

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-117A

PROCEDURAL HISTORY

On September 21, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from an attorney (Complainant) representing the parent (Parent) of a student (Student) attending the Tacoma 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 and the education of several other students.¹

On September 22, 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 30, 2020, OSPI modified the complaint with respect to the other students in the complaint; the allegations related to the other students will be addressed in SECC 20-117B. The allegations for the Student in 20-117A remained the same.

On October 13, 2020, OSPI received the District's response to the complaint and forwarded a redacted copy of the response to the Complainant the same day. OSPI invited the Complainant to reply.

On October 30, 2020, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on November 3, 2020.

On November 12, 2020, OSPI requested clarifying information from the District. The District did not reply.

OSPI considered all information provided by the Complainant 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
2. Did the District follow procedures for amending the Student's IEP with respect to paraeducator support, including:
 - a. Making a student-specific decision;
 - b. Ensuring parent participation; and,
 - c. Providing parents prior written notice?

¹ The allegations made regarding the other students are addressed in SECC 20-117B.

² OSPI notes that in the original opening letters for this complaint, the issues for investigation were listed in a different order. However, as the facts are addressed in chronological order, for clarity the issues and conclusions will also be addressed in chronological order.

3. Did the District follow procedures to implement the Student's IEP, including 1:1 paraeducator support and consideration of the need for in-person services, beginning September 9, 2020?

LEGAL STANDARDS

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 served through enrollment 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 School Facility Closures for COVID-19: 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).

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).

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child’s need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

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 kindergarten, and was eligible for special education services under the category multiple disabilities.
2. The District's 2019-2020 school year began on September 10, 2019 for kindergarten students.
3. The Student's March 9, 2020 amended individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The Student's March 2020 IEP included annual goals in the areas of cognitive/pre-academic (counting, writing skills, letter-sound correspondence), adaptive/self-help (politeness phrases, request to use restroom), social emotional/behavioral (identifying problems and solutions), occupational therapy (scissor skills, visual motor), and physical therapy (hopping, catch). Progress toward the annual goals was to be measured and reported at the trimester via a written progress report. The Student's March 2020 IEP provided the Student with the following specially designed instruction and related services:
 - Adaptive/self-help: 10 minutes, 5 times weekly (provided by a paraeducator in a general education setting)
 - Cognitive/pre-academic: 20 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
 - Social emotional/behavioral: 15 minutes, 5 times weekly (provided by a paraeducator in a general education setting)
 - Occupational therapy: 20 minutes weekly (provided by an occupational therapist (OT) in a special education setting)
 - Speech language therapy: 15 minutes weekly (provided by a speech language pathologist (SLP) in a general education setting)
 - Physical therapy: 15 minutes weekly (provided by a physical therapist (PT) in a general education setting)

The IEP included several accommodations and 390 minutes per day of additional adult support (provided by a paraeducator) in the general education setting as a supplementary aid and service. The IEP indicated the Student would spend 93.3% 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. Subsequently, school facilities were closed for the remainder of the 2019-2020 school year.

The District closed all schools in response to the proclamation, beginning on March 16, 2020. The District stated in its response that all District schools were closed and no educational services were provided to any student from March 16 to April 10, 2020.

5. In the complaint, the Complainant stated that following the school facility closures, the Student's "parents, like so many parents with high-needs students like [Student]...had to serve as his paraeducator in the home so that he could access learning."

Soon after the closures, the Parent emailed the Student's team, asking for suggestions and feedback. For example, on March 19, 2020, the Parent stated, "I've put together a learning plan for him and would your advice...I feel pretty comfortable with his goals, since we just had an IEP meeting, but of course, anything extra, for him specifically-and related to his IEP goals...is very appreciated."

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 29, 2020, the Student's general education kindergarten teacher sent out a weekly email with learning activities in a daily schedule format. The emails provided in this complaint indicated the general education teacher continued to send out weekly emails with resources and activities throughout the closure. In late April 2020, the kindergarten team began introducing new learning concepts and sent out prerecorded video materials. The kindergarten teacher also held weekly office hours.
8. On March 31, 2020, the Parent emailed the general education teacher, special education teacher, and paraeducator with an update on what the Student was working on (e.g., counting to 100, identifying and writing letters, and snap words). The Parent asked for advice on modifications or strategies.

The general education teacher replied with several strategies for writing words and letters, and ideas for activities. The special education teacher also replied with strategies (e.g., teach through "pictures, repetition, music...multisensory"), suggested establishing a motivation system, and provided specific ideas for sight words.

9. The District was on spring break from April 6 to 10, 2020.
10. On April 6, 2020, OSPI issued guidance that recommended guidelines for "maximum student commitment each day," which for students in kindergarten and first grade was 45 minutes.

11. On April 13, 2020, continuous learning began in the District.
12. On April 27, 2020, an email meeting invitation indicated the special education teacher met with the Parent, general education teacher, and principal to "discuss concerns and problem solve." Based on emails, the Parent was concerned about how to navigate all the general education resources and activities with the Student.
13. On May 1, 2020, the Parent emailed the Student's team (special education teacher, general education teacher, paraeducator, OT, PT, and SLP), stating, "we had a great mini IEP meeting on Monday, for [Student's] next steps" and described how she was working with the Student and what activities they were working on.

The special education teacher replied with feedback and asked the Parent to provide specific progress updates on certain elements of his goals. The OT also replied, asking whether the Parent wanted a weekly email or phone call and provided activities and resources.

14. On May 4, 2020, the special education teacher contacted the Parent regarding developing a continuous learning plan (CLP) for the Student. According to the communication and services log kept by the Student's special education teacher, the Parent:

Will be following general education lessons and emailing videos on Friday to the IEP team for specific individual feedback (e.g., what can be adjusted, removing prompts, common language, etc.). For social emotional behavior, it was discussed that the 1:1 paraeducator will call to check-in with [Student] to review his zone color, practice a breathing exercise, and personal check-in. [Special education teacher] and parent discussed that video conferencing would be great method for communication/touching base but is not doable due to district guidelines that state students cannot be 1:1 with a teacher. Parent will attempt to have the student check-in with [the special education] teacher/general education teacher during weekly office hours. Parent would like in the future (if prolonged to fall) to have small group virtual meeting with other students...Discussed having a virtual transition meeting between the student, his kindergarten teacher, and future 1st grade teacher to bring closure to the student's year.

