

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-108**

### **PROCEDURAL HISTORY**

On September 11, 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 Richland 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 14, 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 October 2, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on October 5, 2020. OSPI invited the Parent to reply. OSPI did not receive a reply from the Parent.

On October 13, 2020, OSPI requested that the District provide additional information, and the District provided the requested information that same day. OSPI forwarded the information to the Parent on October 16, 2020.

On October 26, 2020, OSPI requested that the District provide additional information, and the District provided the requested information on October 29, 2020. OSPI forwarded the information to the Parent on October 29, 2020.

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).

**Specialty 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).

**Recovery Services:** Recovery services are intended to mitigate the impact of the spring 2020 COVID-19 school facility closures and to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services during the spring 2020 COVID-19 school closures. While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services in fall 2020 and recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during the spring 2020 school building closures on the student's overall progress and engagement, including progress toward their IEP goals. *Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020* (OSPI, August 26, 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

### 2019-2020 School Year

1. At the start of the 2019-2020 school year, the Student was eligible for special education under the category of Autism, was in the 5th grade, attended a District elementary school, and his December 2019 individualized education program (IEP) was in effect.
2. The District's 2019-2020 school year began on August 27, 2019.
3. The Student's December 16, 2019 IEP was in effect prior to the COVID-19 school facility closures. The Student's December 2019 IEP included the following annual goals:
  - **Reading 1** (ability to physically pick up specific items requested by teacher);
  - **Reading 2** (ability to identify alphabet letters and phonic sounds of letters);
  - **Written Expression** (ability to use a 3-finger grasp to write);
  - **Math** (ability to recognize and identify mathematical components);
  - **Communication 1** (ability to form sounds with mouth);
  - **Communication 2** (ability to use sign language and picture exchange communication system);
  - **Social Emotional** (ability to interpret facial expressions and respond appropriately); and,
  - **Adaptive** (ability to join peers in group activities and demonstrate appropriate behavior).

The Student's progress on the December 2019 IEP goals was to be reported to the Parent at the end of each trimester, in the following manner: curriculum-based assessment; data collection tool; rubric; student work sample; and teacher observation.

The Student's December 2019 IEP provided the Student with the following specially designed instruction in a *special education setting*, in a non-concurrent fashion:

- **Adaptive:** 70 minutes 5 times a week (to be provided by a staff assistant)
  - **Communication:** 15 minutes 1 time a month (to be provided by a special education teacher)
  - **Math:** 70 minutes 5 times a week (to be provided by a special education teacher)
  - **Reading:** 70 minutes 5 times a week (to be provided by a special education teacher)
  - **Social Emotional:** 70 minutes 5 times a week (to be provided by a special education teacher)
  - **Written Expression:** 65 minutes 5 times a week (to be provided by a special education teacher)
  - **Fine Motor:** 15 minutes 1 time a month (to be provided by an occupational therapist)
4. The District's response included a progress report, dated March 4, 2020, that related to the goals in the Student's December 2019 IEP. It stated, in part:
    - **Reading 1** (ability to physically pick up specific items requested by teacher);
      - Sufficient Progress: Student advanced from 0 of 5 opportunities to 2-3 of 5 opportunities.
    - **Reading 2** (ability to identify alphabet letters and phonic sounds of letters):
      - Sufficient Progress: Student advanced from 0 of 5 opportunities to 2 of 5 opportunities.
    - **Written Expression** (ability to use a 3-finger grasp to write):
      - Sufficient Progress: Student advanced from 0 of 5 opportunities to 2 of 5 opportunities.
    - **Math** (ability to recognize and identify mathematical components):
      - Sufficient Progress: Student advanced from 0 of 5 opportunities to 2 of 5 opportunities.
    - **Communication 1** (ability to form sounds with mouth):

- Sufficient Progress: Student advanced from 0 of 5 opportunities to 2 of 5 opportunities.
  - **Communication 2** (ability to use sign language and picture exchange communication system):
    - Sufficient Progress: Student advanced from 0 of 5 opportunities to 3 of 5 opportunities.
  - **Social Emotional** (ability to interpret facial expressions and respond appropriately):
    - Sufficient Progress: Student advanced from 0 of 5 opportunities to 1 of 5 opportunities.
  - **Adaptive** (ability to join peers in group activities and demonstrate appropriate behavior):
    - Sufficient Progress: Student advanced from 0 of 5 opportunities to 2 of 5 opportunities.
5. According to the District's 2019-2020 school calendar, March 6, 2020 was the end of the second trimester.
  6. 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.

