

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-103**

### **PROCEDURAL HISTORY**

On September 4, 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 Renton School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On September 8, 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 by September 28, 2020.

On September 25, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on September 29, 2020. OSPI invited the Parent to reply.

On October 10, 2020, the Parent requested an extension of time to provide a reply to the District's response. OSPI granted the extension and requested the Parent reply no later than October 16, 2020.

On October 19, 2020, OSPI received the Parent's reply and forwarded a copy to the District on October 20, 2020.

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

### **SCOPE OF INVESTIGATION**

The Parent filed a previous complaint, SECC 20-27, on February 18, 2020, which contained an allegation regarding progress reporting. The decision in SECC 20-27, issued on April 14, 2020, addressed the 2019-2020 school year first trimester progress report. Thus, this investigation will only address the second and third trimester progress reports, as a decision has already been issued related to the first trimester of the 2019-2020 school year.

### **ISSUES**

1. Did the District implement the Student's extended school year (ESY) individualized education program (IEP) between July 6 and August 11, 2020?
2. Did the District provide the Parent second and third trimester progress reporting during the 2019-2020 school year?

### **LEGAL STANDARDS**

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the

documentation received from a complainant and district to determine whether there was sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

**Nonpublic Agency – Responsibility of the School District:** Public schools are required to provide a free appropriate public education (FAPE) to eligible special education students, aged 3–21. If a student’s special education and related services cannot be provided within a given district, the district may contract with an approved nonpublic agency (NPA) to provide a FAPE in accordance with the Individuals with Disabilities Education Act (IDEA). Each school district must ensure that a student eligible for special education services placed in or referred to an NPA is provided special education and related services in conformance with an individualized education program (IEP) that meets the requirements of this chapter and at no cost to the parents. 34 CFR §300.146(a); WAC 392-172A-04085(2). An approved NPA must notify the OSPI Special Education Office and any school district it contracts with of any major changes to the program that occur during the approval period, any program changes that may affect the NPA’s ability to contract, and any complaints against the NPA regarding services to eligible students. Any NPA that is unable to continue to provide services in accordance with state special education regulations will be removed from the state approved list of NPAs. *NonPublic Agency Application*, Office of Superintendent of Public Instruction, July 2014.

**IEP Implementation:** Each district must 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).

**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).

**IEP Revision:** A student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education

curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

## **FINDINGS OF FACT**

### **Background**

1. OSPI received this complaint from the Parent on September 4, 2020. The Parent alleged the Student did not receive extended school year (ESY) services in math from July 6 to August 11, 2020, and that the Parent did not receive special education progress reports from September 2019 to June 2020.

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

2. During the 2019-2020 school year, the Student was a seventeen-year-old eleventh grader who lived in the District. The Student was eligible to receive special education services under the category of autism.
3. On August 28, 2019, the 2019-2020 school year began in the District.

### **First Trimester**

4. On September 27, 2019, the District held an individualized education program (IEP) meeting for the Student. The Student's IEP included annual goals in the areas of reading, writing, math, and social/emotional. The IEP goals were as follows:

#### Math

- By 06/03/2020, when given a problem at his instructional grade level involving more than one step [Student] will correctly solve the problem improving mathematical calculation and problem-solving strategies from 0 out of 10 opportunities to 5 out of 10 opportunities over more than one collection date as measured by formal and informal classroom-based assessment(s).
- By 06/03/2020, when given a problem containing rational numbers (fractions or decimals) [Student] will correctly perform the appropriate operation improving multiplication, division, addition, and subtraction skills from 2 out of 10 opportunities to 8 out of 10 opportunities as measured by formal and informal classroom assessment(s) on more than one data collection date.

#### Written Language

- By 06/03/2020, when given a writing prompt [Student] will write or type an average of 5 on-topic sentences using correct subject/verb agreement improving writing skills and grammar from 2 out of 5 opportunities (sentences) to 4 out of 5 opportunities (sentences) on more than one collection date as measured by formal and informal classroom assessment(s).