15. On May 6, 2020, the Parent emailed the special education teacher and requested that the Student's related service providers provide the Student 3-4 videos by the end of the year. The Parent requested videos that were "2-3 minutes long with activities...such as balancing or core strengths, writing..." The special education teacher replied that she would connect with the related service providers.
16. Also, on May 6, 2020, the Parent responded to the special education teacher's question about the Student with videos and evidence of the Student's progress on his goals. For example, the Parent provided videos of the Student counting, a video of the Student identifying letter names and sounds, and images of the Student's lower case letter writing (the "lowercase letters he could write on his own-with me just saying the letter, no other prompt. He definitely struggled with this-he got a,b,c,d,e,f,l,o,x,v,z-so we'll work a lot more on that").

The special education teacher replied with more feedback and suggestions.

17. On May 8, 2020, the Parent emailed the general education teacher, OT, and PT documentation of the Student completing work. The OT replied with some feedback and suggestions for the Student to work on.
18. On May 11, 2020, the special education teacher emailed the Parent to let her know that the related service providers would be sending her videos. The special education teacher also advised that the Student should continue working on counting to 100, writing lowercase letters, and identifying letter sounds.
19. On May 12, 2020, the District members of the Student's IEP team prepared the Student's CLP and emailed it to the Parent. The CLP noted the Parent wanted to prioritize social emotional/behavioral skills and cognitive instruction. The CLP indicated adaptive/self-help and speech therapy would not be addressed during the school facility closures. The CLP documented the services that would be provided as follows:
 - Cognitive/Pre-academic: 20 minutes weekly (provided by the special education teacher)
 - Physical therapy: 5 minutes weekly (provided by the PT)
 - Social emotional/behavioral: 5-15 minutes, twice weekly (provided by the paraeducator)

The CLP was later updated to show that the OT was providing feedback, suggestions, and videos. The CLP stated:

Per parent request specially designed feedback and activities will be sent to parent to support the student's general education learning and IEP goals/progress (from case manager, general education teacher, OT, PT, and SLP), worksheet (as needed), emails, TEAMS, videos from related service providers may be sent to support the Student with Continuous Learning, Weekly check-in with 1:1 paraeducator. PT, OT, SLP: access to Sway page; available for consultation and collaboration with teachers and parents.

The CLP also included that the Student would be provided manipulatives for cognitive skills, occupational therapy, and physical therapy, and that the Parent would be provided written instructions for activities and access to recorded content for instruction. The Student and Parent also had access to a weekly group check in to preview and review learning activities and weekly office hours via Teams.

20. The Complainant, in the reply to the District's response, noted regarding the paraeducator's support that the District "restricted the paraeducator's calls to 2 times per week, 10 minutes per call. Thus, Student's paraeducator support for social-emotional/behavioral was reduced from 1,950 minutes/week to 20 minutes/week." The reply stated the paraeducator made her own efforts by sending letters and pictures "that Student looked forward to" but that the Parents' "have reason to believe that the Student's paraeducator was not allowed to make additional check-in calls."

The documentation in the complaint indicates the paraeducator connected with the Student twice weekly as noted in the Student's CLP. There is no documentation that the Parent requested the paraeducator provide additional weekly calls and that this was denied; although, the paraeducator's overall minutes under the CLP were fewer than the Student's IEP.

21. Also, on May 12, 2020, the paraeducator connected with the Student via phone. The communication and services log noted the Student was in the "Green Zone," that the Student asked the paraeducator to help him problem solve, and they did a "Let's Breathe" exercise. The Parent, Student, and paraeducator also, according to the services log, discussed that day's class meeting.
22. Between May 13 and 15, 2020, the Parent and special education teacher exchanged emails and discussed the Parent's questions and concerns regarding the CLP. The special education teacher suggested they set up a meeting to discuss the concerns further.
23. On May 15, 2020, the paraeducator connected with the Student via phone. The communication and services log noted the Student was in the "Green Zone," that the Student asked the paraeducator to help him problem solve, and they did a "bee breathing" exercise. The log also noted the paraeducator and Parent discussed that the Student had "figured out snap words...and he is counting to 100." The Parent shared that the Student's father was doing "PE" lessons with the Student "so there will be opportunities to practice taking turns, waiting in lines, and other things you need to do in group activities." The Parent did state she was finding it challenging to work on social emotional learning without other students and asked if there were school scenarios they could work through.
24. Also, on May 15, 2020, the Parent emailed the PT and special education teacher with an update on what the Student had been working on. The Parent asked some questions related to physical therapy, to which the PT replied, answering the Parent's questions and asking if there was something the Parent wanted her to focus on for the Student's videos.
25. On May 19, 2020, the special education teacher and a special education teacher on special assignment met with the Parent to discuss the Student's CLP and the Parent's concerns. The Parent requested documentation that the CLP would end at the end of the 2019-2020 school year and that the Student have a transition meeting within the first four weeks of the 2020-2021 school year to discuss the Student's progress over the summer, post-closure baselines, and adjust the IEP or CLP as needed. The prior written notice, dated May 19, 2020, indicated the special education teacher updated the Student's CLP based on the Parent's input.

The communication and service log also included notes from the May 19 meeting, which recorded that the Parent:

Confirmed she is happy with the current CLP that the district has committed to which is videos from related service providers 2-3 by the end of the year, weekly emails from parent following up with direct specific feedback...and weekly check-in by paraeducator with a mini activity. Parent mentioned that the current CLP is working.

26. Also, on May 19 and 21, 2020, the Student met with his paraeducator for social emotional instruction. On May 19, they did a guided imagery breathing activity about self-motivation, and on May 21, problem solved being frustrated and did a breathing activity for relaxation and refocusing.

