

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-73

PROCEDURAL HISTORY

On June 15, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of two students (Student A and Student B) attending the Mercer Island 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 June 17, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On July 1, 2020, the District requested an extension of time for its response. OSPI granted the District's request and asked the District to submit its response no later than July 14, 2020.

On July 14, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on July 16, 2020. OSPI invited the Parent to reply. The Parent did not 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 Student A's individualized education program (IEP) during the March 2020 through June 2020 school facility closures?
2. Did the District implement Student B's IEP during the March 2020 through June 2020 school facility closures?

LEGAL STANDARDS

IEP Implementation during School Facility Closures for COVID-19: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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

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

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

Specially Designed Instruction: The purpose of the IDEA is to ensure that all students eligible for special education have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1; WAC 392-172A-01005. Special education

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

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

FINDINGS OF FACT

1. During the 2019-2020 school year, Student A attended a District elementary school, was in the third grade, and was eligible for special education services under the category multiple disabilities. Student B attended a District high school, was in the ninth grade, and was eligible for special education services under the category multiple disabilities.
2. The District's 2019-2020 school year began on September 4, 2019.
3. Student A's February 2020 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. Student A's IEP included several annual goals in the areas of social/emotional behavior, adaptive, and communication, and provided the Student with the following specially designed instruction and related services:¹
 - Communication: 40 minutes, 1 time a week (to be provided by the speech language pathologist (SLP) in the special education setting);
 - Social/behavior: 150 minutes, five times weekly (to be provided by a special education teacher, in the special education setting);
 - Adaptive: 155 minutes, five times weekly (to be provided by a special education teacher, in the special education setting);
 - Adaptive: 15 minutes, one time weekly (to be provided by a special education teacher, in the general education setting);

¹ On February 23, 2020, Student A's IEP team added extended school year (ESY) services to the Student's IEP. The prior written notice (PWN) stated the Student's need for ESY services was "demonstrated by the recoupment data and because it was determined educational progress in critical life skills could be significantly and adversely impacted without ESY services in the summer of 2020." The notice stated the team reviewed Parent and teacher input, as well as data and progress toward IEP goals and objectives in critical life skills.

- Physical Therapy: 30 minutes, one time weekly (to be provided by a physical therapist (PT), in the general education setting); and,
- Occupational Therapy: 30 minutes, one time weekly (to be provided by an occupational therapist (OT), in the general education setting).

Student A's specially designed instruction in communication, physical therapy, and occupational therapy were offered as concurrent services. Student A's IEP provided the Student with several accommodations and modifications, including:

- Access to alternate seating (bucket chairs, stools, bean bag chairs);
- Adaptive bicycle;
- Adult proximity;
- Augmentative alternative communication (AAC);
- Behavior intervention plan (BIP);
- Breaks and choice opportunities;
- Health care plan – seizures;
- High value reinforcers (preferred toys, 1:1 adult attention, praise);
- Structured bathroom breaks (at the same time daily, multiple/day, with assistance, visual schedule to follow); and,
- Visual aids (picture schedule, task lists, choice images).

The IEP also included support for school personnel (staff training), supplementary aids and services (bus supervision by a paraeducator), and Parent training by the SLP. Student A's IEP indicated Student A would spend 14.08% of his time in the general education setting.

4. Student B's December 2019 IEP and behavioral intervention plan (BIP) were in effect prior to the COVID-19 school facility closures. Student B's IEP included several annual goals in the areas of adaptive, math, reading, writing, social emotional behavior, and provided the Student with the following specially designed instruction and related services:²
 - Adaptive: 1,200 minutes weekly (to be provided by a special education teacher, in the special education setting);
 - Math: 120 minutes weekly (to be provided by a special education teacher, in the special education setting);
 - Reading: 120 minutes weekly (to be provided by a special education teacher, in the special education setting);
 - Writing: 120 minutes weekly (to be provided by a special education teacher, in the special education setting);
 - Social/Emotional: 240 minutes weekly (to be provided by a special education teacher, in the special education setting);
 - Speech language pathology (related service): 45 minutes one time a week (to be provided by a SLP in the general education setting);

² On February 23, 2020, Student B's IEP team met and determined Student B qualified for ESY services. The PWN stated that "based on the nature and severity of [Student B's] diagnosis of multiple disabilities, educational progress in critical life skills could be significantly and adversely impacted without ESY services, as demonstrated by Parent and teacher input, as well as data and progress toward IEP goals and objectives in critical life skills."

- Physical Therapy: 20 minutes, one time a week (to be provided by a PT in the special education setting);
- Occupational therapy: 30 minutes, four times a week (to be provided by an OT in the special education setting); and,
- Speech and language therapy: 30 minutes, one time a week (to be provided by SLP in the special education setting).