#### Reading

- By 06/03/2020, when given a reading text at his instructional level (5th grade) [Student] will correctly answer open-ended, literal comprehension questions (presented verbally or in written form) improving reading comprehension skills from 5 out of 10 opportunities to 9 out of 10

opportunities on more than one collection date as measured by formal and informal classroom assessment(s).

Social/Emotional

- By 06/03/2020, when given frustrating situations (e.g., noisy classroom(s), distracting peers, difficulty with task(s)) [Student] will communicate his needs/wants in an appropriate way (e.g., 'I need to take a break', or, 'I need help with \_\_\_\_\_, could you help me?') improving ability to self-advocate and communicate appropriately in more than one context from 30% of the time to 70% of the time on more than one data collection date as measured by formal and informal classroom observation(s).

The IEP stated progress reports would be reported to the Parent each District trimester.<sup>1</sup> The trimesters ended on the following dates:

- First trimester: November 27, 2019
- Second trimester: March 13, 2020
- Third trimester: June 17, 2020

The IEP provided the following specially designed instruction in a special education setting:

- Reading: 90 minutes, 4 times per week (provided by a special education teacher)
- Written Language: 90 minutes, 4 times per week (provided by a special education teacher)
- Math: 90 minutes, 4 times per week (provided by a special education teacher)
- Social/Emotional: 120 minutes, 4 times per week (provided by a special education teacher)

The Student's IEP provided for 15 accommodations, including speech-to-text software, text-to-speech software, and spelling and grammar devices on an "as appropriate and needed" basis. The IEP stated the Student's placement was in a public/private separate day school.

5. The prior written notice, dated September 27, 2019, stated the IEP team agreed to pursue placing the Student in separate day school.
6. On September 30, 2019, the Student began attending a nonpublic agency (NPA).
7. The NPA was an Office of Superintendent of Public Instruction (OSPI) approved NPA that a school district may contract with to provide a free appropriate public education (FAPE) to a student with a disability.
8. On November 26, 2019, the District convened the Student's IEP team. The team discussed many issues, but did not discuss ESY or progress reports.
9. On February 4, 2020, the Parent filed SECC 20-27 with OSPI. The complaint included an allegation that the District did not provide the Parent with progress reports.
10. The NPA's "Quarter 2 Progress Report," dated February 14, 2020, included a description of the topics covered and present level of performance for each service area. According to the progress report, the Student made the following progress toward his annual goals:

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<sup>1</sup> The NPA operated on a quarter schedule and had quarterly grading periods, whereas the District operated on a trimester schedule.

- English language arts: Present levels and baselines were unable to be taken due to lack of attendance.
- Math: Present levels and baselines were unable to be taken due to lack of attendance.
- Social/Emotional: Present levels and baselines were unable to be taken due to lack of attendance.

The report also stated that once remote instruction began, no data could be collected, and no work could be done on academic goals. This would indicate the progress report was written after schools were closed on March 13, 2020.<sup>2</sup>

### **Second Trimester**

11. On November 11, 2019, the District's second trimester began.
12. On March 2, 2020, the District held a meeting with the Parent, Student, principal of the NPA, the Student's teacher, and NPA's board certified behavior analyst (BCBA). The meeting discussed the Student's difficult relationship with another student and determined that BCBA services were not needed at the time.
13. 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 extended State-wide on March 13, 2020).
14. On March 13, 2020, the District's second trimester ended.
15. Also, on March 13, 2020, the District's director of compliance emailed the NPA principal, stating:
 

The District's contract with [NPA] states that '[NPA] shall...deliver periodic progress reports as outlined in the IEP goals.' See attached, page 1. Can you provide us with the following information:

  - Has [NPA] sent any progress reports to the [Parent]?
    - If so, please provide those progress notes and the date they were sent.
    - If not, please provide us any explanation of way the family *were not* sent reports.
16. On the same day, the principal responded and attached some progress information about the Student that pertained to the first trimester. The information listed each goal, along with anecdotal statements about his academic performance (for example, "He did a great job adding, subtracting, and basic decimals") and behavior (for example, "Will discuss how ripping up schedules and assignments could come across as disrespectful.") Other information did not relate to the goals or provide any basis to determine what progress the Student had made toward the goal. There was no documentation the information was sent to the Parent.

