

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-99

PROCEDURAL HISTORY

On August 31, 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 [REDACTED] 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 September 1, 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 17, 2020, the District sent OSPI the District's response via OSPI's secure email server. Due to technical error, OSPI received the District's response to the complaint on September 23, 2020, and forwarded it to the Parent the same day. OSPI invited the Parent to reply. The Parent did not reply.

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

ISSUES

1. Did the District implement the Student's individualized education program (IEP) during the March 2020 through June 2020 school facility closures?
2. Did the District implement the extended school year (ESY) services in the Student's IEP during summer 2020?

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).

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student’s IEP team determines, based on the student’s needs, that they are necessary in order for the student to

receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

FINDINGS OF FACT

2019-2020 School Year

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.
2. The District's 2019-2020 school year began on September 3, 2019.
3. The Student's September 2019 IEP was in effect prior to the COVID-19 school facility closures. The Student's IEP included annual goals in the areas of communication, cognitive, adaptive, and social. Progress toward the annual goals was to be measured quarterly. The Student's IEP provided the Student with the following specially designed instruction and related services in the *special education setting*:
 - Cognitive: 440 minutes per week (provided by a special education teacher)
 - Adaptive: 435 minutes per week (provided by a special education teacher)
 - Social: 435 minutes per week (provided by a special education teacher)
 - Communication: 60 minutes per week (provided by a speech therapist)
 - Vision Specialist: 30 minutes per week (provided by named staff)
 - Occupational Therapy: 60 minutes per week (provided by named staff)
 - Physical Therapy: 60 minutes per week (provided by named staff)

The Student's IEP additionally provided the Student with several accommodations and modifications and included a 1:1 paraeducator as a supplementary aid and service for 1,740 minutes per week. The Student's IEP indicated the Student would spend 12.6% of her time in the general education setting and indicated the Student would interact with general education peers during lunch, an "exploratory class at school" (an art class), and during extracurricular and nonacademic activities.

4. The September 2019 IEP included an extended school year (ESY) addendum, which stated the Student would access the following specially designed instruction during ESY from June 15 through August 14, 2020: 60 minutes per week of cognitive, adaptive, and social (provided by a special education teacher).

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. The District thus announced schools would be closed starting March 17, 2020.
6. On March 19 and 26, 2020, the Parent and special education teacher discussed via "text message/phone call" planning for distance learning, which included discussing "strategies, activities, and lessons we do in the classroom" and that the District would "check in with the family and get them anything they need to be successful at home." The Parent stated they had a sensory room and many materials at home.
7. 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.
8. On March 25 and 26, 2020, the District provided staff with guidance for "moving forward with services during the closure." This guidance included information about contacting families, identifying barriers, providing classroom materials, instruction, providing continuous learning opportunities, progress reporting, tracking services, and holding meetings, among other topics.
9. On March 26, 2020, the special education teacher emailed the Parent the Student's developmental skills checklist used in the classroom for cognitive, adaptive, and social. The special education teacher also emailed the Parent data collection sheets used at school.
10. On March 27, 2020, the Student's physical therapist (PT) set up a "class dojo"—an online application used to create a school communication platform for teachers, students, and families—for the Student.
11. On March 30, 2020, continuous learning began in the District.
12. Also, on March 30, 2020, the speech language pathologist's (SLP's) services log noted she "included a message with the [special education] teacher with my email and offer for speech therapy via zoom."
13. Later, on March 30, 2020, the Parent sent the special education teacher pictures of the Student "participating in sensory, physical, and reading activities with her siblings."
14. On April 2, 2020, the Parent sent the special education teacher a video of the Student "using her adaptive equipment to participate in physical activities" and the special education teacher attempted to connect with the Student to work on reading, but the Student and Parent were unavailable.
15. On April 3, 2020, the District entered progress reporting on the Student's goals, as follows:

- **Cognitive (developmental milestones cognitive checklist):** "Mastered. As measured by the Developmental Milestones Cognitive Checklist, [Student] has increased her cognitive skills and is mastering 34 cognitive skills. [Student] continued to make progress with her cognitive skills in the areas of looking at objects when named, she's approximately 90% accurate with this skill. [Student] continued to make progress using her velcro/yardstick to complete academic lessons, but due to being out of school for COVID-19, there are concerns of [Student] not making progress with these skills. At this time, [Student] has met her cognitive goal. Next quarter, we will work to maintain current levels of progress."
- **Adaptive (adaptive checklist):** "Not Mastered. As measured by the Developmental Milestones Adaptive Checklist, [Student] has maintained her adaptive skills and is mastering 30 skills at this time. [Student] continues to work with her adaptive device to help her more independently meet her needs. She is making improvement in many areas and increasing her accuracy and ability to communicate these needs. [Student] continues to be interested in her [communication device]...She continues to learn that she has control over choices and she is beginning to realize this is an opportunity for her. She has started using her communication device to request items...without prompting and when she has independent break time at her desk (adults are always nearby, but this time allows [Student] to discover her own personal space), but will also stand up or reach out for an adult's arm to get her needs met. We continue to see less of this and more of her using her adaptive device. Right now, [Student] continues to be approximately 65% accurate in using her device to get her toileting needs met...At this time, [Student] is making progress with her adaptive skills but her goal has not been met. It is anticipated she will continue to make progress and meet her goal."
- **Social (social checklist):** "Mastered. As measured by the Developmental Milestones Social Checklist, [Student] has increased her social skills to 34 skills mastered at this time. [Student] is very likable and adored by her peers, and everyone she meets. With the adults and students in her classroom, [Student] has demonstrated she understands their names and who they are. She also demonstrates preferences for certain people at different times depending on the task. She enjoys being read to by certain classmates and being sung to by others. When her family members are mentioned, [Student] smiles and laughs and get excited. So even without their presence, [Student] gets excited when she hears their names and when they are mentioned. [Student's] face lights up whenever her siblings are mentioned. We are working with [Student] for her to pick out a book when she wants to be read to. We are looking at apps on her new tablet so she can select books this way. At this time, [Student] has met her social goal. We will continue to monitor [Student's] progress to see if she will continue to meet her social goal."

16. The District was on spring break from April 6 through 10, 2020.

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

18. On April 20, 2020, the Parent emailed the PT, stating, "I loved watching your videos on dojo today! Thank you!" and included a video of the Student's "bean bag [physical therapy]." The PT responded, reinforcing certain skills and giving some suggestions for further activities.

19. On April 21, 2020, the Parent sent the PT a video of the Student and her father doing physical therapy. The PT responded, in part, "Wow! That is so great!" The same day, the PT emailed the Parent regarding the activities posted on the class dojo and gave specific suggestions and instruction on how to work with the Student. The Parent responded, "Thank you for specifically

telling me what works for her!!!!...” The Parent also included another video, to which the PT responded with further feedback, coaching, and suggestions.

20. On April 24, 2020, the special education teacher and Student met via Zoom, where the teacher “read her some of her favorite stories and interacted with her.” The special education teacher noted the Student was “excited at some points, but was restless other times. Zoom was not engaging for [Student].” The Parent and special education teacher exchanged text messages setting up weekly meetings for readings.
21. On April 30, 2020, the Student participated in a classroom Zoom meeting with the Parent’s assistance. The special education teacher noted, “Her peers tried to engage with her. [Student] smiled a couple times, but this mode of learning is difficult for [Student.] [Student’s] peers sang to her and this made her smile.”
22. On May 1, 2020, the Parent emailed the PT and special education teacher a video of the Student: “[Student] & Her Bouncy Ball.”
23. On May 7, 2020, the Student participated in a Zoom meeting with the Parent’s assistance, although it was “difficult for her to engage.” Other Zoom meetings were scheduled for May 14 and 21, 2020, but the Student did not attend.
24. On May 19, 2020, the Parent and special education teacher exchanged text messages regarding ESY. The Parent stated she was “not interested in ESY distant learning because I already know what to do with her ([Student]). But, if it switches back, of course, I’m still interested in the hands-on ESY.”
25. On May 18, 2020, the special education teacher emailed the District’s assistant director of special services (assistant director) regarding ESY and stated the Parent was not interested in ESY, stating, “distance learning is not something that would work for [Student].”
26. On May 28, 2020, another class Zoom meeting was scheduled and the Student did not attend. According to the special education teacher’s contact/communication log, she and the Parent “previously discussed this in another phone conversation. Mom reported that between all three daughters at home and zoom meetings not being engaging for [Student], this was difficult for the family to attend. We agreed I would send the meeting notices, but participation would be up to the family.” Zoom meetings were scheduled for June 4 and 11, 2020, which the Student did not attend.
27. On June 9, 2020, the District entered progress reporting on the Student’s goals, as follows:
 - **Communication (receptive and expressive communication skills):** “Not Mastered. Due to the COVID-19 pandemic, distance learning was provided from 3/30/20-6/18/20. During the school closure, daily ClassDojo lessons were provided...by the teacher. Data on the current goals were not able to be obtained by the SLP during this trimester. When in-person instruction resumes, additional progress will be collected to update progress...”
 - **Cognitive (developmental milestones cognitive checklist):** “Mastered. Due to the COVID-19 pandemic, distance learning was provided...During the school closure, consistent