27. On May 26, 2020, the special education teacher provided the Parent with next steps in supporting the Student's counting and shared prerecorded writing lessons "to support [Student's] IEP goal."
28. On May 26 and 29, 2020, the Student met with his paraeducator for social emotional instruction. On May 26, the Student shared what he had been working on and they did a breathing exercise, and on May 29, they did a self-confidence lesson, shared work, and sang a song. The Parent also shared the work the Student had been doing (e.g., sounding out words, sight words and reading, and identifying numbers).
29. On May 29, 2020, the OT emailed the Parent worksheets for letter formation and a visual schedule resource.
30. On or around June 1, 2020, according to the complaint, the Parent learned that the District had laid off a number of paraeducators, which "was not discussed with them in an IEP meeting."
31. On June 1, 2020, the Parent emailed the principal regarding the Student's paraeducator, stating, "I wanted to reach out to you and ensure that nothing has changed for [Student]. As [Student's] para (and hours) are written into his IEP, am I correct in assuming that [paraeducator] will still be with him while he is physically at school next year?"

The principal responded that the Student's paraeducator's hours were cut, but that they would not be able to address the impact until he knew "how we are coming back in the Fall" and that he would keep the Parent posted.

32. On June 2 and 5, 2020, the Student met with his paraeducator for social emotional instruction. Like previous sessions, they checked in regarding what "zone" the Student was in, discussed work, checked in about problem solving and did breathing exercises.
33. On June 8, 2020, the special education teacher emailed the Parent and suggested the Student work on counting to 120 (previously he was counting to 100). The teacher also asked for an update on the Student's progress writing letters and letter sound identification. The Parent replied with progress information, including that the Student can identify 19/26 letter sounds, name 20/26 letter names, print 24/26 uppercase letters with a model (12/26 with no model), and print 25/26 lower case letters with a model (17/26 with no model).
34. On June 9 and 12, 2020, the Student met with his paraeducator for social emotional instruction. Like previous sessions, they checked in regarding what "zone" the Student was in, discussed work, checked in about problem solving, and did breathing exercises, including a teamwork breath exploration.
35. On June 12, 2020, the Parent emailed the special education teacher detailed notes about the Student's progress on his IEP goals and asked for suggestions for the summer. The teacher responded, noting she would include the information in the Student's progress report and provide suggestions for the summer. The teacher also called the Parent to "share a retell strategy to use with [Student]" and discussed the Student's transition meeting.

36. Also, on June 12, 2020, the District entered progress reporting for the Student's March 2020 IEP goals. The progress reporting noted the following:

- Cognitive (Math): Sufficient progress – "During the closure of the school building during Covid 19 epidemic, instruction toward this goal continued through distance learning and was documented within the Continuous Learning Plan. [Student] can orally count from 1-100."
- Cognitive (Writing skills): Sufficient progress – "Due to the closure of school buildings during the Covid 19 epidemic, it was determined that support toward goals would be provided through resources communicated via email and activities available on the OT SWAY site and selected for student and sent via email. Weekly email consult with parent and video of therapy session sent 3 times...Parent also sent video of student's completed suggested activities or performing suggested activities from therapist. – [OT]...During the closure of the school building during the Covid 19 epidemic, instruction toward this goal continued through distance learning and was documented within the Continuous Learning Plan. [Student] can print 24/26 uppercase letters with a model."
- Cognitive (letter sound correspondence): Sufficient progress – "During the closure of the school building during the Covid 19 epidemic, instruction toward this goal continued through distance learning and was documented within the Continuous Learning Plan. [Student] can identify 19/26 lowercase letter sounds."
- Adaptive self-help (politeness phrases): Not provided instruction – "Due to the closure of school buildings during the Covid 19 epidemic, it was determined that instruction towards this goal was not appropriate and/or safe and or meaningful. This was documented within the Continuous Learning Plan. Once in person sessions have resumed, our team will determine how instruction will proceed for this goal."
- Adaptive self-help (restroom request): Insufficient progress – "Due to the closure of school buildings during the Covid 19 epidemic, it was determined that instruction towards this goal was not appropriate and/or safe and or meaningful. This was documented within the Continuous Learning Plan. Once in person sessions have resumed, our team will determine how instruction will proceed for this goal."
- Social emotional/behavioral: Sufficient progress – "During the closure of the school building during the Covid 19 epidemic, instruction toward this goal continued through distance learning and was documented within the Continuous Learning Plan."

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

38. According to the District's response, immediately following the closure, the District provided no "structured educational services" to any students. However, the Student's teachers and providers "communicated with [the] Parent and provided her with resources, materials, strategies, and suggestions for learning activities." The District response noted the following:

- Special education teacher: "Provided Parent with guidance on how to work with Student on his IEP goals and resources for lessons or activities Parent could do with Student."
- Paraeducator: "Provided Parent with social stories and social emotional/behavioral lessons and described how she supported and worked with Student at school." The Paraeducator also sent home other materials the Student used at school, provided "Zones of Regulation" lessons.
- General education teacher: "Provided Parent with resources for reading and other learning activities, as well as videos for Parent to use with Student."
- OT: "Provided Parent with fine motor, visual motor, postural control, and core strengthening activities to do with Student at home."
- PT: "Provided Parent with resources to use."

The District noted in its response that the Student's teachers provided the Parent with weekly lesson plans and activities, with instructions, throughout the school facility closures, and provided resources, learning materials, and guidance and feedback for the Student on the learning activities and his IEP goals. The Student's counselor, OT, PT, and SLP also provided the Parent with videos of activities to do with the Student. The Student's paraeducator held weekly phone calls with the Student and Parent for social emotional/behavioral support.

The District also emphasized the Student made progress on the majority of his IEP goals that could be addressed during distance learning.

39. The communication and services log provided in the complaint summarized that the OT and PT had the following communication with the Parent:
- Occupational Therapy: OT emailed resources and activities (including videos), and provided feedback on: May 18, May 29, May 28, May 31, and June 8, 2020. The activities included handwriting, visual motor strategies, drawing, and multisensory approaches. The Parent contacted the OT on May 15, May 18, and June 12, 2020, to share progress information, what the Student was working on, and feedback on the activities.
 - Physical Therapy: PT emailed the Parent video activities and written instruction (soccer skills, single leg balance) on May 19, May 31, and June 9, 2020. The Parent emailed the PT on May 29, 2020, with video of the Student practicing soccer skills. Later (undated), the Parent shared the Student's progress and shared that she thought the Student had met all his goals.