According to the District's response, on March 13, 2020, its "Board of Directors declared an emergency...related to COVID-10 and closed all of the schools in the District."

7. According to text messages between the Student's case manager and the Parent, on or about March 17, 2020, a "work crate" for the Student that had been prepared by District staff was dropped off at the Student's home.
8. On or about March 18, 2020, the Student's case manager texted the Parent a link to an American Sign Language exercise and a phonics exercise to work on with the Student.
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. According to the District's response, between March 30 and May 4, 2020:
 

[The Student's case manager] went by the house every other week to drop off supplies and would show mom how to implement lesson/activity. The case manager indicated that she believed that mom was appeared pleased with how things were going via text and as a result [the case manager] went by the house less frequently.
11. The District's response included a provider log for the Student's speech language pathology (SLP). According to the SLP provider's log, on March 31, 2020, the Student received 15 minutes of teletherapy with 2-8 other students and the related progress report read: "maintaining."
12. On two occasions in April 2020, the physical therapist emailed the Parent, stating that the physical therapist was available to provide the Parent with "resources, ideas, activities, and/or exercises to support...Student during the COVID-10 [disruption]," as desired or requested.
13. On or about April 2, 2020, the Student's case manager texted the Parent a phonics exercise for the Parent to work on with the Student.

14. The District was on spring break from April 6 to April 10, 2020.
15. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
16. Also, on April 6, 2020, OSPI issued guidance on Continuous Learning 2020, which included recommended guidelines for maximum student commitment each day, as follows: Grades 4-5: 90 minutes.
17. According to the SLP provider's log, on April 15, 2020, 15 minutes of teletherapy with 2-8 other students was made available to the Student, but the Student was "not available."
18. According to the SLP provider's log, on April 23, 2020, the Student received 15 minutes of teletherapy with 2-8 other students and the related progress report read: "maintaining."
19. According to the SLP provider's log, on April 27, 2020, the Student received 15 minutes of teletherapy with 2-8 other students and the related progress report read: "maintaining."
20. On or about April 30, 2020, the Student's case manager texted the Parent at least two American Sign Language exercises for the Parent to work on with the Student.
21. On April 30, 2020, the District finalized a Continuous Learning Individual Plan (CLIP), which documented the services to be provided to the Student, starting May 5, 2020:
  - **Reading:** Picture Letters.
    - 5 minutes 1 time a week (to be provided by a teacher)
  - **Writing:** Worksheets; and, Tracing Lines.
    - 5 minutes 1 time a week (to be provided by a teacher)
  - **Math:** Matching Activities; and, Picture Numbers and Colors.
    - 5 minutes 1 time a week (to be provided by a teacher)
  - **Social/Adaptive:** Online Activities; and, YouTube Learning Videos.
    - 5 minutes 1 time a week (to be provided by a teacher or a paraeducator)

According to the Student's April 2020 CLIP, the following goals from the December 2019 IEP were to be worked on during the spring 2020 COVID disruption: reading; writing; math; social emotional; adaptive; and, communication.

The Student's April 2020 CLIP used similar language to describe when, and how often, the aforementioned goals were to be worked on: "However often Parent can hold Student's attention"; "Whenever Student will do so and for however long he will sit and try"; "Daily and as often as opportunity permits."

According to the Student's April 2020 CLIP, the following goals from the December 2019 IEP were not to be worked on during the spring 2020 COVID disruption: fine motor.

The Student's April 2020 CLIP also read, in part:

Student is resisting any type of academics at home. Parent is able to do sorting jars, puzzles, matching games, and online learning games with Student. Parent finds the best thing for

Student at this time is outdoor activities and physical exercise. Student has so much energy and needs outlets for it.

