupational therapy.

Dated this \_\_\_\_ day of October, 2020

Glenna Gallo, M.S., M.B.A.  
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Special Education  
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**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.)