Student B's IEP provided the Student with several accommodations and modifications, including:

- Breaks and choice opportunities at least every 2 hours;
- High value reinforcers: toys, hats, videos;
- Motivating visual time when transitioning;
- Privacy folders to decrease distracting stimuli;
- Regulatory strategies prompted by an adult;
- Sensory item that can be attached to her workstation or her clothing;
- Short term reinforcers (e.g., verbal [good job], non-verbal [checks], tangible [very small treat]);
- Social stories for situations surrounding unexpected and expected behavior;
- Visual cues for appropriate behaviors (ex. hands to self) to be used by staff and peers working with Student;
- When given a direction give 30 second wait time;
- When requesting a verbal response give 30 second wait time;
- Adult supervision when physically transitioning in the classroom;
- AAC;
- Break class into smaller time chunks all school day;
- Motor checklist for daily strengthening;
- Preferential seating (near doorway and with reduced classroom manipulatives around her seat);
- Priming of expectations before entering settings, regular use of visual for "stand tall;" and,
- School/home communication.

The IEP also included supplementary aids and services including a 1:1 paraeducator for 151 minutes, five times weekly. Student B's IEP indicated the Student would spend 35.1% of her time in the general education setting.

Student B's BIP targeted "screeching loud high pitched scream" after being told "no" or "wait" when Student B realizes she cannot have something in the time she wants it. Intervention strategies included a "visual task list with clear breaks/choice times, visuals of feelings, especially frustration, anger, sad, to provide support for 'using words,' direct instruction on expected classroom behavior and refer to visuals at least every hour. Praise all attempts to articulate feelings beyond the screeching."

5. On March 11, 2020, the District notified families that District schools would be closed beginning March 13, 2020. The District stated it would not replace or supplant core instruction with online learning but would provide supplemental activities designed to provide students and parents with opportunities to extend learning beyond the classroom.

6. On March 12, 2020, Student B's special education teacher informed families that she would post resources for them in Seesaw³ by the following day. She also offered for students to take their District-issued iPads home to have during the closure.
7. On March 12, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in King, Snohomish, and Pierce counties through April 24, 2020 (on March 13, 2020, this was extended to all schools in Washington). The District, per this proclamation, extended its closure accordingly.
8. On March 16, 2020, the director of special services (director) sent a message to District families of students with disabilities to assure them that the District was considering the needs of all students as it developed its plan to support families during the exceptionally challenging time. The director explained that the federal government and the State of Washington were developing guidance for the provision of special education services during school closures resulting from COVID-19, that the District was monitoring the development of that guidance, and that the District would update its approach to supporting students accordingly.
9. On March 19, 2020, the District reported the progress Student A was making on his February 2020 IEP goals. The progress reporting noted the following:
 - Communication: "The physical therapist is supporting this goal as [Student A] engages in activities with staff and peers during adaptive physical education (PE). [Student A] has not used his voice during adaptive PE, but he is now coming in front of staff and peers and making eye contact instead of pulling on hands to get attention."
 - Communication: "Currently, [Student A] will use his voice to say 'come play with me' or 'look at me', 1/5 trials. Staff is doing a lot of modeling."
 - Social Behavior: "Currently, when working with the special education teacher and a structured schedule, [Student A] will independently select 'break' 5/5 trials, and bathroom 2/5 trials. The team is going to continue to work on this goal with multiple adults and in many environments."
 - Adaptive: "[Student A] will use his 'voice' to respond to questions about the story improving functional reading skills to an average of Level 3 engagement over 3 consecutive weeks."
 - Adaptive Academics: Reading Comprehension: "Currently, [Student A] engages at a Level 2."
 - Adaptive – Writing: "Currently, [Student A] independently selects the correct core vocabulary word 3/10 trials. Staff is doing a lot of modeling."
 - Adaptive – Math: "Currently, [Student A] will select the correct color 0/10 trials. He gets distracted by the color yellow (his favorite)."
 - SLP Data: "Treatment data indicates that [Student A] initiates and/or responds to greetings from the SLP using his 'voice' in 1/5 trials. Behavior has remained consistent over baseline measures."
10. 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.

³ Seesaw is a digital platform for student engagement where teachers can upload educational material and review material uploaded by students.

11. On March 24, 2020, the Parent informed Student B's special education teacher that the family was out of town. She explained that Student B was happy on her iPad, [w]atching videos which is a blessing and then all the sudden she is not. The Choice Work schedule has been helpful and we've worked in some chores and other apps as well. [Student A] is a mess! He's so bored and restless and has not mastered the art of chilling like his sister. It's going to be a very long run with him.
12. On March 25, 2020, the District's "continuity of learning plan tracking log" (tracking log) for Student A shows the special education teacher checked in with Student A by sending a message through the Seesaw platform.
13. On March 26, 2020, Student A's general education teacher sent families a Zoom schedule for daily class check-ins for the following week.⁴ That same day, Student A's general education teacher emailed the Parent and asked if Student A could join the general education class for a Zoom session.
14. On March 27, 2020, the Parent responded via email and stated, "[Student A] just fell asleep so he will miss today's Zoo[m], Hope to catch it on Monday!"
15. On March 31, 2020, the director sent an update to all families of students with disabilities. She stated that the District's first priority was the safety, health, and welfare of its students. The director explained that it had been closely following the evolving federal and state guidance regarding the provision of special education services during the COVID-19 school closures, and that staff had been collaborating to identify creative ways to modify educational approaches to meet the needs of students during the school closures. The director informed parents that prior to the District launching its remote learning program on April 13, 2020, special education teachers would be developing continuity of learning plans (CLPs) for all students eligible for special education services.
16. Also, on March 31, 2020, the District developed a CLP for Student A. Student A's CLP included recommended strategies and interventions in the areas of adaptive/social emotional, leisure, academics, motor, and communication. The CLP documented the provision of the following strategies and interventions to the Parent and Student:
 - Adaptive/social emotional: life skills visual schedule (personalized learning program (PLP) learning grid, weekly)⁵

⁴ Examples of check in topics included, "share a favorite toy (be descriptive);" "share a favorite game to play;" "share a favorite exercise and demonstrate if possible;" and "read to us a short poem and make sure to practice it..."