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<sup>2</sup> The report also incorrectly stated the Student's District was a different district.

### Third Trimester

17. On March 17, 2020, the District's third trimester began. The District and NPA were closed at this time due to the COVID-19 pandemic.
18. On March 17, 2020, the principal of the NPA sent a copy of the first quarter (November 2019) progress report to the District's director of compliance. The principal stated the second quarter progress report would be sent when teachers returned to work on April 27, 2020.
19. 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. In addition, school districts were to continue progress monitoring annual goals and report progress according to each student's IEP.
20. On March 27, 2020, the District developed a continuous learning plan for the Student. The plan provided for the Student to continue to receive the specially designed instruction according to his September 2019 IEP. The instruction would be provided by "Microsoft Team online distance learning." The plan stated, in part:

Individualized Education Program (IEP) teams will plan when school resumes, to address student-specific needs resulting from the closure. This might include discussions of compensatory services and extended school year (ESY) services, made on a case-by-case basis. Any need for compensatory services related to school closure or inability to implement a student's IEP will be addressed after school resumes. When educational services are provided during school closure, teams will collect progress data in order inform IEP teams, including parents, and assist in compensatory service decisions when school resumes in-person.
21. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
22. The NPA's May 1, 2020 "Quarter 3 Report Card" provided the following information, in relevant part, about the Student's academic and behavior present levels:
  - English language arts: Topic Covered: [Student] did not participate with his peers or in class.
  - Writing: No data available due to participation and no attendance during COVID.
  - Social studies: Topics covered: No data available due to no participation and no attendance during COVID. Present Level of Performance: [Student] will read and learn about current events that interest him including video games and war history. No other data is available due to no participation and no attendance during COVID.
  - Science: Topics Covered: No data available due to participation and no attendance during COVID. Present Level of Performance: No data available due to participation and no attendance during COVID.
  - Math: Topics Covered: No participation and work refusal. Present Level of Performance: No data available due to participation and no attendance during COVID.
  - Physical Education: No data available due to participation and no attendance during COVID.
  - Community Service: No data available due to participation and no attendance during COVID.

- Social/Emotional: Present Level of Performance: No data available due to participation and no attendance during COVID.

There was no documentation the NPA sent the report card to the Parent.

23. On June 5, 2020, the District director emailed the NPA with information about completing special education progress reports. This information was based on the corrective action that was required by the decision in SECC 20-27.
24. On June 12, 2020, the third trimester grading period ended in the District.
25. According to the NPA's "Quarter 4 Progress Report," dated from April 27, 2020 to June 12, 2020, the teacher stated, in part, that the Student did not attend virtual classroom sessions but was provided with academic content for him to work on at any time. The report addressed the progress toward the annual goals as follows:
  - English language arts: Did not reach mastery due to work refusal.
  - Math: Did not reach mastery due to work refusal.
  - Social/Emotional: Did not reach mastery due to work refusal.
26. On June 17, 2020, the third trimester in the District ended and on June 18, 2020, the 2019-2020 school year ended.
27. On June 19, 2020, the District held the Student's annual IEP meeting that included the Parent, the Student, and the NPA. The meeting notes stated the Student had not logged on while at home and "it had been a long time since he has done any lately." The team discussed different platform options with input from the Student to provide the Student with compensatory services.<sup>3</sup> The team decided on Skype, which the Student agreed to use. The plan was to begin with instruction for 90 minutes, two days a week and gradually increase the number of days of ESY services. The District's proposed "Extended School Year Services" for the Student stated:
 

...Team agreed on a truncated start, meeting Tuesday and Thursday for 1.5 hours for the first two weeks and additional support with an outside tutor was agreed upon. [Student] will meet his tutor via Skype and participate in Teams during Tuesday and Thursday distance learning sessions.

