

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-87

PROCEDURAL HISTORY

On June 19, 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, with regard to the Student's education.

On June 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 June 25, 2020, OSPI requested additional information from the Parent. On June 30, 2020, OSPI received the information from the Parent and forwarded the information to the District on July 1, 2020.

On July 10, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on July 14, 2020. OSPI invited the Parent to reply.

On July 22, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on July 24, 2020.

On August 11, 2020, OSPI interviewed the District preschool director.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. It also considered the information received during the interviews.

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: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction 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).

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).

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education citizen complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting." *In re: Mabton School District*, 2018-SE-0036.

FINDINGS OF FACT

Background

1. OSPI received this complaint from the Parent on June 19, 2020. The Parent, in her complaint, alleged the District failed to “make an appropriate education accessible to my child during school closure.” The Parent alleged the District failed to provide services in the area of behavior, social skills, and communication, along with speech therapy, occupational therapy, and physical therapy according to the Student’s individualized education program (IEP).

The Parent later provided the following statement:

Neither of us (Student’s parents) are certified special education professionals, or certified speech therapists, [physical therapy] or [occupational therapy] providers. We also work and have three other young children, two of whom also had school work. We did our best through ad-hoc research to mimic what we guessed these professionals would have done to meet the required therapies and services listed on his IEP; but this was a very poor substitute. We feel strongly that the District at a minimum should have offered video services that allowed [Student] to be present and to interact with the therapists, and that we should have had in-depth training and consistent support in our volunteer roles as special education teachers.

2019-2020 School Year

2. At the start of the 2019-2020 school year, the Student attended school in another Washington school district, was in preschool, and was eligible for special education services under the category autism.
3. The Student’s October 31, 2019 IEP developed in the previous school district was in effect prior to the COVID-19 school facility closures. The Student’s October 2019 IEP included annual goals in the areas of cognitive, social/emotional behavior, adaptive/self-help behavior, fine motor, gross motor, and communication. Progress toward the annual goals was to be measured by a classroom data collection system. The Student’s IEP provided the Student with the following specially designed instruction and related services:
 - Fine motor: 20 minutes, 3 times weekly (provided by special education staff in a general education setting)
 - Gross motor: 20 minutes, 3 times weekly (provided by special education staff in a general education setting)
 - Gross motor: 20 minutes, 1 time weekly (provided by a physical therapist (PT) in a general education setting)
 - Communication: 20 minutes, 1 time weekly (provided by a speech/language pathologist (SLP) in a special education setting)
 - Communication: 20 minutes, 3 times weekly (provided by special education staff in a general education setting)
 - Fine motor: 20 minutes, 1 time weekly (provided by an occupational therapist (OT) in a special education setting)
 - Adaptive/Self-help: 20 minutes, 4 times weekly (provided by special education staff in a general education setting)

- Cognitive: 25 minutes, 4 times weekly (provided special education staff in a special education setting)
- Social/Emotional: 45 minutes, 4 times weekly (provided by special education staff in a general education setting)

The Student's October 2019 IEP additionally provided the Student with the following accommodations and modifications:

- Allow additional time to respond to verbal requests
- Behavior cue of focus/play attention/participation in the activity
- Edibles for reinforcement
- Hand over hand assistance
- Preferential seating
- Short, frequent practice sessions
- Visual samples

The Student's IEP indicated the Student would spend 77% of his time in the general education setting. The IEP stated the Student would divide his time between an "alternative setting" with one-to-one and two-to-one instruction and a preschool classroom.

The IEP also provided for "consult on students with autism" as a support for school personnel.

4. In February 2020, the Parent moved to the District.
5. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis.
6. Beginning on March 19, 2020 and ending on June 11, 2020, the OT contact log cited 19 contacts with the special education teacher and Parent, providing activities, resources, and feedback.
7. On March 20, 2020, the District held a virtual IEP meeting to amend the Student's IEP. The purpose of the IEP meeting was to amend the IEP from the previous school district, "to fit the service structure of preschool in the [District]." The prior written notice, dated March 20, 2020, stated the Student's IEP team amended the communication goal and dropped one OT goal. The District noted in its response that the IEP meeting was held, not knowing school would be closed for the remainder of the school 2019-2020 school year.
8. On March 21, 2020, the Federal Department of Education, Office of Special Education and Rehabilitative Services (OSERS) issued guidance for school districts regarding closures due to COVID-19.¹ The guidance, in part, stated:
The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. Consider practices such as distance instruction, teletherapy, and tele-intervention, meetings held on digital

¹ *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (U.S. Department of Education, March 13, 2020)

platforms, online options for data tracking, and documentation. In addition, there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments.