⁵ Student A did not participate in the general education setting when receiving specially designed instruction (specially designed instruction was provided in a special education setting) and related services in communication, adaptive, and motor as outlined in the personalized learning program (PLP). PLP staff included the special education teacher, paraeducators, and related service providers. Under the PLP, specially designed instruction could be provided by any member of the PLP staff, but was overseen and

- Break schedule system (sent 4/14)
- Weekly Zoom with peers (started 4/23) and PLP virtual play date (starts 5/19) weekly
- Leisure: communication device comment suggestions
 - Discussed during weekly SLP/parent meeting
- Academics: core vocabulary book/activity of the week (PLP learning grid weekly)
 - Work binder activities (sent 5/4)⁶
 - Matching color activities (sent 4/14)⁷
- Motor: fine motor activities (PLP learning grid and Seesaw video posts weekly)
 - Gross motor activities: (PLP learning grid and PT Seesaw video posts weekly)
 - Adaptive bike and helmet sent home
- Communication: weekly communication activity targeting expressive, receptive and/or social language sent home each Monday via PLP learning grid. On Tuesdays will upload video to Seesaw for students and parents, providing instruction on how to implement

17. On April 1, 2020, Student A's tracking log shows the family received a phone call from the special education teacher to check in on the CLP and documented that the CLP had been finalized.

18. On April 2, 2020, the District developed a CLP for Student B. The CLP documented planned strategies and interventions for delivering instruction and related therapies, as well as Parent concerns:

- Communication: "SLP check in during PLP time, Parent meeting to discuss communication iPad? and Support with social scripts."
- Motor: "OT/PT check in during PLP time/Seesaw videos posted with therapist feedback. Can she have bike? Seating."
- Ceramics: "Check Schoology during scheduled time. Paraeducator to provide accommodations and support."
- PE: "Check Schoology during scheduled time. Paraeducator to provide accommodations and support."
- Special education services/specially designed instruction: "Check Schoology during scheduled time Paraeducator to provide accommodations and support 10-12, 1-3 pm. Flash cards - letters and words, keyboard, choiceworks updates? Needs more ideas about what will work easily, call with each specialist."

monitored by the certificated personnel. Student A otherwise participated in general education lunches, assemblies, and any other extracurricular activities as he chose.

⁶ On April 23, 2020, Student A's tracking log shows the Parent and Student A's au pair met with the special education teacher via Zoom and reviewed applied behavior analysis (ABA) work, talked about adding a new weekly visual schedule, and determined they would "discuss [the phrases] 'all done' and 'break' [the following] Monday with SLP."

⁷ During math, the IEP team decided to focus on one of Student A's relatively mastered goals (matching color activities), but through a different mode of communication while at home: his "voice" speech generating device (SGD). "[Student A] enjoys matching colors and is very proud of his ability to do so. PLP staff will teach [Student A] colors and teach him how to respond to questions with his 'voice' (SGD) instead of matching Velcro pictures."

Student B's CLP also included: check-ins with the OT/PT, videos of motor activities and therapist feedback, and an adaptive bike to address her motor needs; accommodations and support provided by a paraeducator for ceramics and PE; 1:1 Zoom video conferences, paraeducator accommodation and support, flashcards, schedules, and social group meetings to address Student's academic, adaptive, and social/emotional behavior needs.⁸ The CLP further indicated Student B needed an individualized schedule with Parent input and that she would not be able to access her learning without full Parent support.

19. From April 2 through June 18, 2020, Student B's tracking log showed the subjects Student B was working on, the staff with whom she worked, services provided (including accommodation/ modifications), and Student B's engagement and notes. Student B's tracking log also showed that Student B participated in Zoom meetings regularly, and consistently received services under the following categories: work experience, adaptive, social/emotional, motor, and academic and communication.⁹ Accommodations and modifications provided included visuals, wait time for response, opportunities for peer interaction, sight word cards, and scribe and modified assignments. The student response section of the log stated that Student B engaged in many sessions, but too much chatter in Zoom meetings often made it difficult for her.
20. On April 2, 2020, the PT exchanged emails with the Parent to discuss plans for Student A and Student B. She provided the Parent with initial brainstorming options for approaches the family could try, including weekly videos for each student, Zoom video conferences, and emails with pictures of exercises and activities. She stated she had openings between 12:30-1:30 that day, and that after 2:30, she could call, or they could work out a plan via email. The Parent stated her preference was weekly videos, followed by Zoom video conferences, or some combination of both. The Parent suggested the PT start making videos after spring break. The PT also informed the Parent that the District had bikes available for Student A and Student B to use at home. The Parent expressed her excitement about the bikes and stated she could pick them up when they were ready.
21. The District was on spring break from April 6 to 10, 2020.