The meeting's prior written notice, dated June 19, 2020, stated the IEP team recommended ESY services because "[Student's] data shows that the remote platform and work refusal resulted in limited progress during the 2019-20 school year."
28. On June 26, 2020, the IEP team again met to finalize the Student's IEP annual goals and the ESY IEP. The Student's IEP continued to address the areas of math, reading, written language, and social/emotional. The annual goals were:
  - Math: By 06/28/2021, when given a fourth grade level math numbers or algebra problem with visual and physical supports [Student] will orally or in writing answer problems correctly

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<sup>3</sup> Based on the documentation in this complaint, it appeared the District and NPA were providing compensatory services in the form of ESY services, since no other compensatory services were discussed separately.

improving his mathematics skills from 0/10 opportunities to 5/10 opportunities, over 4 data days monthly, as measured by informal and formal assessments.

- Reading: By 06/28/2021, when given a 5<sup>th</sup> grade reading passage [Student] will correctly answer open ended literal comprehension questions presented orally or in written form improving reading comprehension skills from 5/10 opportunities to 7/10 opportunities as measured by special education data.
- Writing: By 06/28/2021, when given a writing prompt [Student] will type one paragraph with an opening sentence, three supporting detail sentences, and a concluding sentence improving his writing sentences from 4/16 points to 12/16 on a 16-point rubric as measured by analysis of student work samples.
- Social/Emotional: By 06/28/2021, [Student] will communicate his needs/wants in an appropriate way (e.g., 'I need to take a break', or, 'I need help with , could you help me?') improving ability to self-advocate and communicate appropriately in more than one context from 30% of the time to 70% of the time on more than one data collection date as measured by formal and informal classroom observation(s).
- Social/Emotional: By 06/28/2021, when given real or contrived social situations and comprehensive materials and supports [Student] will use appropriate language to describe actions, make comments, and gain attention across learning environments (e.g., not using vulgarity, swearing, not screaming) improving his social-emotional skills from 2/10 daily opportunities to 5/10 daily opportunities measured as measured by more than one data collection date as measured by formal and informal classroom (word missing).

Under each present level, the IEP included the following progress statement: "Goal: Did not master previous goal." Each present level also provided a "new goal baseline." For some goals, the new baseline indicated the Student made no progress toward the previous goals. Other new goals were not aligned to the former goals or similar to the former goals; therefore, the new goal did not indicate the Student's progress on the former goal.

The Student's annual IEP also provided for a 1:1 behavior specialist 90 minutes, two times a week.

The ESY plan for summer 2020 provided for similar goals in math, reading, written language, and social/emotional to the June 2020 IEP annual goals. The Student's ESY IEP provided for the following specially designed instruction:

- Reading: 22 minutes, 2 times weekly (provided by a special education teacher in a special education setting)
- Math: 22 minutes, 2 times weekly (provided by a special education teacher in a special education setting)
- Written language: 22 minutes, 2 times weekly (provided by a special education teacher in a special education setting)
- Social/Emotional: 24 minutes, 2 times weekly (provided by a special education teacher in a special education setting)

### **Summer 2020: ESY**

29. From July 6 to August 15, 2020, the NPA documented ESY instruction each day it was provided to the Student. The team had agreed to begin ESY instruction two days a week for a period of



two weeks, and then increase the amount of time as the Student acclimated to the instruction. Beginning July 28, 2020, the NPA began providing ESY services three days a week. The form stated the Student received a total of 90 minutes of instruction at each session and described the instructional activities. The NPA provided instruction on the following dates and provided information on what goals were addressed in the session:

- July 7: Communicating his needs and writing sentences
- July 9: Communicating his needs and writing sentences
- July 14: Communicating his needs and writing sentences
- July 16: Communicating his needs and writing sentences
- July 21: Communicating his needs and writing sentences
- July 23: Communicating his needs and writing sentences
- July 24: Communicating his needs and writing sentences
- July 28: Communicating his needs and writing sentences
- July 30: Communicating his needs and writing sentences
- July 31: Communicating his needs and writing sentences
- August 4: Communicating his needs and writing sentences<sup>4</sup>
- August 6: Communicating his needs and writing sentences
- August 7: Communicating his needs and writing sentences
- August 12: Communicating his needs, writing sentences, and math
- August 13: Communicating his needs, writing sentences, and math
- August 14: Communicating his needs, writing sentences, and math

