

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-111**

### **PROCEDURAL HISTORY**

On September 14, 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 Puyallup 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 September 25, 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 October 5, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply. The Parent did not submit a reply.

OSPI considered all of 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 2019-2020 school year, specifically from March 2020 through June 2020 during school facility closures?
2. Did the District follow IDEA's required procedures regarding the prior written notice (PWN), dated June 8, 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, an 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 specialty 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).

**Continuous Learning Plan (CLP):** A CLP (or similar document) is used to document the temporary services that will be made available and provided during school facility closures for COVID-19. *Questions and Answers* (OSPI, April 13, 2020). A CLP is a temporary plan that outlines the extent to which IEP services and accommodations must be delivered differently or suspended due to emergency health and safety restrictions in spring of 2020, and documents decisions regarding services, timelines, and other student specific considerations during school facility closures. While the information recorded in an individual student CLP may come from a student's IEP, such documentation is not intended to serve as, or to replace, the most recent IEP. Districts must have a method for documenting decisions made for individual students during the spring 2020 school facility closures. *Questions and Answers* (OSPI, May 5, 2020).

**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).

**Prior Written Notice:** Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

## **FINDINGS OF FACT**

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

1. During the 2019-2020 school year, the Student attended a District elementary school, was in the third grade, and was eligible for special education services under the category autism.
2. The District's 2019-2020 school year began on September 4, 2019.

3. The Student's January 22, 2020 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The January 2020 IEP included annual goals in the areas of math (subtracting, problem solving), reading (decoding, reading comprehension, reading fluency), written expression (writing sentences, conventions), communication (following directions), and social-emotional learning (appropriate response, structured activities, reciprocal activities, grammatical core standards). Progress toward the annual goals was to be measured every trimester. The Student's IEP provided the Student with the following specially designed instruction and related services, all in the *special education setting*:
  - Communication: 30 minutes, six times monthly provided by a speech-language pathologist (SLP);
  - Math: 150 minutes weekly provided by a special education teacher;
  - Reading: 150 minutes weekly provided by a special education teacher;
  - Written expression: 150 minutes weekly provided by a special education teacher;
  - Social-emotional: 30 minutes weekly provided by a special education teacher; and,
  - Speech (related service): 30 minutes monthly (provided by an SLP).

The Student's January 22, 2020 IEP also provided the Student with the following accommodations: frequent breaks, preferential seating, access to alternative testing environments, extra time to complete assignments, flexibility on timing of test taking, teacher provision of notes and definitions for students to read and highlight, taking tests in quiet and/or small group settings, text-to-speech device, and use of various sensory tools.

The Student's IEP also included a 1:1 paraeducator for 645 minutes weekly in the general education setting. The Student's IEP indicated the Student would spend 40-79% of his time in the general education setting.

4. 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.
5. The Parent, in her complaint, stated the Student did not receive the special education and related services provided for in the Student's IEP during the spring school closures, and that the services provided to the Student were inappropriate.
6. 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.
7. On March 31, 2020, the Parent emailed the District to inform it that the family had two children but only one computer, and that she utilized the available computer for work—causing difficulty with distance learning. The Parent also indicated she worked five twelve-hour shifts per week as an essential worker, which caused significant hardship in the management of the Student's distance learning. The Parent requested the District send instructional work home via paper packets.

8. On April 1, 2020, the Student's general education teacher resumed general education instruction via online distance learning for all students in the class. On the same date, the special education teacher emailed the Parent, confirming the District mailed a packet of instructional materials to the Student, per the Parent's request.<sup>1</sup>
9. Also, on April 1, 2020, the Student's SLP contacted the Parent, offering to send packets of instructional materials home for the Student.
10. On April 2, 2020, the Student's special education teacher agreed to send speech materials to the Student.
11. The District was on spring break from April 6 to April 10, 2020.
12. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
13. Also, on April 6, 2020, OSPI issued guidance on Continuous Learning 2020, which for third grade students, recommended a maximum daily student commitment of sixty (60) minutes.
14. On April 14, 2020, the District implemented continuous learning for all students in the District, including the Student.
15. On April 15, 2020 the Student's IEP team met remotely to develop a continuous learning plan (CLP) for the Student. The Parent, special education teacher, Parent advocate, and director of special education (director) attended the meeting. The CLP documented that the Student would receive the following services during the school closure:
  - Reading: four times weekly via Zoom and through packet work, provided by the special education teacher;
  - Math: four times weekly via Khan academy and packet work, provided by the special education teacher;
  - Writing: four times weekly via packet work, provided by the special education teacher;
  - Social: once weekly via Zoom, provided by the special education teacher;
  - Reading fluency: once weekly via Zoom (no provider listed); and,
  - Speech language pathology: 30 minutes weekly, Zoom meeting, paper packet, and sharing material via email, delivered by the SLP.