9. 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.
10. The District was on spring break from April 6 to April 10, 2020.
11. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
12. Also, on April 6, 2020, OSPI issued guidance on Continuous Learning 2020, which included recommended guidelines for maximum student commitment each day, as follows:
 - Pre-K: 30 minutes
 - Grades K-1: 45 minutes
 - Grades 2-3: 60 minutes
 - Grades 4-5: 90 minutes
 - Grades 6-8: 20 minutes per class (2.5 hours maximum)
 - Grades 9-12: 30 minutes per class (3 hours maximum)
13. On April 13, 2020, according to the District, the District conducted a meeting with the Student's IEP team and the Parent to develop a continuous learning plan (CLP). The CLP stated the special education teacher and the District autism specialist would meet with the Parent to provide coaching for 30 minutes weekly, including consultation from other service providers. The following goals would be addressed:
 - Cognitive: Functional play and engagement
 - Adaptive: Toileting and visual scheduling for family
 - Communication: Use of Picture Exchange Communication System (PECS) (Phase 1 & 2) and First/Then when requesting and following directions
 - Behavior: Use of First/Then visual to support in learning daily routines and schedules
 - Social/Emotional: Short structured work times, engagement, and playing with siblings
 - OT: Sensory processing support and fine motor skills
14. At the April 13, 2020 meeting, according to the Parent, the Parent made it clear to the District that the Parent wanted the Student to receive services directly from the "appropriate specialists" on the Student's IEP, "since we did not feel it appropriate that a general educator, or, as it turned out, we ourselves, were qualified to plan, deliver or measure the effectiveness of specific interventions required for a 3 year old with severe ASD (autism spectrum disorder), who has lost his ability to speak and motor plan..." The Parent stated she was informed by the District that her request was not a likely option, "pending staff and union discussions."

Regarding the option of 1:1 remote therapy sessions by the OT, PT, and SLP, the District stated, "1:1 remote therapy sessions were not provided to students/families by the district therapists due to the lack of clarity around licensing and ASHA (American Speech and Hearing

Association) requirements. Instead, services were provided indirectly through collaboration with special education teachers and parents.”

15. Also, on April 13th, OSPI’s updated Q&A said the following:

“A-5. Would the state be willing to authorize related service staff to work remotely without all of the American Speech-Language-Hearing Association (ASHA) requirements being in place?

OSPI does not have the authority to waive ASHA requirements. Both an ESA Credentialed SLP and a DOH credentialed SLP can deliver services via a telehealth model. There are no Professional Educators Standard Board (PESB) regulations which would prevent any of Washington state educator roles from practicing virtually.

There are existing resources within the state and many districts to meet the WA Telepractice Requirements for audiologists and speech-language pathologists at the current time, and OSPI recommends that districts strongly consider adapting services in this manner, to meet the needs of their students. Additionally, the U.S. Department of Health and Human Services has released notice of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency which permits flexibility to provide services using widely available communication apps such as FaceTime or Skype when used in good faith to provide telehealth treatment or diagnostic services. The accompanying FAQs on Telehealth and HIPAA during the COVID-19 nationwide public health emergency provides more guidance on this topic.”

16. On April 15, 2020, the special education teacher emailed the Parent, proposing the District autism consultant and her (special education teacher) meet weekly online with the Parent “and then we will consult with the specialists.” In its response to the complaint, the District clarified that the special education teacher delivered real-time coaching to the Parent on a weekly basis. According to the District, the Parent had access to some videos that were based on the Student’s individual needs, while others were about common developmental preschool skills.²

17. On April 16, 2020, according to the District, the District provided a laptop computer to the Parent to access online instructions and resources.