⁸ Based on the tracking log, staff met with Student B through 1:1 Zoom meetings, but also sometimes contacted the Parent in a 1:1 format to discuss Student B's education.

⁹ For example: Student B's tracking log showed that on April 14, 2020, Student B participated in her 4th period general education class of "net sports" with her general education teacher and accessed her notetaking accommodation with the assistance of two paraeducators. On April 20, 2020, Student B participated in her 2nd period 45-minute Zoom class—"hygiene break out"—led by her special education teacher and PT. During the class, the Student worked on typing skills while receiving paraeducator support and visuals during the provision of instruction, as indicated in her accommodations. Under Student response/engagement, it was noted that Student B required "[p]rompts to remain on topic," and under notes, it was documented that, "[i]pad can be used next time."

22. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
23. Also, on April 6, 2020, Student B's special education teacher emailed the Parent with a draft daily schedule for Student B. The Parent responded via email that the schedule was helpful.
24. On April 10, 2020, the Parent emailed Student A's SLP and asked if they could change their weekly meeting time. The SLP agreed to the Parent's request.
25. On April 13, 2020, the weekly SLP/Parent meeting log for Students A and B included notes that reflected multiple communications between the Parent and SLP regarding the Students:
- "[Student A] increase in aggression toward [Student B];"
 - "Call it 'Hurting,' working on it with ABA;"
 - "'That's hurting' encourage him to 'tap' and label - using more signs (at this point) right away started mimicking signs;"
 - "Waiting program;"
 - "Cards with the wait sign;"
 - "Wait and moved on to something else;"
 - "Get to 15 minutes;"
 - "[Student B's] ZOOM lessons - group initially, then break out rooms;"
 - "Model it around typical class meeting;"
 - "1-2 students with paraeducators (student mentors) in a breakout session;" and,
 - "Person of high-interest, pay attention for a little bit. Student A still using TouchChat - as he was before, purely social Asks a lot of questions with his voice."
26. Also on April 13, 2020, Student A's special education teacher emailed the Parent a visual schedule to use for breaks.
27. From April 13 through June 16, 2020, Student A's tracking log shows 15 Zoom SLP/Parent/case manager meetings, including coaching on the visual schedule.
28. On April 14, 2020, the Parent emailed Student A and Student B's PT that the family was still out of state but would be returning soon and inquired about whether the bikes were still a possibility. The PT responded, via email, and stated she would let them know when the adaptive bikes would be available and explained that she was preparing videos for Student B.
29. On April 16, 2020, the PT emailed the Parent and informed her that she uploaded three videos for Student B to Seesaw. The videos included activities for working on sitting and standing, standing on one foot, and walking forward and backward. She also provided online resources for the Parent to access.
30. On April 17, 2020, one of Student B's paraeducators emailed the Parent a schedule of Zoom video conferences for her special and general education classes, along with information about Student B's assignments. Student B's schedule indicated the following:
- Monday 10:15-11:00 class – morning Zoom link 9-11 am located on Schoology, groups, online group, resources (1st period special education teacher, OT and social skills breakout room)

- Monday 12:15-1:00 class – afternoon Zoom link 12-2 located on Schoology, groups, online group, resources (2nd period special education teacher, PT and hygiene breakout room)
- Tuesday 10:15-11:00 class – morning Zoom link 9-11 am located on Schoology, groups, online group, resources (3rd period special education teacher, OT and social skills breakout room)
- Tuesdays at 12:00 net sports Zoom link available on Schoology net sports updates. At 12:15 join afternoon Zoom link 12-2 pm located in Schoology online group, resources (4th period net sports with paraeducator support)
- Wednesday 10:15-11:00 class – morning Zoom link 9-11 am located on Schoology, groups, online group, resources (class with special education teacher, OT and social skills breakout rooms)
- Wednesday at 12:15 join afternoon Zoom link 12-2 pm located in Schoology online group, resources (5th period, cooking); Wednesday 2pm “Islander Hour” check Schoology. Join code and/or link to Zoom meeting is located in “Islander Hour” updates.
- Thursday ceramics at 10:15 join morning Zoom link 9-11 am located in Schoology online group, resources (6th period with paraeducators and general education teacher)
- Thursday at 12:15 join afternoon Zoom link 12-2 pm located in Schoology online group, resources (7th period, special education teacher - job training/life skills)
- Friday 10:40 parent check in Zoom meeting¹⁰

31. On April 20, 2020, the physical therapist emailed the Parent information regarding bike safety for Student A and Student B.

