

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-80**

### **PROCEDURAL HISTORY**

On June 16, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Lake Washington School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding 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.

OSPI contacted the Parent on June 25, 2020, requesting additional information and/or documentation. On July 7, 2020, OSPI received the requested information. The requested information was provided to the District on July 9, 2020.

On July 8, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply. The Parent did not reply.

On July 28, 2020, the OSPI investigator interviewed the Parent by phone.

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

### **ISSUE**

1. Did the District implement the Student's individualized education program (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).

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

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

## FINDINGS OF FACT

1. During the 2019-2020 school year, the Student attended a District high school and was in the eleventh grade. The Student was eligible for special education services under the category of autism.
2. The District's 2019-2020 school year began on September 3, 2019.
3. The Student's November 21, 2019 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The Student's IEP included multiple annual goals in the areas of adaptive skills (making purchases, identifying a helper in the community, and completing a vocational task), social skills (self-advocacy and conversation skills), academics (consumer math, functional writing, reading sight words, and fluency), and speech/language therapy. The IEP indicated required progress reporting would be provided on a quarterly basis. Pursuant to the IEP, the Student would spend approximately 43% of school time in the general

education setting, and the IEP provided the Student with the following specially designed instruction, all to be provided in the special education setting:

- Functional academics in math, 125 minutes weekly, to be provided by special education staff;
- Functional academics in reading, 200 minutes weekly, to be provided special education staff;
- Functional academics in writing, 150 minutes weekly, to be provided by special education staff;
- Adaptive skills, 250 minutes weekly, to be provided by special education staff; and,
- Social skills, 275 minutes weekly, to be provided by special education staff.

The Student's November 2019 IEP contained speech language therapy as a related service for 30 minutes weekly, to be provided by a speech language pathologist (SLP).

The Student's November 2019 IEP included the following accommodations and modifications:

- Simplified instructions
- Oral directions
- P grades and S grades
- Tests read orally
- Verbal responses on tests
- Opportunity to computer generate
- Reinforcement system
- Additional processing time
- Regulated breaks/physical movement
- Visual schedule

4. On March 11, 2020, the District closed schools due to the COVID-19 outbreak. The District ceased providing all educational services for all District students.
5. Also, on March 11, 2020, the Student's special education teacher informed the Parent that the Student's District-issued laptop would be available for pickup on March 13, 2020. The special education teacher explained that District staff were working to compile resources for remote learning.
6. 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 (the closure was subsequently extended to all schools in the State). The District, per this proclamation, extended its closure through April 24, 2020.
7. On March 13, 2020, OSPI issued "Guidance for Long-term School Closures." OSPI stated that during mandatory closures, school districts were "prohibited from providing in-person educational, recreational, and other K-12 school programs using their school buildings and facilities." The guidance also noted districts could provide "direct services to individual students, or other activities deemed appropriate by the district administration" and subsequent OSPI special education guidance stated that health and safety must be prioritized, meaning "special education and related services must be provided from a distance in most instances." The guidance stated in-person services should be provided as a "last resort," in "rare cases where districts determine that the use of school facilities to provide educational services is essential and necessary under a student's IEP."
8. In a March 13, 2020 email to all staff, the District provided updates on school closures. In relevant part, the District indicated:

- We are planning for non-graded, educational opportunities for students during the closure at home.
  - The district is working on obtaining and distributing laptops and wifi hot spots for the students in our district who do not have these options at home.
  - Teachers are learning how to best use our existing online platforms like PowerSchool Learning and OneNote for these opportunities.
9. On March 17, 2020, the special education teacher informed the Parent that remote learning resources were available on the District's website, including supports specific to special education students in high school transition programs. The special education teacher further advised the Parent that the school transition team was compiling resources and would be adding them to the District's website. In addition, the special education teacher explained that there were adaptive courses that students could access through PowerSchool, including ideas for supplemental activities.
  10. On March 23, 2020, the Washington Governor issued a "Stay Home, Stay Healthy" Order, which required residents to stay home, unless they needed to pursue an essential activity. The same day, OSPI issued guidance, instructing districts that education must continue while school facilities are closed. OSPI's guidance outlined an expectation that "continuous learning" would begin for all students by Monday, March 30, 2020.
  11. The District issued a letter on March 27, 2020, communicating with the District community regarding support for students during the school closure and implementation of learning opportunities for students using the District's curriculum.
  12. On April 1, 2020, the special education teacher emailed the Parent to update and explain that she would be providing weekly lessons for each student. The teacher stated: "In order to provide the resources that would best help your family, I would love to connect with you both soon. Please let me know if you would prefer email, phone call or video chat communication to collaborate on [Student.]"
  13. The Parent responded to this email on the same day, April 1, 2020, declining any services, stating: "My husband and I understand you [District] have a directive set out from OSPI to implement some form of educational assistance to families in terms of learning. However given our situation no supplemental instruction is useful for our son." The Parent explained that any response to the District on behalf of the Student would wait until after OSPI issued a decision in a previously filed complaint. (The Parent had previously filed a complaint regarding the Student's educational program on February 19, 2020). The Parent stated she anticipated receiving the decision by April 20, 2020. "We will respond to [assistant director] by email once we have learned about the decision that OSPI has issued." The Parent further requested that future correspondence come only from the assistant director.
  14. The District was closed for spring break from April 6 through April 10, 2020. No services were provided to any students during spring break.

15. On April 6, 2020, OSPI issued "Continuous Learning 2020," a guidance document with recommended guidelines for "maximum student commitment each day," which included a recommendation that students in grades 9-12 be provided 30 minutes of instruction per class, per day.
16. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
17. A broadcast email was sent to the District community on April 6, 2020, explaining in salient part, the closure for the remainder of the school year and transition to curriculum-based remote learning.
18. On April 10, 2020, the assistant director of special education sent an email to the Parent regarding the development of a continuous learning plan (CLP) to address specially designed instruction during the school facility closures, and inquiring about whether the Parent was willing to participate in the development of the plan. The Parent did not respond to this email.
19. On April 17, 2020, the District sent an update to staff regarding implementation of CLPs and virtual instruction. Relevant to special education, the email indicated that remote instruction could be provided through the Microsoft Teams platform. Staff were required to complete a "Specially Designed Instruction" planning form with parents for each student.
20. In its response to this complaint, the District provided an undated copy of a "Specially Designed Instruction" (SDI) plan for the Student. However, the Parent did not participate in the development of the plan, having previously communicated on April 1, 2020 that no supplemental education services would be appropriate for the Student, and reiterating her unwillingness to communicate with the District until after receiving the complaint decision from a prior complaint. The SDI plan documented the Parent's refusal to participate in the process, and large sections of the plan were left blank without input from the Parent.
21. Also, on Friday, April 17, 2020, the District sent a broadcast email to all families in the District with updates on remote learning and other closure related issues.
22. The District's response indicated that the District began implementing curriculum-based remote learning on April 20, 2020.
23. On May 6, 2020, the District provided the Parent with prior written notice (PWN), proposing to discontinue the Student's continuous learning plan because the Parent declined to access the services. In the PWN, the District indicated it was ready to provide services for the Student when the Parent would like to access remote learning activities.
24. On May 11, 2020, the Parent responded to the PWN, explaining the technological limitations with internet in the home, her ongoing obligations as a paraeducator employed by the District, and limited availability, due to caregiver responsibilities, to support the Student's online learning. The Parent stated: "Again, we do NOT AGREE to or DO NOT GIVE CONSENT to any

'IEP amendment' or the contents of any PWN, that was developed without my input and outside of the IEP team which includes this PWN." (Emphasis in original.) Additionally, the Parent indicated that due to the stress of the COVID-19 school closure, they were not "in a state of being able to adequately discuss [Student]." The Parent stated her belief that the CLP the District offered did not work for the Student. The Parent declined to participate in any virtual IEP meetings, but would accept in person future meetings when schools are safe to return to buildings. The Parent expressed a preference for appropriate compensatory services.