18. Regarding the District’s response to the complaint, the Parent stated, “...there was no evidence provided that the therapists interacted regularly and directly (or at all) with [special education teacher] and [autism specialist] after April 15, 2020.”

19. On April 17, 2020, the District associate superintendent emailed the District leadership team and stated the following information would be sent to the teachers in the District, but not to parents. The email, in part, stated:

Teachers may elect to use Teams for live interactions with their students once they have completed the required training. We encourage teachers using videoconferencing with

² The topics of the videos were as follows: PECS Phase 1 & 2; functional communication; Tell-Do-Show; reinforcement; challenging behaviors; positive behavior supports; joint attention (3 parts); prompting; eating (4 parts); potty training (6 parts); sleep (5 parts); and visual schedules.

Teams in this first week or two to consider it for class check-ins, review, discussions, etc. For now, we are asking that teachers **hold** on using videoconferencing to deliver primary instruction and/or to introduce new concepts. Video lessons and voice-over PowerPoints are an option initially to deliver primary instruction and/or introduce new concepts for teachers who choose to do so. These options provide flexibility for students and families. In addition, at the secondary level, live participation in any form should not be used in a way that negatively impacts students' grades.

20. On April 17, 2020, according to the District, the District provided the Parent with a visual schedule, visual supports to use with PECS, and "Sit & Spin" for sensory support, all for use at home and based on the Student's individualized needs.

21. From April 20, 2020 through the remainder of the school year, according to the District, the District implemented a "curriculum-based remote learning model." The Parent and the Student were provided the following:

- Weekly updated early learning activities aligned with District-adopted preschool curriculum.
- In-home strategies including visual supports, speech and language activities, fine and gross motor activities.
- Enrichment websites and strategies on assisting students with self-care at home.
- Access to instructional videos.
- Live classroom meetings to connect with classmates and practice social skills.
- Weekly meetings using Microsoft Teams to provide specially designed instruction (SDI) in cognitive, adaptive, communication, and behaviors.
- Topics included reviewing toileting progress, following a visual schedule, and progress with PECS.
- Provided weekly check-ins with Parent for "individualized visual supports," answering questions, and providing support.
- The SLP, OT, and PT consulted with the special education teacher to provide materials and resources to the Parent to support the Student's motor and language needs.

22. On April 23, 2020, the special education director emailed all special education staff about child find, instruction, a specially designed instruction planning form, technology, extended school year (ESY), and compensatory services. Regarding instruction, the email stated, in part:

In alignment with our agreement with [union], special education staff can engage virtually with students online with Microsoft Teams. We would recommend that you consider utilizing this option as an option for providing modified [specially designed instruction] (although it is not required). We recommend working with groups of students or if you are working 1:1, please ensure that the parent is present or use a paraeducator/therapist so you are not working alone with a child.

23. On June 12, 2020, the District issued a special education progress report on the Student's progress toward his October 2019 IEP goals. The June 2020 progress update described the support provided to the Parent and reported progress as follows:

- Cognitive: "While data was not collected, information was shared from the family and strategies given by the staff."
- Social/Emotional: "While data was not collected, information was shared from the family and strategies given by the staff."

- Adaptive: "While specific data was not collected, information shared by mom indicates that they were practicing using PECS during the bathroom routine some of the time."
- Communication: "While specific data was not collected, information shared by mom, including 3 videos, indicates that they were practicing using PECS at home to help [Student] request food items."
- Gross motor: "Due to the extended school closure from COVID-19, and recent initiation of an initial IEP during the school closure, there is not enough information to report on [Student's] progress on this goal at this time. Please see present levels of performance in initial IEP for the most up-to-date information on [Student's] gross motor skills."
- Fine motor: "Due to the emergency school closure from the COVID-19 Pandemic, it is difficult to adequately measure progress with these goals, as objectives require consistent, in-person data tracking over a period of trials."

24. According to the June 2020 progress update, the OT described the support that was provided to the Parent for the fine motor goals:

Throughout the school closure, weekly activities were provided via the OT/PT Supplemental Resource OneNote page, including fine and visual motor options as well resources for supporting self-regulation and social emotional skills at home. Family check-ins with educational staff were available as needed. OT will continue to support [Student's] fine and visual motor development as well as support his sensory processing differences in the classroom environment.