The CLP included input from the Parent, which noted that on Thursdays and Fridays, the Student would not be available via Zoom due to family scheduling issues. The Parent requested packet material for the Student on those days. The CLP further documented the Parent's preference for weekly communication from the Student's service providers via email.

---

<sup>1</sup> It is not clear from the documentation provided if the Parent received the instructional materials or what activities were contained in the instructional materials sent. However, the District began documenting the nature of the instructional materials sent home to the Student and other services delivered, following the creation of the continuous learning plan (CLP) on April 15, 2020.

16. On April 15, 2020, the Parent requested the special education teacher and SLP provide additional instructional materials for the Student. The Parent also requested additional flexibility in scheduling the May IEP meeting due to the pandemic. The District agreed to the Parent's request.
17. Between April 16 and 17, 2020, the Parent and special education teacher exchanged emails regarding the Parent's report of non-receipt of previously mailed packets. The Student's special education teachers offered to deliver work packets to the Student's home and procured a computer for the Student's use so the Student could also access Zoom instruction, which included general education instruction.
18. On April 16, 2020, the Student's special education teacher agreed to provide additional packet work for the Student, which was made available to the Parent through their choice of picking materials up from school, mail, or having them delivered to the home. On the same date, the District emailed the Parent that the District would provide a laptop to the family so the Student could simultaneously access packet work and distance learning. The Parent responded that she would prefer the District deliver the work packets for the Student. The District agreed.
19. On April 20, 2020, the special education teacher began weekly communications with the Student and his family regarding Zoom meetings, Khan Academy, and packet work, as agreed to in the CLP. The Student's special education teacher offered students in the class general assistance with Zoom meetings, online resource logins, orientation for parents around District email addresses for students (to reduce clutter in parents' email accounts). The special education teacher also offered support to assist with availability of packet work and delivery options for the packets.
20. On April 21, 2020,<sup>2</sup> the Student's special education teacher began documenting the date and nature of the instructional materials provided to the Student and the individualized IEP goals the materials targeted in the Student's CLP tracking log (tracking log). According to the tracking log, the special education teacher provided the Student packets of instructional material, targeting the Student's goals in reading, writing, and math, weekly from April 21 through June 12, 2020.<sup>3</sup>
21. On April 24, 2020, the Student's special education teacher emailed the Parent to remind her they would be mailing packet work home. The Student's special education teacher also invited

---

<sup>2</sup> Although the District mailed the first packet to the Parent on April 21, 2020, the Parent indicated she did not receive the first week's packet and that the Student accordingly did not begin receiving weekly packets until April 27, 2020.

<sup>3</sup> The tracking log documented that in the area of reading, the instructional packets included lessons in "vocabulary, dedications, author's purpose, cause and effect," and "drawing conclusions," as well as "reading mastery lessons 22-39." In the area of math, the CLP documented the Student was provided "addition/subtraction/word problems," and that the "Math on Khan academy – SPED" was provided in the Student's goal areas. The CLP further documented that on April 21, 2020, an individualized writing packet was sent home to the Student.

the Parent to provide feedback on the amount and type of work being sent home if she thought any adjustments were warranted.