30. On July 16, 2020, the NPA sent a form email to all parents who were receiving ESY from the NPA. The email stated ESY would be conducted from July 6 to August 15, 2020. The session times would “resemble the current programming.” The email stated the NPA would offer the program “eDistance learning via Microsoft Teams.” There would be a 6:1 student to teacher ratio, and students would receive online support from their behavior technicians. Occupational therapy and speech/language therapy would also be provided.

31. On July 29, 2020, the District’s secondary director of special education (director) emailed the principal of the NPA, stating: “[The Student] is contracted for full time attendance and therefore his days and times can be increased at the rate determined by the family and school. The Tuesday/Thursday schedule was only established to set minimal attendance – the goal is for full time daily online attendance.”

32. The District’s “Monthly Student Progress Update,” dated July 2020, stated the Student attended 20 days of school during the month and missed no days (contrary to the ESY attendance form, which noted the Student attended 10 days of ESY). The update provided the following weekly information:

- Week of July 6, 2020: The Student attended July 7 and July 9, 2020.
- Week of July 13, 2020: “Student had log-in issues and did not attend online class, but did contact teachers and coaches who responded.” On July 16, 2020, Student attended and participated fully.
- Week of July 20, 2020: Student attended on July 21, July 23, and July 24, 2020.

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<sup>4</sup> The August 4, 2020 entry on the form stated: “Student agreed to start math sessions with teacher.”

- Week of July 27, 2020: Student attended July 28 and July 30, 2020. "Student was offered to attend on Wednesday or Friday – However, student stated that he would talk to mom about setting a regular three-day schedule (on this particular Friday mom had other plans)."

The update stated that the Student had 100% work completion in the areas of social skills, science, social studies, and writing. And the Student's behavior during ESY was "terrific."

33. According to the NPA's "ESY Progress Report," dated August 13, 2020, the classroom teacher's observation stated:<sup>5</sup>

[Student] is an amazing addition to the high school cohort. [Student] is engaged in the learning material during class and hits learning targets regularly without scaffolding. [Student] has attended all scheduled classes for the summer session and requested time to get to know his coach and teacher. [Student] is driven to learn and does so independently using sources on the internet. [Student] has expressed interest in space science and rocketry. [Student] began the summer session attending 2 days each week, but due to his perfect attendance, he was invited to increase his schedule to 3 days each week.

The report provided the topics covered and the progress in each area:

- Reading: "For the ESY session the class read the original script to Star Wars. Students, teacher and coaches all took parts to read each day. [Student] wrote to let staff know that he enjoys star wars and was pleased with the material. [Student] chose not to read, but he was an active listener and answered all prompts. This reading was combined with comprehension lessons that related Star Wars to Joseph Campbell's 'The hero's journey.' These two sources were used to show that stories about heroes all around the world share similar memes."
- Writing: "On a daily basis, [Student] writes answers to comprehension and open-ended questions at the end of every science and social studies lesson. He also participates in zones of regulation and writes his responses in the class chat. His writing is clear and his answers are frequently precise. Due to [Student's] limited schedule, no major writing assignment was completed during ESY."
- Math: "Present Level of Performance: [Student] identified his last diagnosed math level to be at 4th or 5th grade. Teacher observed [Student's] math skills during the diagnostic. [Student] was able to apply previously learned materials to verbally work out how to calculate new equations. [Student] will complete this diagnostic so that his math program will be ready for him to engage in come September."
- Science: The report referred to a different student.
- Social/Emotional: "The learning team's goal with [Student] for the summer was to get him used to attending school regularly and providing material interesting enough to keep [Student] engaged. The learning team and [Student] met this goal. [Student] and his mom requested a personal meeting with the teacher to learn about each other and for [Student] to express his interests. [Student] reported that he really enjoys learning history, space science and rocketry. [Student] was also open to and participated in face to face (online) with him speaking to both. This is progress because of [Student's] aversion to turning his camera on and using his voice rather than typing in the class chat. [Student's] mom expressed that it was important to her that [Student] eventually feel comfortable with turning on his camera and using his voice during class time. [Student] did not meet this goal, but as stated before, he did make this progress in regard to his teacher and coach."