32. Also, on April 20, 2020, per the SLP/Parent meeting log, the SLP and Parent had their weekly meeting. After the meeting, the SLP documented the following in the log:

- “Ask Parent if she wants to set-up another coaching session to talk about more learning/how it is going? Parent hasn’t started using the schedule, will discuss next week at this meeting;”
- “Ask Parent would [she] like [Student A] to attend live PLP Zoom? Parent states he will not be interested at all (tried [sic] once and friendship circles);”
- “Learning grid activities? Parent states they haven’t started anything yet, not a lot they can do with [Student A] right now;”
- “ABA Agency opening May 4th (regardless) at least 2 hours a day, try to push for more (through insurance or school district);”
- “ABA parent training right now - Around behaviors;”
- “Parent reports [Student A] is little less aggression [sic] but still too much.”

33. Also, on April 20, 2020, Student A’s special education teacher emailed the Parent with links to weekly Zoom video conferences for the remainder of the school year for parents and Student

¹⁰ Additional notes to Student B’s schedule listed things the Parent could find at home to add to Student B’s OT kit: “Toilet paper roll, Playdough, Marbles, Tweezers, Clothes pins, Binder clip, Cookie cutter, Scissors, Tape, Paper Clips, Plastic container [with] lid - make a small slit on lid, Pennies (10), Only if available, Birthday candles or something to represent candle, toothpicks, golf tees.” The notes also included instructions regarding walks in net sports, “Check Schoology on Mondays for assignments from [general education teacher]. Complete four, 30 min walks (or activities) per week. Post picture of activity and note how far you walked on SeeSaw.” The notes also included instructions for ceramics: “Thursdays in...Morning Zoom Link 9-11 am April 23 we will have a costume ‘party,’ visit with peers and [general education teacher]. Come in costume and have a piece of paper, markers and anything else you would like to use to make your mask. We will take pictures to share on SeeSaw.”

A's SLP and special education teacher. She also asked to connect with the family the following day.

34. On April 24, 2020, the District provided the Parent with adaptive bikes for Student A and Student B. The physical therapist also provided tips for making sure Student A's helmet remained on.
35. On April 27, 2020, the weekly SLP/Parent meeting log for Student A stated: "Little seizures, new kind → 1 min-2 min with no convulsive movement (like he is paralyzed, staring straight at something) doesn't take him longer to come out of it. Daily block of time set out to engage Student A completely with SLP and songs. Student A will not engage."
36. On May 1, 2020, one of Student B's paraeducators provided, via email, links for Zoom video conferences for Student B's general and special education classes and services, as well as related information.
37. On May 4, 2020, Student A's special education teacher emailed the Parent with a visual schedule for him.
38. Also, on May 4, 2020, the weekly SLP/Parent meeting log for Student A stated:
Student A is doing good, talking a lot, saying a lot, saying 'Mama' clearly, sound for smoothie, chatting back and forth, vocal play. He gets warmed up and tries new sounds – 'B' 'p' 'yayayaya,' 'Bubu' for brother, Back throat sounds. Signing *help *more *hurt (actually hurt, emotions OR hurt someone else) *my turn (hand on chest). Using touch chat, social page, commenting on things. Obsesses over certain buttons.
39. On May 11, 2020, the weekly SLP/Parent meeting for Student A was canceled.
40. On May 18, 2020, the Parent emailed the director, requesting that the District reconsidered providing ESY services virtually. In response, the director offered to speak with the Parents regarding their concerns. Based on their concerns, the District offered training sessions for the Parents.
41. Also, on May 18, 2020, the weekly SLP/Parent meeting log for Student A stated: "Discussed 5-10 minute Zoom 3x weekly, Parent states no meaningful learning would happen. Send a video of him playing. Progress monitoring/Good times to schedule 1:1? Parent reports last week went fine, Student A resorted to more aggression and throwing as the week went on. Wasn't too bad."
42. Also, on May 18, 2020, the Parent's feedback was noted in Student A's CLP:
[Parent] reported the following during a check-in virtually today: The Adaptive bike goes well sometimes and not so well other times. [Student A] did have a very successful time riding his bike independently while Dad was in the yard and that seemed very fun and engaging to him but he's not interested in going on long family bike rides. [Student A] is sleeping better (through the night, and past 6:00 am in the morning). He has jumped right back into ABA and that programming is going well. [Student A] is also showing signs that he is really ready to start the potty training process, he does not like being in a wet pull-

up. Parent reports that [Student A] has a lot of energy and requires so much work to take care of still. She is concerned about how strong he is getting and with his body growing she is worried that he will become more destructive and dangerous toward others. While having him at home full time, it is hard managing all his wants/needs/behaviors. Mom can't imagine any meaningful learning would go on via ZOOM for [Student A] and has concerns about ESY being virtual. She is struggling to have the appropriate skills and energy to do it all right now and is working extremely hard. [Sic].