22. Also, on April 24, 2020, the Student's SLP began providing packets of activities for the Student to accompany the upcoming weekly Zoom meetings for speech therapy.
23. Beginning April 29, 2020, the District began providing synchronous speech services to the Student.
24. On May 9, 2020, the Parent emailed the Student's IEP team, and requested compensatory education. Specifically, the Parent requested the District provide the Student "Lindamood Bell" services over the Summer to assist the Student in recouping skills she believed he had lost during remote instruction. The Parent cited the lack of timely access to appropriate technology and displeasure with instruction missed due to the pandemic as reason for the request. The Parent indicated that it was unclear to her what the Student's "abilities are in the area of Non-Verbal Working Memory," and that "[t]his, along with [Student's] borderline range of Working Memory impacts everything [the Student] does with this Executive Functioning." The Parent requested the District also conduct a direct assessment of the Student in the area of executive functioning, and raised concerns regarding the Student's skills in reading, writing, math, staying engaged in the classroom, and focus with the teacher and peers.
25. On May 11, 2020, the Student's IEP team met virtually. During this meeting, the team discussed the Parent's request for compensatory services. The Parent again raised concerns regarding the obstacles in coordinating a time to pick up the work packets and concerns based on the Student not having access to a computer until April 27, 2020. The Parent also expressed concerns that the Student had not received the specially designed instruction and related services as written in his IEP since the school facility closures and that accordingly, she believed the Student's academic progress would regress to the point of having to repeat third grade if he was not provided compensatory services. As documented in a prior written notice (PWN), issued the same day, while the team discussed the impact of school closures on students, it noted there were obstacles to assessing the impact on students at that time and declined to determine whether the Student required compensatory services until the Student could be evaluated upon school reopening in the fall.
26. During April and May 2020, the Parent continued to express difficulty obtaining work packets for the Student, access to technology, family work schedules, and inconsistent mail delivery in their area. The Parent reported that issues with mail delivery often resulted in the family not receiving work packets sent by the District. In the District's response, the District noted it offered the Parent the opportunity to come to the school to retrieve packet work, or to have District staff deliver packet work.

27. On May 11, 2020,<sup>4</sup> the District produced the first progress report for the Student following the implementation of continuous learning. The following information was provided on the report:

- Reading:
  - *Decoding long vowels (some progress)*: “[Student] engaged in some learning opportunities during the closure. While the skill was addressed, traditional data collection on the skill was not possible through current model’s instructional methods.”
  - *Silent comprehension (emerging skill)*: “[Student] engaged in some learning opportunities during the closure. While the skill was addressed, traditional data was not possible through instructional current model.”
  - *Reading fluency (sufficient progress)*: “[Student] has recently been working on reading fluency via zoom. While he has had progress, with a mean average of 35 words per minute on 2<sup>nd</sup> grade leveled passages, the special education teacher could hear coaching in the background. This data may be impacted by the continuous learning setting.”
- Math
  - *Subtracting, with regrouping (sufficient progress)* – “[Student] has been provided packet work to complete with the help of parents at home. Work has been returned and all answers were correct. [Student] has been provided instruction through continues learning [sic] through Freckle and Khan Academy, but did not participate in the continuous learning applications.”
  - *Addition with re-grouping (emerging skill)* – “[Student] has been provided packet work to complete with the help of parents at home. [Student] engaged in opportunities during the closure. While the skill was addressed, traditional data collection was not possible through current model’s instructional methods.”
  - *Problem solving (emerging skill)* – “[Student] has been provided packet work to complete with the help of parents at home. Work has been returned and all answers were correct. [Student] has been provided instruction through continues learning [sic] through Freckle and Khan activities but has not accessed either platform and did not participate in the continuous learning applications.”
- Written Expression
  - *Writing sentences (emerging skill)* – “[Student] has been provided packet work to complete with the help of parents at home. Work has been returned with (sic). [Student] has not accessed continuing learning through Quill or other online performance platforms provided by his general education teacher and Student did not participate in the continuous learning applications.”
  - *Conventions (emerging skill)* – “[Student] has been provided packet work to compete with help of parents at home. Work has been returned. [Student] has not been accessed continuous learning through Quill or other online learning platforms provided by his general education teacher. [Student] did not participate in continuous learning applications.”
- Social Emotional
  - *Appropriate response-large group setting (emerging skill)* – “[Student] has been provided instruction through continuous learning and did not participate in the social group; however, [Student] did participate in the small group reading via zoom twice per week, where he’s easily distracted by noises/talking within the educational setting. [Student] engaged in some learning opportunities during the closure. While the skill was

---

<sup>4</sup> The Progress reports are dated May 11, 2020; however, the narrative comments were added in June 2020 (the exact date was not provided).



addressed, traditional data collection was not possible through current model's instructional methods."