Summer 2020

40. On June 25, 2020, the District school board approved the decision to lay off and reduce the hours of paraeducators in the District. The District stated the decision was based on: Its estimate of the need for paraeducator support across the District at the beginning of the 2020-2021 school year. At that time, the District did not anticipate returning to full-time, in-person instruction for all students in September 2020, and not all students required paraeducator support during virtual instruction. The District therefore adjusted staffing levels based on a review of individual students' needs throughout the District. The District subsequently rehired certain paraeducators and/or increased paraeducators' hours based on student needs.
41. According to the complaint, the decision regarding paraeducators was made without any individual analysis of IEPs by IEP teams, parents were not consulted, nor were parents "afforded a vehicle to participate in the educational decisions-making process for the decision to reduce or eliminate paraeducator services on their children's IEPs."
42. The District, in its response, stated the June 25, 2020 decision was not a proposal or refusal to change the Student's education placement or provision of a free appropriate public education (FAPE) to the Student and the District made no decision about the Student's educational program at that time.
43. On July 7 and 17, 2020, the Parent emailed several District staff, expressing her concern regarding the District's decision to lay off paraeducators and the potential impact on the Student. The Parent also requested that they have an IEP meeting prior to the start of the school year.

44. On August 4, 2020, the Parent met with the District's director of student services (director) to discuss concerns and options for the Student's services in the fall. Based on the conversation and the Parent's request for an IEP meeting, an IEP meeting was scheduled at the end of August.
45. On August 25, 2020, the Student's IEP team met. According to the prior written notice from the meeting, the team met to discuss the Parents' concerns regarding the upcoming year and the Student's schedule. According to the prior written notice, the team discussed the Student's progress during the school facility closure period. The team determined the Student should receive in-person services, and that the District anticipated the Student could begin receiving in-person instruction for two days a week by the end of September 2020, given health and safety guidelines. The team determined the Student would receive paraeducator support for six hours a day, five days a week during both in-person and virtual services, and that the Student would continue to receive his related services virtually until health and safety guidelines could be met to allow the Student to safely receive in-person therapies. The team agreed that they needed to closely monitor the Student through Parent interviews and check-ins with the paraeducator and change the Student's schedule as needed, based on the Parent's and Student's needs.
46. Also, on August 25, 2020 the Parent emailed District staff her summary of the meeting and questions related to the Student's schedule and services. On August 27, 2020, the District's special education consultant responded. Based on the consultant's response, the related service providers were still determining their schedules and the schedules generally were in flux; however, the consultant stated the services would be provided as written on the Student's IEP, either in a remote or in-person environment.
47. On September 1, 2020, in response to further emails from the Parent with questions and concerns regarding the Student's schedule, the teacher on special assignment responded. In part, the teacher stated the Student would receive all his service minutes remotely, beginning September 9, 2020:

He will have 6 hours a day of school (all 1,800 minutes) including his services of physical therapy for 15 minutes x1 weekly, occupational therapy 20 minutes x1 weekly, speech and language 15 minutes x1 weekly, social/emotional 15 minutes x5 weekly, adaptive/self help 10 minutes x5 weekly, cognitive 20 minutes x5 weekly and his para, one on one support, for 390 minutes x5 weekly. The 3 hours we discussed is when [District] allows some students for face to face learning at the end of the September [sic]. [Student] will be receiving instruction from both his [special education] teacher, general education teacher and related service teachers remotely until the end of September.

The teacher on special assignment provided a "mock schedule" for the Student for reference.

48. The District's response included a "protocol for determining onsite instruction," which stated, "During remote learning, onsite instruction will be available for students that [sic] IEP goals cannot be supported remotely." The protocol noted that IEP teams will need to consider whether a student requires "extensive, repeated, individualized instruction and support that is

not of a temporary or transient nature. The student uses substantially adapted materials or individualized methods of accessing information in alternative ways to acquire, maintain, generalize, demonstrate and transfer skills across multiple settings, including school, workplace, community and home.” The protocol included a further list of IEP team considerations and a flowchart for determining whether onsite instruction is appropriate (e.g., data, present levels, and does the student require learning opportunities and can only be provided in person). The protocol also included information about the District’s need to meet health and safety restrictions and included a “face to face protocol flowchart” to help determine, for specific students, whether in-person learning could safely be provided.

2020-2021 School Year

49. The District’s 2020-2021 school year began on September 9, 2020. The Student was in the first grade and continued to be eligible for special education services.
50. On September 9, 2020, the Student’s PT and OT emailed the Parent to touch base about scheduling the Student’s virtual physical and occupational therapy sessions. The PT indicated she would have a better sense of her schedule by the week of September 14, 2020. The OT stated she could arrange a time to meet with the Student the week of September 14, 2020, and asked the Parent to let her know. The Parent replied to both the PT and OT that the week of September 14, 2020 would work to start sessions.
51. Also, on September 9, 2020, the Student’s paraeducator emailed the Parent, and copied the general education teacher, stating that she was only available for two hours that week to support the Student in addition to class time. The general education teacher suggested the paraeducator support the Student during writing assignments that week. The Parent replied with thoughts about scheduling, having the paraeducator work with the Student on writing and social emotional, and asked for suggestions on how the Student could ask to take a break when needed.
52. On September 10, 2020, the Student’s paraeducator’s hours increased to six hours a day per the agreement made by the IEP team on August 25, 2020.
53. Also, on September 10, 2020, the paraeducator emailed the Student’s special education teacher regarding putting together materials for the Student, including making him a “break” card and adding social stories to the materials.
54. On September 13, 2020, the paraeducator and Parent emailed regarding planning the Student’s schedule, the times the paraeducator would support the Student, and when related services would fit in. The Parent noted they needed to figure out the Student’s schedule with his special education teacher and suggested that “for the first few days we plan class with you at the end of the [English language arts] time” and then the paraeducator would work with the Student during small group time, take breaks with the paraeducator, work with the Student during math lesson time and small group, etc. throughout the day.