communication was maintained with [Student's] family to discuss activities, lessons, and ideas to help [Student] maintain progress with her cognitive goals. [Student's] mom and dad report [Student] is doing well, but she is bored without her classmates. Data on the current goals were not able to be obtained by the teacher during this quarter. When in-person instruction resumes, additional progress will be collected to update progress..."

- **Adaptive (adaptive checklist):** "Not Mastered. Due to the COVID-19 pandemic, distance learning was provided...During the school closure, consistent communication was maintained with [Student's] family to discuss activities, lessons, and ideas to help [Student] maintain progress with her adaptive goals. [Student's] mom and dad report [Student] is doing well. At home, sharing mom and dad and instructional tools with her sibling, her [communication device] has not been used as often. Data on the current goals were not able to be obtained by the teacher during this quarter. When in-person instruction resumes, additional progress will be collected to update progress..."
- **Social (social checklist):** "Mastered. Due to the COVID-19 pandemic, distance learning was provided...consistent communication was maintained with [Student's] family to discuss activities, lessons, and ideas to help [Student] maintain progress with her social goals. [Student's] mom and dad report [Student] is doing well. During zoom meetings, [Student] smiled at times, but there was never a strong connection to what she was smiling at. Engaging with technology was difficult for [Student] as it did not hold her interest. When in-person instruction resumes, additional progress will be collected..."

28. June 18, 2020 was the last day of the 2019-2020 school year for the District.

Summer 2020

29. On July 31, 2020, the special education teacher emailed the Parent regarding the District's plan to continue distance learning in September 2020. The special education teacher noted the Student would have the option of attending "school 1 day/week in the classroom setting...with their teacher, possibly 1-3 other students, and a paraprofessional."

30. On August 20, 2020, the Student's father emailed the District's director of special services (director) and assistant director, with concerns that he had "very little information from the district concerning this school year and how the district will ensure my daughter receives a [free appropriate public education] FAPE." The Student's father stated:

From what I am aware of as of now is that she will attend only one day a week in person and the other four are to be distant learning? If this is correct, it is absolutely inappropriate learning environment for my daughter...There is no way she can receive ANY education thru distant learning due to her disabilities and must have in person school...I am hoping you can help provide guidance on this and along with how recovery services are going to happen for services not received last year.

The director responded and requested they set up a meeting to discuss.

31. On August 31, 2020, according to the District's response, the District superintendent and director met to develop criteria for "identifying students with significant need that would drastically impact the ability to learn via distance learning" and based on this criterion, a "small group of students were offered to attend 4 days per week onsite for face to face instruction."

32. Also, on August 31, 2020, OSPI received the Parent's complaint and opened this investigation. The complaint alleged the District failed to implement the Student's IEP during the spring 2020 school facility closures and ESY. The complaint stated the "restrictive environment" of distance learning "caused [the Student] not to receive any minutes of general education for cognitive, adaptive, and social" and that the District failed to provide physical therapy, occupational therapy, speech, or vision therapy.

33. In its response to this complaint, the District stated it "offered services and communicated with the family frequently throughout the closure to discuss service options" and that "progress reports were provided to the family summarizing services offered and progress made towards annual goals." The District also stated it offered ESY services and initially planned to provide ESY in person. The District stated, however, that the "county continued to have high numbers of COVID cases. Based upon recommendations from the local health department all summer school including ESY were offered via distance learning." The District stated the Parent chose not to participate in ESY.

In an email from the special education teacher to the director, the teacher summarized her communication with the Parent during the school facility closures and stated, "a lot of progress, status, ideas, and data was discussed through phone calls with [Student's] mom. We maintained consistent contact throughout the closure."