- *Structured activities (emerging skill)* – "[Student] has been provided instruction through continuous learning and did not participate in the social group; however, [Student] participated in small group reading via zoom twice per week where he's easily distracted by voices/talking within the education setting. [Student] engaged in some learning opportunities during the closure. While the skill was addressed, traditional data collection was reliable though and faster."
- *Reciprocal conversation/SLP to support (emerging skill)* – "[Student] has been provided though continuous learning and did not participate in the social group; however [Student] did participate in small group reading via Zoom twice per week, where he was distracted by noises within the home and additional coaching by others in the room at home. Also, due to school closures related to COVID-19, progress has been minimal and [Student] has not had an opportunity to demonstrate this goal in the current instructional time."
  - "[Student] was provided instruction on this goal twice weekly during 1:1 speech therapy sessions via video conferencing. During structured activities, [Student] identified on and off topics with 42% accuracy and chose appropriate 'connected' comments and questions with 90% accuracy when given a choice of 4. Nice job, [Student!] He continues to work on this during national conversations. We will continue to address this in the fall."
- *Grammatically core standards (sufficient progress)* – "[Student] was provided instruction with this goal during twice weekly speech therapy sessions via video conferencing and printed worksheets. With repeated instruction and practice, [Student] is able to use the correct irregular, past tense verbs with a modeled sentence with 84% accuracy. Nice job, [Student!] We will continue to work to create his own sentences and to generalize these skills into his spontaneous speech in the fall."
- *Communication (sufficient progress): Following directions with concepts (sufficient progress)* – "[Student] has been provided with instruction on this goal during twice weekly speech therapy sessions via video conference. He was also provided with printed material which addressing temporarily. Based on cursory data during video sessions, [Student] follows two-step directors with him 'before' 90% accuracy and after the 22% accuracy. We will continue to address this in the fall."

28. On May 27, 2020, the District's school psychologist began coordinating an evaluation referral team in response to the concerns regarding the Student's possible academic regression, as expressed by the Parent at the May 11, 2020 IEP team meeting.

29. On June 8, 2020, the District held a referral meeting and decided to initiate an early re-evaluation for the Student.

30. On June 10, 2020, the District sent the Parent a prior written notice via email and regular mail, documenting the Parent's disagreement with the Student's May 2019 evaluation and the option of a reevaluation. The Parent provided the school psychologist with a list of her concerns and the PWN noted the team discussed the following:

- Parent disagreed with the May 23, 2019 evaluation both verbally during the meeting and in a previous email in May 2019. The PWN stated: "The team recognized parent disagreement and noted that dissent had been chronicled on the PWN and in the body of the evaluation."

- Parent requested a direct assessment in executive functioning (working memory and non-verbal memory). The school psychologist shared that working memory (verbal and non-verbal) was assessed during cognitive testing in May 2019. After discussion, the team agreed to open a reevaluation "as a review of records in previously assessed areas with new direct assessment done only in the area of executive function skills."
- Parent expressed concern that the previous evaluation was a "snapshot" and that the team did not have a clear picture of the Student's cognitive needs. The school psychologist explained "that all evaluations are 'snapshots' of skills...the cognitive test used in the May 2019 evaluation is a broad-based cognitive assessment that looks at a variety of areas, including working memory."
- The Parent did not agree that adaptive skills can "just be met in Social/Emotional or Academics." The PWN noted the team discussed what areas the Parent thought were missing and the Parent reiterated that the Student "qualified in adaptive but did not receive services. The school psychologist explained that [Student's] areas of concern in adaptive behavior were in the areas of social-emotional skills, academics, and communications. These goals are met specifically within each of those areas of specially designed instruction rather than under the broad category of adaptive behavior."
- The Parent requested a specific curriculum for reading and the PWN noted the district "uses curriculums for [Student] that are research and evidence-based for students with dyslexia."
- The Parent expressed concern around the Student's assistive technology and the team noted the Student had a "1:1 device" and that he would be able to access it the following year, potentially taking it home. The team "noted [the Parent's concern about features available] and will provide direct instruction for the assistive technology when school resumes."

The PWN also noted the Parent "agreed that the team had addressed all of the areas of concern she had outlined, but indicated that she did not agree with decisions and/or explanations. She indicated that she would follow the meeting with an email addressing her continued concerns to the school psychologist."