The PT provided the following description of the support provided to the Parent:

During the school closure, gross motor support was offered as an area of continuous learning, for which the PT created an individual PT program for [Student] which emphasized continuing to work on his ball skills as well as his overall strength, balance, and coordination. PT also consulted with [Student's] mother via video chat to further instruct her on how to assist [Student] with his emerging ball play skills.

The SLP provided the following description of the support provided to the Parent:

Before the school closure in March due to COVID-19, [Student] had attended school only a couple of weeks. During the closure, the Special Needs Preschool Teacher and a SNAPS (Students Needing Additional Programming Support) coordinator meet with mom weekly via video conference for Specially Designed Instruction (SDI). During this time, part of the discussion was about [Student] requesting items like food and toys from family members. PECS were shared with the family to facilitate this (3 basic PECS- snack, food, toys).

25. June 12, 2020 was the last day of the 2019-2020 school year for the District.

26. On June 19, 2020, OSPI received the Parent's complaint and opened this investigation.

27. On August 11, 2020, in a telephone interview with the District preschool director, the director stated that the Parent was the primary provider of instruction to the Student and was supported by the special education teacher and autism specialist, along with consultation with the SLP, OT, and PT. The director stated that parent training was not initially offered to the Parent, but there were many opportunities for parent training through weekly meeting with staff, consultation, and training videos the Parent had access to. When asked if the District considered providing related services through teletherapy or direct consultation with the

Parent while instructing the Student, the director stated those options were not considered for the Parent and Student because of the confusion over teletherapy and whether the related service providers could provide it. The director stated some SLPs chose to provide teletherapy. The director also expressed concern about the possibility of too many people being involved and causing confusion during a real-time consultation with the Parent during instruction.

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged the District failed to provide the services on the Student’s individualized education program (IEP) and refused to provide direct support from the speech/language pathologist (SLP), occupational therapist (OT), and physical therapist (PT) to the Parent and Student.

Under normal circumstances, a district must implement IEPs as written. However, during the school closures due to the COVID-19 pandemic, because of health and safety concerns, districts were not necessarily expected to implement IEPs as written. IEP services should have been implemented to the extent possible, including the provision of specially designed instruction, based on the student’s individualized needs. If a service was not implemented, a district should have documented why it could not be implemented and what other options were considered. Districts should have clearly communicated to parents what services were being offered and were expected to collaborate with parents about the implementation of the services, including parent capacity, to assist in service implementation and the potential need for parent training. Special education services must have begun by March 30, 2020, as districts began “continuous learning,” per expectations from OSPI. Districts were expected to continue to monitor student progress toward annual goals and report progress to parents. Like special education services, the district may not be able to measure progress in the method stated in the IEP because of remote services. However, districts should still have reported what progress they could, even if an alternative method was used to gather progress monitoring data.

Here, the Student’s October 2019 IEP provided for specially designed instruction in the areas of cognitive, social/emotional, adaptive behavior, communication, fine motor, and gross motor that was to be implemented by special education staff, along with an SLP, OT, and PT. In March 2020, the District’s facilities closed temporarily because of COVID-19, and subsequently closed for the remainder of the school year. Because of COVID-19, the District was required to implement the services on the Student’s October 2019 IEP to the extent possible. Since some services could not be implemented or implemented in the same way on a remote learning platform, the District was required to document through the IEP, a continuous learning plan (CLP), or some other form of documentation the services that were going to be implemented and inform the Parent of the plan.

In April 2020, the District developed a CLP for the Student. The District proposed the Parent provide the instruction and therapy activities to the Student with indirect support from the special education teacher, autism specialist, and other service providers. The Student would not receive any remote therapy or coaching from the OT, PT, or SLP. The Parent expressed concern at providing services to the Student because the Parent was not a special education teacher or therapist and was uncertain how to plan, deliver, and measure the effectiveness of the

interventions. The Parent requested more assistance, such as teletherapy or real-time consultation with the therapists while the Parent was instructing the Student. The District provided no explanation why such requests were not possible, other than the preschool director stating there was confusion in the District over whether teletherapy was possible due to licensing requirements. The District was not required to fulfill all the Parent's requests, but the District was required to provide a cogent and responsive explanation of its decision regarding the Parent's request for more assistance.