34. Regarding classes the Student participated in with general education peers, teachers sent emails to students, including the Student, regarding learning opportunities throughout the closure, including:

- The physical education (PE) teacher sent emails, encouraging students to do some physical activity every day and included suggested activities on March 27 and April 13, 2020.
- The "exploratory class" teacher sent emails regarding classwork, noting that more information about assignments and instructions were on the Google classroom, on March 30, April 13, April 20, April 28, April 30, May 5, May 8, and June 7, 2020.

35. Regarding related services, the District provided the following information:

- Speech: SLP service log, noting the SLP contacted the family via phone and email on the following dates and received no response: April 12, 21, and 28; May 6, 12, 19, and 26; and, June 2 and 9, 2020.
- Vision: Teacher of the visually impaired (TVI) noted he sent letters home "via Case manager" on March 27, April 29, and June 3, 2020 and stated the letters offered "daily availability for zoom meetings and family support as well vision related resources...We did not hear from this family in response to our letters."
- Physical Therapy: PT "posted daily activity on my classroom dojo" and the Parent "'liked' [the posts] many times. She was often the only parent to 'like.'" The PT stated she included internet links for activity ideas, made YouTube videos "with several geared toward [Student's] needs." The PT also noted the Parent shared videos of the Student doing the recommended activities, to which the PT provided feedback.

2020-2021 School Year

36. On September 1, 2020, the District contacted the family regarding the plan to have the Student attend school onsite four days per week, to which the Parent agreed.
37. On September 8, 2020, according to the District's response, in person services began for students in self-contained programs, including the Student.
38. On September 9, 2020, the Student's IEP team, including the Parents, met to discuss her three-year reevaluation and develop her annual IEP. The District stated, in its response, that recovery services were discussed briefly at the end of this meeting.
39. On September 16, 2020, the Parents, an advocate, and the director met to discuss recovery services. They agreed to contract with the advocate's organization for three hours a week of services to occur on Wednesdays, which "can increase up to 6 hours per week with agreement from this team" for a total of 180 hours. Additionally, the District agreed to provide 12 weeks of occupational therapy "as it was not clearly offered during the closure last spring." The occupational therapy services would be "contracted out by the district and be provided in the home or the clinic" and the sessions may be made up anytime throughout the 2020-2021 school year.

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged the District failed to provide the Student instruction in the least restrictive environment for cognitive, adaptive, social, physical therapy, occupational therapy, speech, or vision therapy.

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 in spring 2020. Here, the Student's September 2019 IEP was in place prior to the school facility closures. The IEP included goals and specially designed instruction in communication, cognitive, adaptive, and social. The IEP also required the Student receive the following related services, in the special education setting: vision specialist, occupational therapy, and physical therapy. The Student's IEP noted she would spend 12.6% of her time in the general education setting, which included lunch and an art class.

After the District closed school facilities on March 17, 2020, the Student's IEP was not implemented as written, which during spring 2020 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 free appropriate public education (FAPE), which consists generally of specially designed instruction and related services.

According to the District's response, it "offered services and communicated with the family frequently throughout the closure to discuss service options." The Student's special education teacher summarized her communication with the Parent during the closures and stated "a lot of progress, status, ideas, and data was discussed through phone calls with [Student's] mom. We maintained consistent contact throughout the closure."

The documentation in the complaint indicated the special education teacher and Parent communicated via phone and text message to discuss "strategies, activities, and lessons we do in the classroom." The Parent indicated they had a sensory room and many materials at home. The teacher provided the Parent with the Student's developmental skills checklists and data collection sheets. The Parent provided the special education teacher information and photos related to the Student participating in sensory, physical, and reading activities. The special education teacher provided some reading instruction via Zoom, and the Student participated in a few Zoom meetings with the rest of her class (e.g., April 30, 2020 the special education teacher noted "Her peers tried to engage with her. [Student] smiled a couple times, but this mode of learning is difficult for [Student.] [Student's] peers sang to her and this made her smile.") However, the District and Parent both recognized that due to the Student's disability, she could not engage effectively with Zoom instruction.