43. On May 20, 2020, the PT emailed the Parent a balance program for Student B to complete daily, along with information about videos she posted for Student B and online resources.
44. On May 25, 2020, the District was closed and there was no school in observance of a holiday.
45. On May 27, 2020, the weekly SLP/Parent meeting log for Student A stated: "ESY longer weeks but shorter sessions ideal at home program. [Student A] does not sit at the table and work with ABA. Potty training today. Gets aggressive before he has to go to the bathroom. Relentless need for supervision. Scheduling: M-Th 10:15-11am 12:15-1:00pm. Set up a time to work with [Student A]."
46. On June 1, 2020, the weekly SLP/Parent meeting log for Student A stated: "What is mom's priority right now? Best preparing him for return to school. Set up a coaching meeting with paraeducator and au pair. Academic break plan."
47. On June 5, 2020, one of Student B's paraeducators emailed the Parent updated links for Zoom video conferences for Student B's general and special education classes and services.
48. On June 8, 2020, the weekly SLP/Parent meeting log for Student A stated: Canceled.
49. On June 10, 2020, the Parent emailed Student A's special education teacher and requested an IEP meeting to discuss Student A's services and formally adding ABA services to this IEP before the end of the school year.
50. On June 12, 2020, Student B's paraeducator emailed links for Zoom video conferences for Student B's general and special education classes and services for the last week of school, as well as related information.
51. On June 15, 2020, OSPI received the Parent's complaint and subsequently opened this investigation.
52. Also, on June 15, 2020, the weekly SLP/Parent meeting log for Student B stated: "Reviewed ESY and CLP. Meet with Au Pair sometime tomorrow?"
53. On June 15, 2020, the District also reported the progress Student A was making on his February 2020 IEP goals. The progress reporting noted the following:
 - Communication: "During this period of Learning Forward due to the COVID pandemic, [Student A] has attended two social ZOOMs with teachers and peers. During these virtual Lunch Bunches, [Student A] looked closely at the screen, saw his friends, waved and showed excitement

- (laughing, smiling). Per parent report, [Student A] is able to play independently for 1-2 minutes at a time."
- Communication: "During this period of Learning Forward due to the COVID pandemic, [Student A] has practiced this skill while working with his Au Pair. After explicit coaching from the Special Education Teacher and [paraeducator] to [Student A's] Parent and Au Pair, [Student A] was able to start practicing this skill at home. At one of our weekly 30 minute check-ins on 4/27/2020, Parent, SLP and SPED Teacher decided to have [Student A] use sign language to request a break instead of his 'voice.' [Student A's] functional communication was discussed weekly for 30 minutes during a check-in with the SLP and SPED Teacher. Currently, [Student A] is learning how to form the sign through, visuals, labeling, and modeling by adults. During a 30 minute observation by Special Education teacher and [paraeducator] on ZOOM on 6/11/2020, [Student A] was able to successfully request a break 1/5 trials with his 'voice' and tried signing break by signing 'more' and 'drink.'"
 - Adaptive Academics - Reading Comprehension: "During this period of Learning Forward due to the COVID pandemic, [Student A's] learning has focused on engaging in a familiar work-break schedule with his Au Pair at home. During a virtual coaching session by the SPED Teacher and [paraeducator] with [Student A's] Au Pair on 6/04/2020, the Au Pair reported that [Student A] practices this schedule 4 days/week. SPED Teacher provides visual schedules with updated academic work as needed and reviews targeted learning goal and expectations during 30 minute coaching sessions with Parent and Au Pair."
 - Occupational Therapy: "During this period of Learning Forward due to the COVID-19 pandemic, occupational therapy provided weekly activities and videos via SeeSaw for [Student A] and his family to access virtually at home throughout the school closure. All activities addressed the development of fine motor, visual motor, visual perception, hand/finger strengthening and sensory processing skills."
 - Adaptive – Writing: "During this period of Learning Forward due to the COVID pandemic, vocabulary instruction has focused on teaching [Student A] new signs. Parent, Speech Language Pathologist (SLP), and SPED Teacher meet for 30 minutes weekly to discuss [Student A's] language progress, how to teach him new signs, and how to model and label these signs at home. The SLP and Parent agreed that [Student A] signing 'want' would look like him holding both hands out face up, and that is how modeling 'want' at home would look like too. Currently, [Student A] is working on learning the words 'break' and 'want.' He is able to sign 'my turn' with Parent consistently, right now [Student A] is signing 'more' or 'drink' when prompted by his Au Pair to sign 'break.' The SPED Teacher and a [paraeducator] meet multiple times per week with the Au Pair to provide coaching on how to model, label, and prompt [Student A] to sign 'break.'"
 - Adaptive – Math: "During this period of Learning Forward due to the COVID pandemic, math instruction has focused on saying colors verbally, while matching them. Currently, [Student A] is able to say "g-g-g" for green. [Student A's] Au Pair reports, he is also able to say "rrr" for red, "b-b-b" for blue, and "y" sound for yellow. [Student A] practices this 4x/weekly while following his work-break schedule with his Au Pair."
 - SLP Data: "During this period of Learning Forward due to the COVID pandemic, the SLP has been supporting [Student A] by providing weekly communication activities via the learning grid as well as a weekly video demonstrating implementation of this activity at home. The SLP has also been meeting with Parent, during weekly zoom check-ins to facilitate use of his 'voice' at home. Parent attended six out of eight of these zoom sessions."