The District's proposal to have the Parent as primary provider of instruction was reasonable because the Student was three years old and remote instruction would not have been appropriate for the Student. Given that the Parent was primary provider, however, the District should have considered the additional support the Parent requested. The District provided some assistance and coaching to the Parent, but the Parent expressly stated that it was not enough to support her and the Student. Teletherapy may not have been necessarily a good option because of the Student's age, but real-time assistance from the OT, PT, and SLP was a reasonable request. As part of the corrective action, the District will need to address the Parent's request and the District will need to provide a sufficient justification based on data for any decision that it made.

As for the implementation of the CLP, the District was required to begin providing specially designed instruction to the Student by March 30, 2020, but documentation indicated that the curriculum-based remote learning did not begin until April 20, 2020, which took into account spring break from April 6 to April 10, 2020. After that time, the Parent and special education teacher met weekly with the autism specialist and the service providers participated in some of the meetings. The documentation showed that the District consistently provided the Parent with individualized activities and materials that the Parent implemented as much as possible, and there was regular communication between the Parent and special education teacher.

The District was also required to monitor progress toward the Student's goals that were being addressed during distance learning. The District provided a special education progress update in June 2020 that stated no data was taken to measure the Student's progress. Despite the services being provided by the Parent, the District should have monitored the Student's progress.

Based on the District failing to: 1) consider the Parent's request for more assistance; 2) failing to monitor the Student's progress; and, 3) failing to start services by March 30, 2020, a violation is found. The District will be required to hold an IEP meeting and will be required to measure and monitor the Student's progress, including new assessments to reestablish the Student's baseline on his goals. At the IEP meeting, the IEP team must consider, based on the results of the updated progress reporting, and new assessments to reestablish the Student's baseline on his goals. At the IEP meeting, the IEP team must consider, based on the results of the updated progress reporting, what additional special education services the Student requires to lessen the impact of the school facility closures, if any. The District must submit the progress report and the team determination of any additional services needed based on the progress report to OSPI for review and approval.

OSPI will not order District level corrective action related to this violation, as training related to progress reporting has already been ordered in another special education complaint filed against

the District. The training ordered in the other complaint will sufficiently address the violation noted here.

CORRECTIVE ACTIONS

By or before **September 18, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **September 11, 2020**, the Student's IEP team will meet to discuss the Parent's request for more assistance and the Student's progress and the impact of the school facility closures from March 30, 2020 to June 19, 2020. Prior to the meeting, the District will need to monitor and measure the Student's progress. This could include a review of existing data, Parent input regarding progress at home during the closures, and new assessments to reestablish the Student's baseline on his goals.

At the meeting, the Student's IEP team must discuss the Student's progress and the impact of the school facility closures on that progress. Because OSPI was unable to determine an amount of compensatory services to order due to lack of progress data available, the IEP team will also discuss what compensatory services are necessary to help lessen the impact of the closures. OSPI must approve any decision regarding compensatory services. Any compensatory services provided will be provided after school time.

By **September 18, 2020**, the District will provide OSPI with the following documentation from the IEP meeting: 1) Invitation or scheduling documentation; 2) Agenda or meeting notes; 3) Information used to determine the Student's progress on IEP goals during school facility closures; 4) Updated progress report; 5) IEP or amended IEP, if applicable; 6) Plan for additional special education services, if applicable; 7) prior written notice; and, 8) any other relevant documentation.

By September 25, 2020, OSPI will review the data used by the IEP team to determine the Student's need for additional services, as well as any plan proposing additional services (including amount, when services will be provided, and timeline for delivering services), and will either amend or approve.

DISTRICT SPECIFIC:

Create District Policy on Progress Reporting and Training on the Same

As required in SECC # 20-67, the District must develop a District-wide plan to ensure that progress towards annual goals is monitored for all students with disabilities during 2020-2021 school year, The District must also provide training to staff. Please refer to SECC #20-67 for specific requirements and timelines.

Dated this ____ day of August, 2020

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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