The Student's April 2020 CLIP stated the following individuals participated in the development of the April 2020 CLIP: Parent; general education teacher; special education teacher; principal; school psychologist; and speech language pathologist.

22. The District's response included a prior written notice, dated April 30, 2020, that read, in part: Student will receive direction from mom with supplies and sources from his special education teacher and SLP...Due to Student's needs, his mother will do hand over hand activities with Student to continue to work on his goals...Zoom with Student was rejected due to Student not being able to go online. He has an addiction to technology and will grow agitated if he goes on and cannot access the games or movies he desires. Mom is willing to get emails with activities and ideas for Student.
23. According to the SLP provider's log, on May 5, 2020, the Student received 15 minutes of teletherapy with 2-8 other students and the related progress report read: "maintaining."
24. According to the SLP provider's log, on May 12, 2020, the Student received 15 minutes of teletherapy with 2-8 other students and the related progress report read: "maintaining."
25. On May 15, 2020, the art teacher provided the Parent with some online resources related to art.
26. According to the SLP provider's log, on May 21, 2020, the Student received 15 minutes of teletherapy with 2-8 other students and the related progress report read: "maintaining."
27. According to the SLP provider's log, on May 29, 2020, the Student received 15 minutes of teletherapy with 2-8 other students and the related progress report read: "inconsistent."
28. According to the SLP provider's log, on June 3, 2020, the Student received 15 minutes of teletherapy with 2-8 other students and the related progress report read: "maintaining."
29. The District's response included a progress report, dated June 5, 2020, that related to the goals in the Student's December 2019 IEP. It stated, in part:
  - **Reading 1** (ability to physically pick up specific items requested by teacher): Not Applicable: Due to the COVID 19 pandemic and school closure, Student was not able to work on this goal with teacher. Parent tried to work with him, but Student would not work at home.
  - **Reading 2** (ability to identify alphabet letters and phonic sounds of letters): Not Applicable.
  - **Written Expression** (ability to use a 3-finger grasp to write): Not Applicable.
  - **Math** (ability to recognize and identify mathematical components): Not Applicable.

- **Communication 1** (ability to form sounds with mouth): Not Applicable: Weekly newsletter and materials sent home via class [messaging system] and e-mail [but District received] no response.<sup>1</sup>
- **Communication 2** (ability to use sign language and picture exchange communication system): Sufficient Progress: Student advanced from 0 of 5 opportunities to 3 of 5 opportunities.
- **Social Emotional** (ability to interpret facial expressions and respond appropriately): Not Applicable.
- **Adaptive** (ability to join peers in group activities and demonstrate appropriate behavior): Not Applicable.

30. In relation to the second communication goal in the Student's December 2019 IEP, the Parent's complaint stated: "Where Student previously could independently express his wants and needs through picture exchange (PEGS), he now needs 3.5 full physical prompts after I redirect him to his PEGS board. This regression is significant and devastating."

31. In relation to the social emotional goal in the Student's December 2019 IEP, the Parent's complaint stated: "I've seen an increase in Student being socially withdrawn, depressed, anxious, panic attacks, and self-injury due to the extreme amount of stress Student is under every day."

32. June 16, 2020 was the last day of the 2019-2020 school year for the District.

33. On September 11, 2020, OSPI received the Parent's complaint and opened this investigation. In her complaint, the Parent stated, in part:

The District violated...the IDEA by failing to provide Student with any sort of education starting March 13, 2020...Student received zero hours of instruction and zero hours of speech and occupational therapy for the entire 4th quarter of the 2019-2020 school year, which is a harsh violation of his IEP. Student received no education whatsoever, not even an attempt...The various [District] team members [sent] emails [to me] once a week with suggestions of what I could do with Student in lieu of school [and this] was not a free or appropriate education.

34. In its response, the District stated, in part:

The District admits that it did not provide the services as detailed in the Student's [December 2019] IEP from the end of March until the end of April.