54. Also, on June 15, 2020, Student A's IEP team met to discuss the Parents' concerns. The Parents requested that the team add ABA services to Student A's IEP and that the District provide

trained behavior technicians and a board-certified behavior analyst (BCBA) to work with Student A. The Parents stated that Student A was not able to access remote learning and that he needed in-person 1:1 instruction. The District team members did not agree to add ABA and BCBA services to Student A's IEP because he was making expected progress on his IEP goals and did not require a change in services. However, the team agreed to: explicitly describe what working 1:1 with Student A looked like in his IEP; send a video of Student A's special education teacher working with him to the team; and, update Student A's CLP to include virtual consultation between Parents, his in-home ABA therapists, the District's BCBA, and his special education teacher during the ESY.

55. On June 17, 2020, Student A's special education teacher emailed the Parents with language the IEP team was proposing to add to Student A's IEP, to more clearly describe the instructional strategies that had been successful with him.

56. On June 19, 2020, the District reported the progress Student B was making on her December 2019 IEP goals. The progress reporting noted the following:

- Social/Emotional: "During this period of Learning Forward due to the COVID pandemic, SLP support has focused on ensuring that [Student B] participates in social routines (e.g., Two questions) during her class meetings. During virtual meetings, she benefits from models and multiple prompts to follow a 3-volley social script. Data collected prior to the school closure reflected that [Student B] was following her script in 0/5 trials in the classroom setting. Staff was adjusting instruction and her talk tablet to simplify the task when school closed."
- Social/Emotional - voice regulation: "During this period of Learning Forward due to the COVID pandemic, [Student B] has been participating in online classes. She has been mostly quiet during class except when she wishes to make a comment, usually to her caregiver. Her voice volume is mostly expected for the online class activities. Prior to school closure, [Student B] was using a requested voice volume in 2/5 trials."
- Adaptive: "Restroom independence: During this period of Learning Forward due to the COVID pandemic, [Student B] has been participating in online classes. At the time of school closure, [Student B] was independent in 3/4 trials on her last data day. Her parents report that they continue to work on independence in the bathroom at home."
- Adaptive: "Safe Transition: During this period of learning forward due to the COVID pandemic, the physical therapist has been helping [Student B] to work on safe sit to stand transitions in the home setting using the same chair that she uses at school. This chair was sent home for her use. A video was made for her demonstrating the safe technique for completing sit to stand transfers and the technique has been reviewed with her family and home aide over zoom conferences. Learning this safe sit to stand transfer will support her ability to move safely from 1 to 4 locations. Prior to the school closure, Student B transitioned independently with self-control to 4 locations on 1 data day."
- Math: "During this period of Learning Forward due to the COVID pandemic, [Student B] has been participating in online classes. She currently is able to match the number of bills up to \$5 held up by the teacher."
- Reading: "During this period of Learning Forward due to the COVID pandemic, [Student B] has been participating in online classes. She has read words online and has flashcards at home. In the last two sessions, [Student B] read 5/8 and 7/10 words."

- Writing – “Typing: During this period of Learning Forward due to the COVID pandemic, Student B has been participating in online classes. During three recent sessions, Student B typed 7/9, 6/9 and 11/12 letters per caregiver report which reflects new letters learned.”

57. Also, on June 19, 2020, the District issued a prior written notice (PWN), proposing to initiate an IEP with a clearer description of instructional strategies that will work for Student A. The Parent proposed adding ABA and BCBA services to Student A’s IEP, but the District rejected adding ABA and BCBA services since the team is in agreement that Student A was making expected progress on his current IEP goals and that did not require a change in services.¹¹

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

59. On June 26, 2020, Student B’s special education teacher emailed the Parent visuals to help prepare Student B for her ESY services. She also provided the Parent with a draft ESY schedule and the goals that they would be working on with Student B.

60. The District stated in its response to this complaint that when school resumes, IEP teams will meet to consider the impact of the school closures on Students A and B and to determine whether they have a need for additional services.

CONCLUSIONS

IEP Implementation – The Parent alleged the District failed to implement the individualized education programs (IEPs) of Student A and Student B during the school facility closures from March through June 2020. Specifically, the Parent alleged the District did not provide Students A and B with the special education and related services written in their IEPs, that the online learning and coaching provided were not accessible to either Student, and that accordingly, neither Student accessed the intended benefit of the special education services provided.

Implementation of Special Education Services for Students A & B

The Parent alleged Student A was not provided services outlined in Student A’s IEP, including specially designed instruction in adaptive, behavior/social, and occupational and physical therapy. Similarly, the Parent alleged Student B was not provided services outlined in Student B’s IEP,

¹¹ The Student’s IEP team considered additional factors when declining to add ABA or BCBA services to the Student’s IEP, including that the Parent felt the Student had made significant progress while working with ABA therapists at home during the school facility closures. The Parent expressed a desire for the behavior technicians overseen by a BCBA to work with the Student and to be able to implement similar strategies moving forward. The Parent also want more explicit instruction in the Student’s IEP regarding what methods school staff are using when working with Student A, and the Parent stated that if ABA services are “more spelled out” in Student A’s IEP, perhaps similar supports could be provided during the closure without having to add ABA support to the IEP. The team also considered the Parent’s concerns that Student A was unable to access learning during the closure due to Student A requiring 1:1 in-person instruction; and the Parent’s statements that the SLP and special education teacher had made “heroic efforts” to assist Student A and his family during the pandemic.

including specially designed instruction in social/emotional/behavior, adaptive, communication, and occupational, speech, and physical therapy.