25. The Parent filed this complaint on June 16, 2020.

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

27. During a telephonic interview as part of this investigation, the Parent indicated that she was unwilling to communicate with the District until OSPI issued its decision in a special education citizen complaint previously filed.<sup>1</sup>

In the current complaint, the Parent emphasized her belief that a CLP was not part of the Student's IEP. And, the Parent stated, "Due to many inequitable factors that the District failed to provide in addition to my son's disability, current reading level, and depression, anxiety, and stress from the closure and other factors, my child was unable to access the continuous learning plan that [District] offered, which is a plan and not an IEP."

In the interview conducted as part of this investigation, the Parent reiterated that the Student's November 2019 IEP was "fully intact," and that she expected the District to abide by it, even during the time of school closures.

## CONCLUSIONS

**Issue One: IEP Implementation** – The Parent alleged the District failed to implement the Student's individualized education program (IEP) from March 11 through June 19, 2020, during the school facility closures caused by the novel Coronavirus (COVID-19). Specifically, the Parent alleged the Student did not receive a free appropriate public education (FAPE) consistent with the services and supports in his IEP.

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

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<sup>1</sup> The Parent filed a previous complaint on February 19, 2020. The investigation was completed, and the final decision signed on April 17, 2020. Due to an OSPI error, the decision was not sent to the District or Parent until May 18, 2020. The previous decision addressed several issues, including IEP development and implementation, procedural safeguards, prior written notice, and evaluation procedures. OSPI found a violation related to progress reporting and ordered training related to progress reporting. The time period under investigation in the previous complaint ended prior to the COVID-19 school facility closures, and thus, the issues and time period under investigation in the previous complaint did not overlap with the instant complaint.

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, 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. Districts were encouraged to collaborate with families and prioritize communication during this time.

Here, the District communicated with the Parent on March 11, 17, 27, April 1, 10, 17, and May 6, 2020 regarding instruction during the school facility closures. In addition, as an employee of the District, the Parent received other school closure emails intended for members of school staff. In response to the April 1, 2020 correspondence from the District, the Parent made clear that she would not communicate further with the District until OSPI issued a decision in an earlier complaint. Further, the Parent declined all "supplemental instruction" delivered pursuant to a continuous learning plan (CLP) on behalf of the Student.

During the period of time relevant to this complaint, the special education teacher and assistant director of special education made themselves available to the Parent for planning specially designed instruction and developing a CLP. The Parent declined to engage with the District while waiting for a decision in a previously filed complaint. Further, the Parent declined to engage in any CLP services during the school closure in lieu of the full array of IEP services.

As previously stated, the District was not expected to implement the Student's IEP as written during the school facility closures; however, it was required to have a plan for providing students with special education services, including specially designed instruction and related services, and to have written documentation of the individualized special education services it was providing this Student by or around March 30, 2020. Because the Parent declined to attend any planning meetings, engage in discussions regarding services to be provided to the Student under a CLP, or permit the Student to participate in remote learning opportunities, the District was unable to plan or provide continuous learning opportunities consistent with OSPI guidance. Accordingly, OSPI finds no violation.

When implementing IEPs or continuous learning plans, the District is required to collect data on how the services the Student was receiving impacted the Student's progress on the Student's IEP goals. Because the Parent declined services during the COVID-19 school closures, the District was unable to implement any services or report on the Student's progress consistent with the IEP. As a result, OSPI finds no violation.

## **CORRECTIVE ACTION**

### **STUDENT SPECIFIC:**

None.



**DISTRICT SPECIFIC:**

None.

**RECOMMENDATION**

In light of the extended break in services the Student experienced, given the Parent's refusal of services, OSPI recommends that the District convene the Student's IEP team prior to the start of school, if needed, to ensure that an IEP is in place on the first day of school this fall. If the District is continuing to provide instruction via remote means in fall 2020, the IEP team should discuss the plan to ensure the Student has access to instruction and special education services. At the IEP meeting, the IEP team must consider the Student's current educational needs and the provision of FAPE, as well as what additional special education services the Student requires to lessen the impact of the school facility closures.

Dated this \_\_\_\_ day August, 2020

Glenna Gallo, M.S., M.B.A.  
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**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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