55. Based on emails, the Student's first occupational therapy session of the year was on September 14, 2020.
56. As of September 15, 2020, based on emails, the Parent and PT were still trying to find a time for the Student's physical therapy sessions.
57. Between September 15 and 17, 2020, the Parent and paraeducator continued to discuss the Student's schedule. On September 17, the paraeducator emailed and suggested they try the schedule the Parent had outlined, as follows:
- 8:45-9:15 Support session
 - 9:35-10:35 General education
 - 11:00-11:30 Support session
 - 12:05-1:05 General education
 - 2:00-2:20 (or 2:00-2:40) Support session could be extended based on the Student's needs
 - 2:45-3:15 Support session if needed
58. On September 16, 2020, the Parent emailed the teacher on special assignment and asked about in-person learning and when the Student would be able to attend in-person.
59. On September 18, 2020, the Parent emailed members of the Student's IEP team to confirm when the Student would be able to start attending in-person. The Parent stated, "So, to be clear, [Student] is no longer being offered two days of face to face instruction time prior to the start of in person hybrid program when the rest of Gen Ed (in this case K-2) return to the building, is that correct?" The Parent stated this was a change from what she was told at the beginning of September and what was discussed at the August 25, 2020 IEP meeting.

In subsequent emails, the District stated the team had hoped at the August 25, 2020 IEP meeting that the Student would be able to attend "two days of face to face instruction at the end of September" and that, "that has now changed to four days, beginning on September 28th, if Covid numbers stay down."

The Parent responded that "a key issue for [Student] is being given additional time for transitions, as outlined in his IEP accommodations...we are aware of this accommodation being afforded to other children with special needs at [other District] schools" and stated that she did not understand why the Student "cannot be afforded this accommodation, which was the outcome of our IEP meeting and as reflected in the [prior written notice]."

60. Later, on September 18, 2020, the teacher on special assignment emailed the Parent and the Student's team, stating the Student would be able to start the following week to receive in-person instruction: "face to face instruction TWO DAYS this coming week for 3- hour sessions. He will be in school Tuesday (September 22) and Thursday (September 24) from 9:00 AM-12:00PM with his 1:1 para."
61. Emails included in the District's response indicated that prior to and after September 22, 2020 and the Student returning to some in-person instruction, the PT and OT provided therapies to the Student remotely. Emails indicate the Student received occupational therapy remotely on Mondays and physical therapy remotely on Fridays.

62. On September 21, 2020, an email from the SLP to the Parent indicated the SLP would work with the Student remotely on September 22 and start working with the Student in-person on Tuesdays the following week. The emails between the SLP and Parent indicated that September 22, 2020 would be the Student's first speech session.
63. Also, on September 21, 2020, the Complainant filed this complaint on behalf of the Parents and "representing the interests of all special education students in the [District] who are assigned a 1:1 paraeducator in their IEPs, parents in the District who have received little to no communication about when their students' special education services will be provided, and who have had decisions made cutting special education services outside of the IEP team process and without Prior Written Notice and procedural safeguards." The complaint named several other students in special education in addition to the Student. (The other students will be addressed in SECC 20-117B).

In the complaint, the Complainant stated the Student has experienced "emotional and behavioral escalation and regression due to the lack of special education services" and that as of the writing of the complaint, "while remote paraeducator support is available to [Student] during the school day, [Student] cannot access any remote instruction or related services at all without the constant presence and assistance from his parents."

The complaint stated that "resource instruction" and speech language therapy have "not yet been provided, almost two weeks after the first day of school." The complaint also stated that "when school opened on September 9, 2020, [Student] was not prioritized for in-person, face to face instruction as a student who requires it in order to receive a [free appropriate public education]." The complaint also made the following arguments:

- The District was "depriving special education students of services based on its personnel and administrative decisions."
- The District is "refusing to allow IEP teams to make individualized decisions based on student needs and is prioritizing building use for other purposes instead" and that "IEP services are being cut by District administrators with no required IEP team member input and certainly none from parents."
- The District failed "to provide notice to parents when IEP services are changed or denied" and failed to provide procedural safeguards.
- The District failed to "provide any information to parents about the reasons and data used for the District's decisions."
- "IEPs, including accommodations, assistive technology, supportive aids and services, and related services are not in place and are not being implemented from the first day of school."
- "Parents are not being told where and when their students' services will begin."

64. On September 22, 2020, the Student began receiving three hours a day, two days a week of in-person instruction with 1:1 paraeducator support.
65. The District, in its response, stated the Student's IEP team members "communicated extensively with Parent regarding in-person services during the 2020-2021 school year" and the District "began providing Student with in-person services as soon as it was able to do so safely and in accordance with health and safety restrictions and guidelines."

66. On September 27, 2020, the Student's paraeducator emailed the Student's team to notify them that she was maintaining the Student's "master schedule" and that the Student would not be able to be in-person with her until she was fitted for an N95 face mask.
67. Also, on September 27, 2020, the Parent emailed the Student's general education teacher and paraeducator with several questions and concerns, including that she did not think the Student was getting all his minutes of specially designed instruction.
68. On September 28, 2020, the Student's IEP team met to discuss the Student's transition to in-person instruction. The team discussed schedule changes to meet the Student's needs and increased the amount of in-person instruction. According to the prior written notice, the team discussed adjusting the Student's schedule to provide him more breaks throughout the day and to ensure he receive all his minutes of specially designed instruction. The notice also indicated the team would continue to discuss in-person instruction for the Student, as further health and safety guidance was communicated.
69. On September 30, 2020, the special education teacher emailed the Parent, noting:
[The Student's] current Special Education service minutes on his IEP reflect 5-20 min./week for a total of 100 min./week for preacademic skills. Currently, I see [Student] remotely for 4-30 min./week for a total of 120 min./week. [Student] is getting more service minutes than what is documented on his IEP. I will adjust his schedule to 4-25 min./week for a total of 100 min.
70. In an October 1, 2020 email from the Parent regarding the September 28, 2020 meeting prior written notice, the Parent mentioned that she did not think the Student was getting his full number of social emotional or adaptive minutes with his paraeducator.
- In another email on October 1, 2020, from the paraeducator to the Parent, the paraeducator noted she met with the school counselor and that she, the Student, and the counselor were going to meet for 15 minutes on Tuesdays and Thursdays when the Student was in-person. This would allow the Student to get his social emotional minutes and give the paraeducator "a jumping off point to work on the concepts with [Student] virtually the rest of the week."
71. On October 1, 2020, the Student resumed his in-person, twice weekly instruction schedule as the paraeducator was fitted for her N95 mask.
72. On October 5, the Parent, principal, and teacher on special assignment emailed regarding increasing the Student's time in-person at school. The teacher stated that "if it is ok with the building I would encouraging [sic] the team to allow [Student] to stay until 1:15 so we are not interrupting his general education time."
73. On October 12, 2020, the Student's in-person instruction was increased to four hours and 15 minutes a day, four days a week—Monday, Tuesday, Thursday, and Friday, from 9:00 am to 1:15 pm.