Given 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 in spring 2020, districts had to have a plan for how students with disabilities were to receive a free appropriate public education (FAPE), including the provision of specially designed instruction and related services. Accordingly, all schools were required to have begun continuous learning for all students by or around March 30, 2020, which was to include 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 provided documentation that it provided the Parent a written plan of the individualized special education services provided to Student A and Student B by the end of March and early April 2020. Student A received his individualized continuity of learning plan (CLP) on March 31, 2020. Records provided by the District, specifically the tracking log, weekly speech language pathologist (SLP) log, and June 15, 2020 progress report demonstrated that from March 31 through June 2020, Student A was receiving specially designed instruction and related therapies in speech and language, social behavioral, adaptive, physical therapy, and communications. In accordance with his CLP, Student A participated in Zoom virtual class meetings and regularly submitted recordings of himself for review by the physical therapist (PT), who collaborated with the Parent and SLP to develop activities in furtherance of his IEP goals. Likewise, Student B received her individualized CLP on April 2, 2020. Student B's tracking log demonstrated the subjects Student B was working on, the staff with whom she worked, services provided, accommodations and modifications provided, and Student B's responses and notes from April 2 through June 18, 2020. Student B's tracking log also shows that Student B participated in Zoom meetings regularly, and consistently received services under the following categories: work experience, adaptive, social/emotional, motor, academic, and communication. Student B sometimes struggled to access class due to too much chatter in Zoom meetings, but still engaged in most Zoom sessions offered, despite occasional difficulties.

While the special education services provided during distance learning did not mirror exactly the services in Student A and Student B's IEPs, and may not have addressed each of the Student's IEP goals exactly as written, the District was not required to implement the IEP exactly as written due to exceptional circumstances presented by COVID-19. Instead, as previously stated, the District was required to maintain written documentation of the individualized special education services it did provide the Students beginning around March 30, 2020—which the District did. The Students' special education teacher and SLP designed activities for each Student based on their IEP goals and remained in frequent communication with the Parent to help her implement the activities remotely. The special education teacher and SLP also provided alternative activities or

helped the Parent try different methods if the Parent's feedback indicated one method was unsuccessful at engaging the Student or the activity was otherwise unable to be implemented successfully by the Parent at home. Accordingly, OSPI finds no violation regarding the special education services provided during the school facility closures.

Progress Reporting for Students A & B

The Parent alleged that because the services were not provided as written in the IEP, the Students were unable to access the intended benefit of the IEP and did not make progress. As part of its obligation to provide written documentation of the special education services provided to students with IEPs during the school facility closures, Districts also had to have a way to measure students' progress on their IEP goals.

Student A

On June 15, 2020, the District provided the Parents Student A's progress report, documenting that from March 31 through June 2020, Student A was receiving specially designed instruction and related therapies in speech and language, social behavioral, adaptive, physical therapy, and communications. The progress report provided to Student A's Parents on June 15, 2020 included data on progress made toward IEP goals from March to June 2020, as well as narrative information on how instruction had been provided during the school closure in each IEP goal area. While it is noted that numerical data was not reported related to the adaptive goals, it is noted that information from a current observation of the Student was included, and that the observation notes included information about the Student's level of performance based on the observation. While progress information for the Student's occupational therapy goal was not included (instead it included only information on the activities the Student was doing during the closure), the progress report overall was sufficient to serve its purpose of informing the Parent of the Student's progress to enable to Parent to participate in making decisions about the Student's education. OSPI finds no violation.

Also, on June 19, 2020, the Parent requested ABA therapies be added to the Student's IEP—alleging the Student required the service to make progress and the District should be found in violation for denying this request. The IEP team rejected the request—relying on the documented progress indicated in the June 15, 2020 progress report. The IEP team documented its decision in a properly constructed prior written notice. Although the Parent disagrees with the IEP team's decision and finds the Student's progress during the school facility closures to be inadequate, the District followed procedures to document the special education services provided. OSPI finds no violation.

Student B

Records provided by the District—specifically the learning tracking log and progress reporting—demonstrate that Student B was receiving at least some specially designed instruction in speech language therapy, social behavioral, adaptive, physical therapy, and communication. Student B participated in Zoom virtual class meetings, and reviewed videos from her physical therapist that

helped her work on getting in and out of a chair and worked 1:1 with paraeducators and staff, while also participating in the general education setting with paraeducator support. The progress reporting provided for Student B contained a mix of information. For some goals, the progress report only included pre-closure data, other goals contained some data on the Student's progress during the closures (e.g. reading, writing, and math), and other goals had information based on District observations or the Parent's report of what they were working on at home. While the progress reporting likely could have contained more data or information, because the progress report showed the Student was accessing instruction and special education services during the school closure and considering the totality of the circumstances which required progress reporting be completed in ways other than indicated in the IEP, OSPI finds the progress reporting to be sufficient. OSPI finds no violation.

If the District will be providing remote instruction in fall 2020, the District is encouraged to review and continue to improve upon its practices and procedures for, and to ensure all staff are trained in how to complete progress reporting during non-traditional instruction.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of August, 2020

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)