The PWN further noted that a copy of the procedural safeguards was sent with the PWN.

31. Also on June 10, 2020, the District sent a consent form for the Parent to evaluate the Student in the area of executive functioning. The Parent returned the signed consent form via email on June 12, 2020.
32. On June 12, 2020, the Parent emailed the director of special education and requested the District provide compensatory education for the Student for not implementing the special education and related services, as delineated in the Student's IEP since March 13, 2020.
33. On June 15, 2020, the director responded that decisions regarding compensatory education are IEP team decisions and noted the issue was considered at the Student's May 11, 2020 IEP team meeting. The Parent expressed interest in compensatory education in the area of speech language pathology, which was not considered at the May 2020 meeting. The director responded that if the Parent was asking the team to again consider this option, that the Parent could email the special education teacher and request an IEP team meeting to reconsider the issue. The Parent did not respond. The District initiated a process of data gathering that

included reviews of work and communications with the Student as no direct observations were possible.

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

### **Summer 2020**

35. On August 4, 2020, the Parent emailed the District, requesting clarification regarding various issues related to distance learning during the 2020-2021 school year as they affected the Student's IEP implementation. The Parent shared the various obstacles to effective learning facing parents attempting to work and monitor distance learning at home during the workday. The Parent and District exchanged emails over the coming days, further discussing scheduling a meeting to get the Student's IEP team input on these concerns.

### **2020-2021 School Year**

36. On September 3, 2020, the 2020-2021 school year began in the District. The Student was in fourth grade and attended an elementary school in the District. The Student continued to be eligible for special education services under the category autism. The Student began "Continuous Learning 2.0" on this date.

37. On September 14, 2020, OSPI received the Parent's complaint and opened this investigation.

38. On September 15, 2020, the Student's IEP team met. The team discussed the Student's return to in-person learning due to concerns about the Student's ability to engage in Continuous Learning 2.0, without in-person support and instruction. The team proposed and ultimately accepted a half day, Tuesday through Friday schedule. The Parent disagreed with this, preferring full day instruction. The IEP team also considered the Parent's concerns regarding the Student's speech needs due to the impact of the school closures and determined that even though the Student had made some progress during the spring, the Student would benefit from in-person speech language pathology. The team determined that two in-person sessions weekly would address the Student's speech needs.

### **CONCLUSIONS**

**Issue One: IEP Implementation** – The Parent alleged that the District failed to appropriately implement the Student's individualized education program (IEP) during the March through June 2020 school facility closures caused by the novel coronavirus (COVID-19). Specifically, the Parent alleged the Student did not receive his special education or related services and that the services he did receive were inappropriate.

In consideration of the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs may not be implemented as written as school facilities shut down and districts transitioned to various distance learning formats. While there was not an expectation that districts implement a student's IEP as written during school facility closures caused by COVID-19 during the Spring 2020, districts had to have a plan for how

students with disabilities would receive a free appropriate public education (FAPE), including the provision of specially designed instruction and related services. Therefore, all schools were required to begin continuous learning for all students by or around March 30, 2020. Said continuous learning required a written plan for providing special education services, including specially designed instruction and related services, to students during the school facility closures. In addition, districts were required to document in writing, the individualized special education services it was providing to each student with an IEP.

The District implemented continuous learning for all students in the District beginning on April 14, 2020. On April 15, 2020, the Student's IEP team met with the Parent and developed a continuous learning plan (CLP) for the Student, which provided the Student a combination of packet and online instruction to address each of the Student's IEP goals and related service needs. When developing the Student's CLP, the IEP team considered input from the Parent—including the Student's availability for online instruction, the Student's technology needs, and the Parent's communication preference. Although the Student did not have access to his own computer at the commencement of remote learning, the District was able to secure a laptop for the Student by April 27, 2020, and supplemented gaps in the Student's ability to receive online instruction by providing work packets with activities tailored to the Student's individual goals. The District provided the first packet on April 1, 2020; although, due to issues with the mail, it is not clear if the Student received this first packet.