The District proposes the following remedies:

The District will provide a total of 41 hours of recovery services in the form of after-school opportunities to the Student. The 41 hours will include 8 hours of service in Adaptive, 8 hours in Behavior (Social), 8 hours in Math, 8 hours in Reading, 8 hours in Written Expression [and] 1 hour of recovery services for Occupational Therapy.

The IEP Team shall determine when these recovery services will take place.

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<sup>1</sup> During the course of this investigation, OSPI asked for clarity on this language. The District responded with the following: "According to the Speech Pathologist...she sent activities home but did not get a response from the Parent that they were doing activities or that they needed any support from her."



Based on documentation provided by the Speech Language therapist, communication services were provided to the student, therefore service time is not being proposed by the district in this service area.

## CONCLUSIONS

**Issue One: IEP Implementation** – The Parent alleged the District did not implement the Student’s December 2019 individualized education program (IEP) that was in effect during the COVID-19 school facility closure.

During the COVID-19 closure, school districts were responsible for providing a free appropriate public education (FAPE) to students with IEPs. FAPE 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. Due to the exceptional nature of the COVID-19 closure, though, districts were not expected to deliver IEP services exactly as stated in students’ IEPs. OSPI described the nature of instruction that students were to receive during the COVID-19 closure as follows: “[School districts] should avoid assuming that continuity of education outside of a typical school building can only occur through online means. Districts will provide instruction using printed online learning materials, phone contact, email, technology-based virtual instruction, or a combination to meet student needs.”

All schools were expected to have begun providing educational services for all students by March 30, 2020, which OSPI termed “Continuous Learning 2020.” And OSPI guidance stated districts were to provide students with IEPs student-specific continuous learning opportunities beginning March 30, 2020. Thus, beginning March 30, 2020, the District should have begun providing the Student with opportunities to access individualized instruction.

Here, the District did not implement the Student’s December 2019 IEP following the closure of schools in mid-March 2020. In accordance with OSPI guidance, though, from mid-March (when the District first closed its schools due to COVID) through May 4, 2020 (the day before the Student’s “Continuous Learning Plan” (CLIP) began to be implemented), the District did provide the Student with some Student-specific services. For example, the record shows that from mid-March through May 4, 2020, the Student was provided with the following:

- Approximately 1 hour of remote speech language teletherapy;
- On or about March 17, 2020, a “work crate” for the Student that had been prepared by District staff was dropped off at the Student’s home;
- On or about March 18, 2020, the Student’s case manager texted the Parent a link to an American Sign Language exercise and a phonics exercise to work on with the Student;
- On or about April 2, 2020, the Student’s case manager texted the Parent a phonics exercise for the Parent to work on with the Student; and,
- On or about April 30, 2020, the Student’s case manager texted the Parent at least two American Sign Language exercises for the Parent to work on with the Student.

On April 30, 2020, the District created a CLIP that reflected the services the Student was to be provided with from May 5, 2020 through the end of the school year. Importantly, in accordance

with OSPI guidance, these services appear to have been individualized for the Student. For example, the April 2020 CLIP identified the specific goals from the Student's December 2019 IEP that were to be addressed. Furthermore, the April 2020 CLIP stated the following individuals participated in the development of the April 2020 CLIP: Parent; general education teacher; special education teacher; principal; school psychologist; and speech language pathologist.

The documentation provided to OSPI, though, does not permit a finding that the April 2020 CLIP was materially implemented from May 5 through June 16, 2020 (the end of the school year). For example, the documentation provided to OSPI only shows the following services were provided to the Student during this time period: 1) one hour and fifteen minutes of remote speech language pathology therapy; and 2) on May 15, 2020, the art teacher emailed the Parent some online resources.<sup>2</sup> For example, the District was not able to provide OSPI with documentation, showing that in accordance with the April 2020 CLIP, it provided the Student with reading, writing, math, and social/adaptive activities once a week for the approximate five weeks represented by May 5 through June 9, 2020. The District also indicated that services were not provided as needed. This is a violation of the IDEA. The District, however, offered recovery services for the Student to address the failure.