The Student's progress reporting indicated that by the beginning of April 2020, the Student had mastered her cognitive and social goals, and was making progress on her adaptive goals (although this progress report appeared to largely report pre-closure progress). On June 9, 2020, the District provided progress reporting that described the distance learning provided and communication with the Parent, along with areas the Student had mastered, challenges during remote instruction, what data could not be collected, and a notation that progress reporting would be updated. The progress reporting, while it looked different given the differences in instruction, was individualized to the Student and supported the assertion that the District offered and provided some amount of instruction.

Regarding related services, the physical therapist regularly provided activities, suggestions, coaching, and follow up, which the Student and Parent engaged with throughout spring 2020. The documentation indicated the speech language pathologist and teacher of the visually impaired reached out to the Student's family several times throughout the closure to offer services and received no response. However, there is no indication that occupational therapy was offered.

Finally, the Parent stated distance learning prevented the Student from receiving her "minutes of general education for cognitive, adaptive, and social." However, the Student's IEP stated she would receive her cognitive, adaptive, and social instruction in a special education setting. Prior to the school facility closures, the Student accessed the general education during her art class. While the art teacher sent emails throughout the closure with assignments and instructions, there was no indication that the District made efforts to ensure the Student could engage with this class or her general education peers.

Overall, OSPI finds the District offered, or offered and provided, the Student special education services during the spring 2020 school facility closures in all areas on her IEP, except occupational

therapy and access to the general education setting through her art class. OSPI finds the District in violation only for the failure to offer occupational therapy services and the failure to offer the Student access or accommodate the Student's access to her general education class. Given that the Student's IEP team does not appear to have specifically addressed access to general education for this school year, the Student's IEP team will be required to meet and discuss.

The District has already taken steps to address the Parent's concerns (e.g., concerns expressed in the complaint and in emails during the summer of 2020 that remote instruction was not appropriate for the Student) and the impact of the services missed in spring 2020. The Student's IEP team has since met and updated her annual IEP, the Student is attending school in-person several days a week to receive special education services, and the District has offered the Student recovery services: 180 hours of recovery services provided 3-6 hours a week and 12 hours of occupational therapy "as it was not clearly offered during the closure last spring." Thus, OSPI finds the District has addressed the violation and OSPI will not require any further corrective actions.

Issue Two: Extended School Year Implementation – The Parent alleged that the District failed to provide the Student special education services during extended school year (ESY). Given the exceptional circumstances of the COVID-19 global pandemic, OSPI recognized that IEPs could not be implemented as written during ESY given the ongoing public health situation. OSPI expected districts to provide ESY services to eligible services; however, these services could have been provided in-person or using distance technology, depending on the specific health restrictions in the district community. Here, the Student's September 2019 IEP included an ESY addendum, which stated the Student would access ESY from June 15 through August 14, 2020.

The District stated it offered ESY services and initially planned to provide ESY in-person. The District stated, however, that the "county continued to have high numbers of COVID cases. Based upon recommendations from the local health department all summer school including ESY were offered via distance learning." The Parent, on May 19, 2020, told the special education teacher that she was "not interested in ESY distant learning because I already know what to do with [Student]. But, if it switches back, of course, I'm still interested in the hands-on ESY." While the Parent did not explicitly state the remote format was inappropriate—instead she stated she already knew how to work with the Student—the special education teacher stated, "distance learning is not something that would work for [Student]."

Here, given the local health restrictions, the District's decision to provide ESY using distance technology was reasonable. While, in retrospect, the Student's IEP team could have at least explored other options for ESY, at the time, the Parent declined the offered ESY and stated she already knew how to work with the Student. Thus, OSPI finds no violation as the District offered ESY and the Parent declined to have the Student participate.

CORRECTIVE ACTION

By or before **November 13, 2020**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By or before **November 6, 2020**, the Student’s IEP team will meet and discuss the Student’s access to the general education setting through her “exploratory class” during the 2020-2021 school year. The IEP team will discuss how the Student is accessing this class (in-person or distance learning), specific strategies and supports to ensure access to this class and her least restrictive environment, and strategies and supports to ensure the Student has opportunities to engage with general education peers per her IEP.

By or before **November 13, 2020**, the District will provide OSPI with the following documentation: 1) IEP meeting invitation; 2) Agenda or meeting notes; 3) Amended IEP (if applicable); 4) Prior written notice; and, 5) Any other relevant documentation.

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 October, 2020

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
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.)