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<sup>5</sup> It should be noted that the goals referred to in the progress were similar to, but not the same as the ESY goals in the Student's IEP.

34. According to the Parent's reply to the District's response to the complaint, first, the Student's goals on the ESY progress report were not the same goals on the ESY IEP, although they were somewhat similar. Second, the Student was supposed to receive 22 minutes of math during each session, but the documentation only showed that the Student received math instruction on three sessions. Third, the Parent alleged that the Student was often dismissed 30 minutes early from his ESY instruction that were supposed to be 90 minutes long.
35. The August 13, 2020 ESY progress report in math explained why the Student did not receive math services at the beginning of the program and a description of the instructional activities:  
Due to [Student's] schedule limitations, mathematics was not part of his regular schedule. [Student's] participation schedule was for two 1 1/2 hour sessions each week. Online class sessions cover zones of regulation, science lessons, social studies lessons, and English/language arts. While [Student] participated in all of his scheduled classes, mathematics was only covered in a latter opportunity when [Student], teacher and coach all supported him. [Student] has completed much of the preliminary diagnostic test in the online mathematics program IXL. This is the program he will be accessing for regular mathematics when the school year begins in September.
36. On August 20, 2020, the NPA emailed the Parent a form letter regarding ESY and attached the Student's August 2020 ESY progress report.
37. In the Parent's reply to the District's response, the Parent stated:  
I believe the Quarter 2 & 3 Progress Reports were created after the District received the decision from OSPI re: SECC 20-27 in an attempt to correct their mistakes. The District provided Progress Reporting guidelines to the NPA by email on June 5, 2020. Quarter 4 Progress Report was emailed to the District from the NPA on 6/19/2020 but never forwarded to this Parent by the District.

## CONCLUSIONS

**Issue One: Progress Reports** – The Parent alleged the District failed to provide the Parent with the Student's special education progress reports during the 2019-2020 school year. Because the Parent's previous complaint addressed the first trimester progress report, OSPI investigated whether the District provided the second and third trimester progress reports.

A district must ensure the individualized education programs (IEPs) 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. While a school district has the ultimate responsibility for providing a free appropriate public education (FAPE) to a student and thus implementing the IEP and providing progress reports to the parent, a nonpublic agency (NPA) has a contractual relationship with the district and an obligation through its agreement with OSPI to ensure that special education services are provided in accordance with state special education regulations. Failure to do so could result in the NPA being removed from the state approved NPA list.

Here, the Student's September 2019 IEP stated that progress toward the annual goals would be measured by formal and informal assessments and observations and reported to the Parent according to the District's trimester grading schedule. In September 2019, the District contracted with the NPA to implement the Student's IEP, including providing the progress reports to the Parent.

### **Timely Progress Reports to the Parent**

To begin, there was confusion with the District and NPA having different grading calendars. The District was on trimester grading schedule and the NPA was on a quarterly grading schedule. On March 13, 2020, the District's second trimester ended. The documentation showed communication between the District and NPA that the progress report should be sent to the Parent and it was the responsibility of the NPA to provide it to the Parent. However, there was no evidence that either the District or the NPA provided the Parent with a written progress report, even though the NPA created a second quarter progress report, dated February 14, 2020.

The District's third trimester ended on June 17, 2020. According to the documentation, the NPA created a May 2020 "Quarter 3 Report Card" and an April to June 2020 "Quarter 4 Progress Report." Both reports addressed the Student's participation in his English language arts, writing, and science classes, among others, but there was no documentation that the special education reports on the Student's progress toward his annual goals were provided to the Parent.

A violation is found as the NPA and District failed to provide the Parent with progress reports.