Recovery services are intended to mitigate the impact of the spring 2020 COVID-19 school facility closures and to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services during the spring 2020 COVID-19 school closures. While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services in fall 2020 and recovery services should be determined on a case-by-case basis.

Here, the District has already determined that recovery services are appropriate for this Student. For example, to account for any failure on its part to properly follow the IDEA during the spring 2020 COVID disruption, the District has offered to provide the Student with the following recovery services: eight hours of Adaptive; eight hours of Behavior/Social; eight hours of Math; eight hours of Reading; eight hours of Written Expression; and one hour of Occupational Therapy. OSPI acknowledges this determination and accepts the proposed corrective action; the District will be required to provide the Student with the foregoing recovery services.

Finally, districts must provide parents with progress reporting on the student's measurable annual goals. Progress reporting is an element of IEP implementation and a method for a district to demonstrate that special education services were provided. 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

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<sup>2</sup> In its response, the District stated the speech language pathologist stated, "she sent activities home but did not get a response from the Parent that they were doing activities or that they needed any support from her." But no documentation of these communications was provided. The most that OSPI can conclude from this, then, is that it is likely that, on at least a couple of occasions between May 5 and June 9, 2020, the speech language pathologist "sent activities home." But OSPI cannot conclude—from the evidence provided to it during the course of this investigation—that this occurred on a regular basis.

IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals.

Here, in accordance with the December 2019 IEP, the District completed a progress report on March 4, 2020, concurrent with the end of the second trimester. The progress report which was completed on June 5, 2020—concurrent with the end of the third trimester, though, was insufficient. For example, according to the Student’s April 2020 CLIP, the following goals from the December 2019 IEP were to be worked on during the spring 2020 COVID disruption: reading; writing; math; social emotional; adaptive; and, communication. Of these goals, though, the June 5, 2020 progress report contains only one detailed entry. For example, regarding **Communication 2**, the June 5, 2020 progress report read, “Sufficient Progress: Student advanced from 0 of 5 opportunities to 3 of 5 opportunities.” For the rest of the December 2019 IEP goals that were addressed by the April 2020 CLIP, though, the June 5, 2020 progress report reads: “Not Applicable.” This is a violation of the IDEA.

Even during any potential period of COVID disruption, districts must have a plan to gather progress data for each student with an IEP. As a corrective action, the District will be required to create a detailed, District-wide plan for how it will gather and report progress on IEP goals for all students with IEPs during the 2020-2021 school year, as the unique circumstances present in the spring of 2020 are likely to also be present during the 2020-2021 school year. The District will also develop, and present, a training that informs certain District staff of the detailed, District-wide plan for gathering and reporting progress on IEP goals for students with IEPs during the 2020-2021 school year.

### **CORRECTIVE ACTIONS**

By or before **November 13, 2020, November 18, 2020, November 25, 2020, and February 26, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Recovery Services**

By or before **November 13, 2020**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 8 hours of Adaptive; 8 hours of Behavior/Social; 8 hours of Math; 8 hours of Reading; 8 hours of Written Expression; and 1 hour of Occupational Therapy.

The District will provide OSPI with documentation of the schedule for services by or before **November 13, 2020**.

The recovery services will be provided by a certificated special education teacher and they may be provided in a remote setting. The instruction may occur on weekends or during District breaks. 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 **February 26, 2021**, the District shall provide OSPI with documentation that all of 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 the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **February 26, 2021**.

#### **DISTRICT SPECIFIC:**

##### **Create District Policy on Progress Reporting and Training on the Same**

By **November 18, 2020**, the District will develop a detailed, District-wide plan for how it will gather and report progress on IEP goals for all students with IEPs during the 2020-2021 school year. Also by **November 18, 2020**, the District will develop a training that incorporates and summarizes this plan.

By **November 18, 2020**, the District will submit a draft of both the plan and the training materials to OSPI for review. The training materials will include examples. OSPI will approve the materials or provide comments by November 20, 2020 and additional dates for review, if needed.

By **November 25, 2020**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet; and, 2) a roster of who should have attended so OSPI can verify that staff participated.

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

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

Glenna Gallo, M.S., M.B.A.  
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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.)