CONCLUSIONS

Issue One IEP Implementation Spring 2020 – The Complainant alleged the District failed to implement the Student’s individualized education program (IEP) during the March 2020 through June 2020 school facility closures.

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 March 2020 amended IEP was in place prior to the school facility closures. The IEP included goals in cognitive/pre-academic, adaptive/self-help, social emotional/behavioral, occupational therapy, and physical therapy, with progress to be reported at the trimester. The IEP included the following specially designed instruction and related services:

- Adaptive/self-help: 10 minutes, 5 times weekly (provided by a paraeducator in a general education setting)
- Cognitive/pre-academic: 20 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
- Social emotional/behavioral: 15 minutes, 5 times weekly (provided by a paraeducator in a general education setting)
- Occupational therapy: 20 minutes weekly (provided by an occupational therapist (OT) in a special education setting)
- Speech language therapy: 15 minutes weekly (provided by a speech language pathologist (SLP) in a general education setting)
- Physical therapy: 15 minutes weekly (provided by a physical therapist (PT) in a general education setting)

The IEP also included 390 minutes per day of additional adult support (provided by a paraeducator) in the general education setting as a supplementary aid and service.

After the District closed school facilities on March 16, 2020, the Student’s IEP was not implemented as written, which during this time alone does not represent a violation of the IDEA. However, that does not end the analysis as the District still had an obligation to provide students with special education services during the school facility closures. On March 23, 2020, OSPI communicated the expectation that districts would begin providing educational services to all students by March 30, 2020 (“continuous learning”); and, as instruction was being provided to all students, districts must have a plan for how students eligible for special education services would receive a free appropriate public education (FAPE), which consists generally of specially designed instruction and related services. OSPI issued guidance that recommended guidelines for “maximum student commitment each day,” which for students in kindergarten and first grade was 45 minutes.

The District stated that all schools were closed, and no educational services were provided to any students from March 16 to April 10, 2020, and that continuous learning in the District began on April 13, 2020. The District was on spring break from April 6 to 10, 2020.

Soon after the school facility closures, the Parent reached out to the Student’s teachers and paraeducator, asking for feedback on the learning plan she put together for the Student and

suggestions for working on the Student's IEP goals. Throughout the closure, all the Student's teachers and providers were very responsive to the Parent's emails and provided feedback, strategies, resources, and learning activities (e.g., email from the special education teacher with strategies, such as teach through "pictures, repetition, music...multisensory", suggested establishing a motivation system, and provided specific ideas for sight words).

The documentation provided in this complaint—including the continuous learning plan (CLP) developed for the Student on May 12, 2020—indicated the District provided the following special education services and supports to the Student during the school facility closures:

- On or around May 12, 2020, the paraeducator began checking in with the Student via phone twice a week for approximately 15 minutes at a time. During this time, the paraeducator worked with the Student on his social emotional/behavioral goals and reviewed "Zones of Regulation," problem solving, self-regulation breathing exercises, and often they discussed what the Student worked on that day for his other classes and goals.
- Occupational Therapy: OT emailed resources and activities (including videos), and provided feedback in May and June 2020. The activities included handwriting, visual motor strategies, drawing, and multisensory approaches. The Parent contacted the OT on May 15, May 18, and June 12, 2020, to share progress information, what the Student was working on, and feedback on the activities. The OT responded to the Parent's emails with feedback for the Student and suggestions for further activities or strategies.
- Physical Therapy: PT emailed the Parent video activities and written instruction (soccer skills, single leg balance) in May and June 2020. The Parent emailed the PT on May 29, 2020, with video of the Student practicing soccer skills.
- Cognitive/Pre-academic: According to the CLP, 20 minutes of instruction were provided weekly by the special education teacher.
- Feedback for Parent and activities for specially designed instruction to support the Student's IEP goals/progress. The documentation provided included emails throughout the school closures from the Parent with updates on what the Student was working on (including videos of the Student and work samples) and responses from the teachers and providers with strategies, suggestions, and further activities. The special education teacher (and other members of the Student's team) also met with the Parent on April 27 and May 19, 2020, to discuss concerns and problem solve around the Student's learning.
- The special education teacher checked in consistently with the Parent and asked for updates on the Student's progress in specific goal areas.

The Student's general education kindergarten teacher also sent out weekly learning activities and resources, and in late April 2020, began to introduce new learning concepts and sent out prerecorded video materials.

The documentation in the complaint provides conflicting information about speech services. While the Student's CLP indicated the Parent requested to prioritize social emotional/behavioral skills and cognitive instruction, and thus adaptive/self-help and speech would not be addressed, the CLP also stated the SLP (like the PT and OT) was available for consultation and collaboration. And, the District's response stated the school counselor and SLP (like the PT and OT) sent the Parent videos of activities to do with the Student. However, the emails provided in the complaint do not contain an email record of these videos being emailed (unlike emails with videos from the

PT and OT). Thus, OSPI finds the Student was not provided speech services during the school facility closure.