### **Substance of Progress Reports**

In addition to the NPA failing to provide timely special education progress reports to the Parent, the content of the progress reports that were generated by the NPA failed to provide sufficient data to determine the Student's progress toward his goals. The purpose of progress reports is to inform the Parent, the Student, the District, and the NPA whether the program designed to meet the Student's individual needs was working. And, if the Student was not making sufficient progress to achieve his goals, the IEP team must address the lack of progress.

Each of the Student's measurable goals provided a description of how progress would be measured toward the goal. The June 2019 IEP goal for math, for example, stated progress would be measured by formal and informal classroom assessments using more than one data point. There was no documentation that these assessments were done, or if assessments were done, that the data from them was used in the progress reports. The progress reporting generally only noted that progress could not be measured due to a lack of attendance or work refusal. The District and NPA did determine the Student would receive compensatory services in the form of extended school year (ESY) services due to the Student's lack of progress during the spring of 2020; however, a violation is found as the progress reports that were created insufficiently documented the Student's progress.

## **Student's ESY Progress**

The Student's ESY services included math, reading, writing, and social/emotional services. The NPA provided an ESY progress report that stated the Student regularly attended the sessions and engaged in the instructional activities, which was a marked improvement over spring 2020. However, the progress report referred to goals that were similar to the ESY goals, but were not the same goals listed in the Student's ESY IEP. More significantly, while the report provided some information about the Student's instruction and progress in other areas, the report lacked sufficient data to determine whether the Student made progress toward his stated ESY goals.

For example, the report stated that one of the ESY goals for the Student was for him to regularly attend the ESY sessions. The Student admirably achieved the attendance goal; however, attendance was not actually a goal listed on the Student's ESY IEP. The Student also made progress with turning on his camera and using his voice during class time, but again this was not an IEP goal. The report did not provide any data regarding his goals to communicate his needs in an appropriate way or understand other peoples' perspectives, which were to be measured by formal and informal assessments and were goals listed on the ESY IEP. So, it was unclear whether the Student's improved attendance led to progress on his goals. In another example, his IEP reading goal was to answer comprehension questions after reading a passage. The ESY progress report stated the Student chose not to read with the class, but was an active listener and answered questions. This information was more aligned to listening comprehension rather than reading comprehension. While progress in other areas should be noted, the progress toward the goals in the IEP—and agreed upon by the IEP team—cannot be ignored. To do so would render the goals meaningless and provide no measurement of progress for the IEP team.

Again, the purpose of progress reports is to inform the Parent, the Student, the District, and the NPA whether the program designed to meet the Student's individual needs was working; and if not, the IEP team must address the lack of progress. The ESY services were meant to redress the Student's lack of progress during spring 2020. However, the NPA's ESY progress report did not provide sufficient data to establish what progress the Student made on his IEP goals as a result of the ESY services and if the Student recouped skills lost during the spring closure. Thus, a violation is found.

**Issue Two: Implementation of ESY Services** – The Parent alleged the Student did not receive his ESY services, and specifically that the Student did not receive math services during ESY. A district is required to ensure the special education services are implemented in conformity with the IEP. An NPA is also required to implement the services in conformity with the IEP when contracting with a district.

Here, the Student's IEP team created an ESY IEP in June 2020, which provided services in the areas of reading, math, writing, and social/emotional. The IEP team determined that the Student was to initially receive services two days a week and then that would increase as the Student acclimated to the instruction. The IEP did not indicate by how many days instruction was to increase. Initially, the IEP provided 22 minutes a session of reading, math, and writing, and 24 minutes a session for social/emotional, totaling 90 minutes a session. The number of days the Student attended

increased from two to three days beginning the week of July 27, 2020. The NPA provided documentation that ESY services were provided from July 6 to August 15, 2020.