On April 24, 2020, the Student's speech language pathologist (SLP) also began providing the Student with assignments specifically tailored to the Student's speech related needs, and by April 27, 2020, began providing weekly online speech services in addition to packets. While there were occasions where the Parent was unable to log onto Zoom or pick up a packet when scheduled, the District delivered, and the Student received, services similarly to what was described in the CLP developed on April 15, 2020. Throughout the school closures in spring 2020, the District monitored the Student's progress on his IEP goals using methods it had available. While for some goals, the progress reporting indicated learning opportunities were provided and that traditional data collection could not be used, for other goals, the progress reporting indicated the Student engaged with learning and made progress. For example, the Student "engage[d] in some learning opportunities" related to his reading goals and was reading at an "average of 35 words per minute on 2<sup>nd</sup> grade leveled passages;" the Student participated in small group reading and was "easily distracted by voices/talking within the education setting" (related to social emotional goals); and, "Based on cursory data during video sessions, [Student] follows two-step directions with him 'before' 90% accuracy and after the 22% accuracy." The progress reporting supports the District's assertion that continuous learning opportunities were provided to the Student and the progress reporting sufficiently detailed the Student's engagement, potential non-engagement in some areas, and progress made. The District also initiated a reevaluation to collect additional student data.

On September 15, 2020, the Student's IEP team met and developed his current IEP. When developing the IEP, the IEP team took into consideration information about the Student's progress from spring, as well as his current individual speech needs, which it found to have been impacted

by the school closure despite the Student having made some progress. In order to provide the Student with the intended benefits of his IEP, the IEP team amended the Student's IEP and determined the Student required some in-person special education and speech services for the current school year.

As previously stated, the District was not obligated to implement the IEP as written during the spring 2020 school closures caused by the pandemic. Instead, as noted above, the District was required to maintain written documentation of the individualized special education services it did provide to the Student beginning around March 30, 2020, and to monitor the Student's progress on IEP goals during continuous learning. The District was also required to consider the impact of the school closures on the Student's progress to determine if the Student required any additional services to mitigate the impact. The District complied with all the above. OSPI finds no violation.

**Issue Two: Prior Written Notice Procedures** – The parent alleged that the District failed to follow the requirements of the prior written notice (PWN), dated June 8, 2020, by allegedly not allowing the Parent an opportunity to respond.

Prior written notice, including all required components—including documentation of any disagreements, a clear explanation of the reason for the proposed actions, and notice of procedural safeguards so that if parents wish they can follow procedures available to them to resolve any conflicts that may arise—must be provided to a parent within a reasonable amount of time before initiating or changing certain aspects of a student's special education program.

On June 8, 2020, the Student's IEP team met virtually by video conference to discuss the Student's May 2019 evaluation and options for early reevaluation. According to the PWN, which was sent to the Parent by mail and electronically on June 10, 2020, the IEP team discussed the Parent's concerns regarding the May 2019 evaluation and decided to reevaluate the Student in the area of executive functioning. The PWN further documented concerns raised by the Parent that the Student was not receiving services in the area of adaptive behavior, despite having identified needs in this area, to which the PWN explained the IEP team had informed the Parent it believed the Student's adaptive needs were appropriately being met by the services being provided to the Student in the area of social/behavior. The PWN also documented the Parent continued to disagree with the IEP team's decision to meet the Student's adaptive behavior needs this way. Additionally, the PWN described the Parent's requests for a particular curriculum to be used to address the Student's reading needs and the IEP team's response to how the District believed it was appropriately meeting the Student's needs based on the Student's progress in reading. The PWN documented the Parent's disagreement. Finally, the PWN noted the IEP team's discussion of the Student's needs in the area of assistive technology, including needs identified during remote learning, and a proposal by the IEP team for how it would meet the need in the upcoming school year. The PWN contained a statement, informing the Parent how to obtain additional information on her procedural safeguards under the IDEA. A copy of the procedural safeguards was also emailed to the Parent, along with the PWN, on June 8, 2020.

At the meeting, the Parent had indicated that she would send additional correspondence regarding her concerns following the meeting. On June 10, 2020, the District sent the Parent a

PWN, dated June 8, 2020. On June 11, 2020, the District sent the Parent a consent for reevaluation. The Parent signed and returned that consent form to the District on June 12, 2020. On the same date, the Parent sent the District an email, requesting compensatory education for the Student.

The PWN provided by the District contained all required elements, including documentation of the Parent's disagreements, and notice of her procedural safeguards, and was promptly provided. OSPI finds no violation.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

Dated this \_\_\_\_ day of November, 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.)