There is one notable gap in services. The documentation does not include evidence of a plan for or organized provision of special education services in April 2020. The District stated it began continuous learning on April 13, 2020, which excluding spring break, was still a week after districts were supposed to begin continuous learning on March 30, 2020. The paraeducator began the twice weekly sessions with the Student in May 2020, and there was no documentation that the Student was consistently provided social emotional instruction in April 2020. The related service providers did not send video instruction as requested by the Parent until May and June 2020. While the teachers and related service providers were very responsive to the Parent's emails and requests for support throughout, initially the District staff were responding after the Parent had reached out versus the District initiating the provision of special education services. It does not appear that there was a clear plan for how the District would provide the Student special education services and instruction until May 2020. Thus, OSPI finds a violation for the failure to consistently provide special education services in April 2020.

It is clear from the documentation that the Parent invested a great deal of time and energy into providing the Student instruction. The Complainant noted the Parent, "like so many parents with high-needs students like [Student]...had to serve as his paraeducator in the home so that he could access learning" during the school facility closures. This was likely a factor in the progress the Student did make. The progress reporting provided indicated the Student made sufficient progress on his cognitive goals (math, writing skills, and letter sound correspondence) and social emotional goal. The progress reporting sufficiently noted the Student's progress, how instruction was provided or modified during the closure, and specific data about some of the goals (data largely provided by the Parent, for example: "[Student] can orally count from 1-100" and "[Student] can print 24/26 uppercase letters with a model.") The progress reporting recorded that the Student was not provided instruction on his adaptive self-help goals (politeness phrases and restroom request).

Overall, given that the District failed to have a plan for how the Student would receive special education services and failed to consistently provide special education services beginning on March 30, 2020 and in April 2020, the District will provide recovery services to mitigate the impact of the school facility closures in April 2020, based on the services outlined in the CLP and provided in May 2020. Thus, the District will be required to provide the following services: 80 minutes of cognitive/pre-academic services (20 minutes weekly x 4 weeks), 20 minutes of physical therapy, 20 minutes of occupational therapy, and 120 minutes of social emotional/behavioral instruction.

Issue Two: IEP Amendment – The Complainant alleged the District improperly altered the Student's paraeducator services when it laid off paraeducators during summer 2020. Specifically, the complaint alleged that changes were made to services based on personnel and administrative decisions and decisions were made outside of the IEP process: without consideration of Student specific need, Parent participation, or provision of prior written notice.

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; participate in discussions about the child's need for special education; and join with the other participants in deciding how the child will be involved and progress in the general curriculum, and what services the agency will provide to the child and in what setting. When a district initiates or refuses to initiate a proposed change to the provision of a FAPE for a student, it must provide prior written notice a reasonable time before the change.

On June 1, 2020, the Parent learned the District had laid off a number of paraeducators. This decision was approved by the school board on June 25, 2020, based on estimated staffing levels for the fall of 2020 during virtual instruction. On June 1, 2020, the Parent emailed the principal regarding the potential impact on the Student as the Student's IEP included paraeducator support. The principal indicated there could be an impact on the Student, but they would not know until they knew how the District would be opening in the fall. The Complainant argued the Student's IEP team should have been involved in the District's staffing decision and that the Parent should have been involved in the decision to reduce paraeducator services for the Student. However, in June, no changes had been made to the Student's IEP, despite the principal's statement. The District stated the June 25, 2020 decision was not a proposal or refusal to change the Student's education placement or provision of a FAPE to the Student and the District made no decision about the Student's educational program. Thus, at this point, it was not a violation for the District to make determinations about staffing levels, as there was no decision made with respect to the Student's services and any potential impact had not yet happened. Further, the District was not required to provide the Parent with prior written notice of the District level decision.

The Student's IEP team met on August 25, 2020, and discussed the Student's upcoming school year. According to the prior written notice, the team discussed several topics, including the Student's paraeducator support. The team determined the Student would receive paraeducator support for six hours a day, five days a week during both in-person and virtual services in order to implement the Student's IEP.

Based on the documentation in this complaint, all decisions made regarding paraeducator supports for this Student were made by his IEP team, with the Parent's participation, and in consideration of the Student's needs. The Parents were provided prior written notice, documenting the August 25, 2020 IEP meeting. OSPI finds no violation.

Issue Three: IEP Implementation 2020-2021 – The Complainant alleged the District failed to implement the Student's IEP during the 2020-2021 school year. Specifically, the Complainant stated the Student was not prioritized for in-person instruction, that the Student's IEP was not implemented from the first day of school, and that the Parent was not told when services would begin.

At the beginning of each school year, each district must have in effect an 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. When a 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 IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to the student and those required by the IEP.

In-Person Services

There is no independent right guaranteed in the IDEA to in-person instruction. Districts must provide a student eligible for special education services with a FAPE, which may include a determination that a student receive in-person instruction. The District has a protocol for assessing which students should receive "onsite instruction," which included direction to IEP teams to consider whether a student requires "extensive, repeated, individualized instruction and support that is not of a temporary or transient nature. The student uses substantially adapted materials or individualized methods of accessing information in alternative ways to acquire, maintain, generalize, demonstrate and transfer skills across multiple settings, including school, workplace, community and home." The District also had to be able to meet Department of Health safety and health guidelines.

On August 25, 2020, the Student's IEP team determined the Student required in-person services and would be provided onsite instruction when health and safety guidelines could be met, which would likely occur by the end of September. The team determined the Student would continue to receive his related services virtually until health and safety guidelines could be met. Ultimately, after many emails about when the Student could start in-person and multiple requests from the Parent to clarify, the Student began receiving in-person instruction on September 22, 2020, for three hours a day, two days a week. During the in-person time (and during remote instruction), the Student received 1:1 paraeducator support. The Student attended in-person September 22 and 24, 2020. The following week, the Student could not attend in-person because the Student's paraeducator had to be fitted for an N95 face mask, but the Student resumed his twice weekly onsite schedule on October 1, 2020. On September 28, 2020, the Student's IEP team met again to discuss the transition to in-person instruction and subsequently, the Student's onsite time was increased to four hours and 15 minutes per day, four days a week beginning on October 12, 2020.