The documentation indicated the services focused on the Student's social/emotional goals and writing. Of the 16 ESY sessions documented, the NPA provided math services the last three sessions and no reading services. The ESY progress report stated the class read and the Student chose not to read, but only listened and responded to questions. This indicated the Student did not receive services for reading comprehension. For writing, the report stated the Student wrote answers to comprehension and open-ended questions. His answers were "clear and frequently precise." In math, he was at the fourth or fifth grade level. He was able to apply what he knew "to verbally work out new equations." It is unclear how this related to the Student's goals, but it reflects the limited amount of math services the Student received. Regarding social/emotional, the Student attended ESY sessions regularly. The Student also made progress with turning on his camera and using his voice. Although attendance and using his voice were not the Student's ESY goals, the progress indicated that social/emotional services were provided to the Student.

The Parent also reported the Student was dismissed early from sessions, although it was not clear what sessions the Student was dismissed early from or how many minutes were missed. Each daily documentation form included a statement, "Face to Face Session: 10-11:30," including those days when the Student did not receive services. Thus, OSPI cannot determine if the documentation accurately reflects the length of each session for the Student.

While the Student attended ESY and received services when he attended, primarily in the areas of writing and social/emotional, based on the NPA and thus the District not implementing the ESY IEP in reading and math, a violation is found. The District and NPA are required to provide the Student with three hours of compensatory math services and three hours of compensatory reading services based on the services missed during the 16 sessions and the lack of documentation that the Student made progress towards his ESY goals.

### **CORRECTIVE ACTIONS**

By or before **November 20, 2020, November 30, 2020, January 15, 2021, and March 5, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.<sup>6</sup>

#### **STUDENT SPECIFIC:**

##### **Compensatory Services**

By **November 20, 2020**, the District, NPA, and Parent will develop a schedule for a total of six hours of compensatory services (three hours in math and three hours in reading). The compensatory education will occur in a one-on-one in-person setting as health/safety permits, or

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<sup>6</sup> The corrective action assumes the District will continue to contract with the NPA and OSPI will continue to approve the NPA. In the event that the District no longer contracts with the NPA or the NPA is not approved by OSPI, the corrective action will be revised accordingly.

a one-to-one remote setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks.

By **November 30, 2020**, the District will provide OSPI with documentation of the schedule for compensatory services.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **February 26, 2021**, including those needing to be rescheduled.*

No later than **January 15, 2021**, the District will provide OSPI with an update on the number of hours of compensatory services completed to that date. No later than **March 5, 2021**, the District shall provide OSPI with documentation that all the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services if services are provided in-person. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation related to transportation or reimbursement by **March 5, 2021**.

### **Progress Monitoring/Reporting Plan**

By **November 20, 2020**, the District and the NPA will develop a detailed draft progress monitoring and reporting plan for the Student for the 2020-2021 school year and submit it to OSPI. All District and NPA staff responsible for components of the plan will be familiar with the plan and trained on how to monitor the Student's progress. This plan will include the following for each goal in the Student's current IEP:

- What steps need to be completed to progress monitor and report each goal;<sup>7</sup>
- A timeline for completing each step, each trimester;
- The estimated date the Parent will be provided the progress report each trimester—e.g., the date the trimester ends, within a week of the end of the trimester, etc.;

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<sup>7</sup> The plan must include a step to review the progress monitoring data taken according to each goal. For example, the new math goal states: "By 06/28/2021, when given a fourth grade level math numbers or algebra problem with visual and physical supports [Student] will orally or in writing answer problems correctly improving his mathematics skills from 0/10 opportunities to 5/10 opportunities, over 4 data days monthly, as measured by informal and formal assessments." The goal states progress would be measured by formal and information assessments. The plan must ensure informal and assessments are administered related to the math goal and the results are reviewed and documented before completing the progress report for the goal.

- The specific staff who will be responsible for each step and how and when those staff will be trained in how to monitor and report the Student's progress;
- What attachments (e.g., work samples, testing materials, formal and informal assessment results) need to be attached to each report;
- And any other relevant information in order to ensure the Student's progress reports are timely, accurate, and complete.

By December 4, 2020, OSPI will approve the plan or provide feedback. Additional timelines will be set as needed. Based on the plan approved, OSPI will develop additional corrective action as necessary to ensure its implementation.

**DISTRICT SPECIFIC:**

None.

The District and NPA will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this \_\_\_ day of November, 2020

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

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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