While OSPI notes the schedule the first few weeks was confusing and continually changing and understands that the Parent wanted the Student to receive onsite instruction as soon as possible, overall, OSPI finds the District appropriately considered the Student's need for in-person instruction at the two IEP meetings and communicated with the Parent to the best of its ability during the rapidly changing circumstances of a pandemic. The team determined the Student required in-person instruction beginning at the end of September in order to ensure health and safety guidance was met. The Student began in-person instruction on September 22, 2020, and subsequently has increased the time spent in-person. OSPI finds no violation as the IEP team appropriately considered the Student's needs and reasonably provided in-person instruction while taking into consideration health and safety restrictions.

IEP Implementation from the First Day of School

Wednesday, September 9, 2020, was the first day of school. At the start of the 2020-2021 school year, the Student's March 2020 amended IEP was still in place and included the following specially designed instruction and related services:

- Adaptive/self-help: 10 minutes, 5 times weekly (provided by a paraeducator)
- Cognitive/pre-academic: 20 minutes, 5 times weekly (provided by a special education)
- Social emotional/behavioral: 15 minutes, 5 times weekly (provided by a paraeducator)
- Occupational therapy: 20 minutes weekly (provided by an OT)
- Speech language therapy: 15 minutes weekly (provided by a SLP)
- Physical therapy: 15 minutes weekly (provided by a PT)

Prior to the start of school, a District teacher on special assignment assured the Parent that the Student would receive all his service minutes remotely beginning on September 9, 2020. However, the documentation indicates the implementation of the Student's IEP was imperfect between the first day of school and the date the complaint was filed (September 21, 2020). Based on the email documentation, the Parent and the Student's teachers, paraeducators, and related service providers spent the first week or so of school attempting to work out the Student's schedule for services and supports.

For example, emails indicate the Parent worked with the PT and OT to have physical and occupational therapy sessions begin the week of September 14, 2020. However, it appears the first speech session the Student had with the SLP was not until September 22, 2020. The Student's paraeducator was not able to provide a full day of support to the Student on September 9, 2020, because she did not have enough hours available; however, the paraeducator's hours increased on September 10, 2020 to six hours a day. Yet, as the Parent and paraeducator worked out the Student's schedule in the first week, it is not clear that the paraeducator was actually supporting the Student all day or providing all of the minutes in the Student's IEP (the paraeducator provided adaptive/self-help and social emotional/behavioral instruction and additional adult support). On September 27, 2020, the Parent emailed the Student's general education teacher and paraeducator and expressed concern that the Student was not getting all his minutes of specially designed instruction. The Student's special education teacher emailed the Parent and noted the Student was getting more minutes of specially designed instruction with her than what was noted on his IEP, and thus, she would be adjusting the schedule. Finally, the paraeducator emailed the Parent on October 1, 2020, that she and the Student would begin meeting with the school counselor for 15 minutes on Tuesdays and Thursdays, which would allow the Student to get his social emotional minutes and give the paraeducator "a jumping off point to work on the concepts with [Student]."

Overall, the beginning of the 2020-2021 school year was confusing and challenging as schedules were still being finalized. It is understandable this would be frustrating for the Parent, Student, and staff. While IEPs must be implemented beginning on the first day of school and must be implemented as written, if a 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 IEP. A material failure occurs when there is more than a minor discrepancy between the services

provided to the student and those required by the IEP. Based on the documentation, OSPI makes the following conclusions regarding the first two weeks of school:

- Cognitive/pre-academic: The Student was likely receiving more minutes of instruction from the special education teacher than was on his IEP, although it is not clear when the Student began receiving instruction from the special education teacher.
- Occupational and physical therapy: The Student's first occupational and physical therapy sessions were scheduled the week of September 14, 2020, and the Student has consistently received instruction in these areas since that time.
- Paraeducator instruction and supports: Based on the fluctuating schedule, the fact the paraeducator was not allotted the full six hours until the second day of school, and the emails indicating the Student was not receiving his full amount of social emotional instruction until October 1, 2020, OSPI concludes the Student was not receiving the full amount of adaptive/self-help and social emotional/behavioral minutes required. It does appear the paraeducator was generally providing additional adult support as she supported the Student in both the remote and in-person setting.
- Speech language therapy: The Student did not receive speech services until the third week of school (September 22, 2020).

Overall, even though this is a short period of time, considering how disruptive and challenging the fluctuating schedule was and the fact that the Student's IEP was not implemented as written with respect to adaptive, social emotional, and speech, OSPI finds this to be more than a minor deviation. While OSPI understands the challenges involved for the District in starting the year remotely and trying to work out schedules to support all students during the rapidly changing circumstances, this Student was not provided all the services outlined in his IEP. Thus, OSPI finds a violation as the District failed to ensure the Student's IEP was implemented as written beginning on the first day of school.

As compensatory services are an equitable remedy, OSPI finds this Student is entitled to compensatory services in adaptive, social emotional, and speech. The District will provide the Student with one week's worth of these services as compensatory education: 50 minutes of adaptive/self-help instruction, 75 minutes of social emotional instruction, and 15 minutes of speech (in addition to the recovery services ordered above).

CORRECTIVE ACTION

By or before **December 4, 2020** and **February 22, 2021**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

Recovery/Compensatory Services

By or before **December 4, 2020**, the Parent and District will develop a schedule for the following recovery and compensatory services:

- Cognitive/pre-academic: 80 minutes
- Social emotional/behavioral: 195 minutes (120 minutes plus 75 minutes)
- Adaptive/self-help: 50 minutes
- Occupational Therapy: 20 minutes

- Physical Therapy: 20 minutes
- Speech Therapy: 15 minutes

The District will provide OSPI with documentation of the schedule for services by or before **December 4, 2020**.

The services will be provided by a certificated special education teacher or appropriate related service provider. The Student's current paraeducator may deliver the social emotional/behavioral minutes under the supervision of a special education teacher. Services will be provided outside of the school day and may be provided on weekends or over District breaks. The services will be provided in-person, unless the Parent agrees to remote services or if COVID-19 conditions worsen and health/safety guidance makes in-person services impossible. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **February 15, 2021**, including those needing to be rescheduled.*

No later than **February 22, 2021**, the District shall provide OSPI with documentation that all the recovery/compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **February 22, 2021**.

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 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.)