

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-74

PROCEDURAL HISTORY

On June 15, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Seattle School District (District). The Parents alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On June 17, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 24, 2020, the District requested an extension of time to respond to the complaint. OSPI granted this request and asked the District to respond by July 10, 2020.

On July 10, 2020, OSPI received the District's response to the complaint and forwarded it to the Parents the same day. OSPI invited the Parents to reply.

On July 17, 2020, OSPI requested information from the Parents. On July 20, 2020, OSPI received the Parents' reply. OSPI forwarded that reply to the District on July 21, 2020.

On July 22, 2020, OSPI requested additional information from the District, and received the information on the same day. OSPI forwarded the information to the Parents on July 22, 2020.

OSPI considered all information provided by the Parents 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).

FINDINGS OF FACT

1. During the 2019-2020 school year, the Student attended a District K-8 school, was in the sixth grade, and was eligible for special education services under the category other health impairment.
2. The District's 2019-2020 school year began on September 4, 2019.
3. The Student's December 17, 2019¹ individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The Student's IEP included several annual goals in the areas of social/behavior (filtering comments, complying with no arguing, identifying emotions, smooth transitions, voice level, and social behavior with speech language support) and a written language goal (multi-paragraph essays). The Student's IEP provided the Student with the following specially designed instruction and related services:
 - Social/behavior: 30 minutes, 5 times a week (to be provided by a special education teacher, in the special education setting)
 - Writing: 10 minutes, 5 times weekly (to be provided by special education staff, in the general education setting)
 - Speech Language Pathology (Related Service): 90 minutes monthly (to be provided by speech language pathologist (SLP), in the general education setting)

The Student's IEP provided the Student with several accommodations and modifications, including extra time for assignments, frequent positive reinforcement, and daily instructional assistant (IA) support for 15 minutes in language arts, math, science, and social studies (among others). The IEP also included the daily special education IA, occupational therapy (60 minutes/year), and a behavioral intervention plan under supports for school personnel.

The Student's IEP indicated the Student would spend 90% of his time in the general education setting.

4. On March 10, 2020², the District reported the progress the Student was making on his December 2019 IEP goals. The progress reporting noted the following:
 - Social Behavior – Filtering Comments: 1 (little or no progress made)

¹ Based on the documentation in the complaint, the Student's IEP team met December 17, 2019 to develop the Student's IEP and finalized the IEP after a second meeting in January 2020.

² The progress on the Student's social/behavior goals with SLP support was reported as of January 24, 2020.

- Written Language: 2 (some progress made), "3/10 Argumentative essay will [sic] in progress."
 - Social Behavior – No Arguing: 1
 - Social Behavior – Identify Emotions: 2
 - Social Behavior – with SLP Support: NA (not applicable this grading period), "1/2020: This IEP was completed too recently to record any measurable progress."
 - Social Behavior – with SLP support: NA, "1/2020: This IEP was completed too recently to record any measurable progress."
 - Social Behavior – Smooth Transitions: 1
 - Social Behavior – Voice Level: 1
5. On March 11, 2020, the District notified families that it would be closing schools for at least fourteen days, beginning on March 12, 2020.
 6. Also, on March 11, 2020, several of the Student's teachers provided the Student with learning packets to work on during the two-week closure and teachers used the "Schoology" platform³ to communicate with students.
 7. On March 12, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in King, Snohomish, and Pierce counties through April 24, 2020 (on March 13, 2020, this was extended to all schools in Washington). The District, per this proclamation, extended its closure through April 24, 2020.
 8. Between March 16 and 23, 2020, the District implemented and provided resources and supports for students, including "supplemental learning" District-wide.
 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. Also, on March 23, 2020, the District provided its educators with guidance and expectations for continuous learning. This guidance included the following, in relevant part:

General education teachers...who teach grades 6-8...were directed to determine power standards, utilize District-adopted materials, if available, or develop lessons aligned to standard; and connect with students and their families to communicate academic learning targets and activities. Teachers were directed to respond to email and other communications...hold regular and scheduled time for students and families to ask live questions...general education middle school teachers were instructed to make instructional adjustments and use formative assessment results to differentiated instruction for students needing more support; and to contact all families with students have Tier 2 and Tier 3 Supports, using at least two different communication methods, in collaboration with support staff, including special education staff.

³ Schoology is a learning management system and platform used by the District that can be used to create content, design lessons, and assess student understanding. See, <https://www.schoology.com/k-12>.

Special education teachers were instructed to design and provide learning that is aligned with IEP goals and to hold regular office hours to collaborate with content area teachers to make modification to content in accordance with the student's IEP. They were expected to determine whether newly introduced apps and platforms being utilized were accessible to students based on their unique needs. Special education teachers were instructed to hold regular office hours to meet and/or communicate with families in order provide learning support; and to check in regarding outside counseling services or community-based supports. In addition, special education teachers of students...who receive instruction in the general education classroom were required to hold regular and scheduled office hours for students and families to provide strategies for students to make progress toward individual goals. They were also directed to implement accommodations where appropriate for distance learning.

11. On March 24, 2020, the Student's SLP emailed families at the Student's school, including the Parent, regarding communication services. The SLP attached a speech and language packet with suggested activities and encouraged parents to reach out if they would like "suggestions on what you can do to provide language enrichment activities...(or if you just want more)..I will get back to you...with more ideas and resources."⁴

The Parents, in their reply to the District's response to this complaint, stated the suggestions offered were "only general suggestions for parents" and that the SLP "did not offer instruction or advice specifically for the SLP-supported goals in [Student's] IEP."

12. On March 30, 2020, continuous learning began in the District, and according to the District's response, "explicitly prioritized contacting students with IEPs."⁵
13. The Parents, in their complaint, stated the District was not providing the following services as outlined in the Student's IEP: Writing, behavior and social skills, and speech therapy. The Parents also stated the principal and teacher said that specially designed instruction was not required during the closure and that the school added a life skills class to the Student's schedule, "even though he does not need instruction in life skills." The complaint also stated that due to his disabilities, the Student "could not have accessed the general education offered without constant support."

⁴ OSPI notes the Student's goals for speech related to social communication in unstructured situations and social communication in situations that cause frustration. None of the activities in the packet provided by the SLP directly related to social communication. Activities in the packet targeted speech sounds and language skills, such as "increasing overall understanding [and] use of vocabulary words, answering [and] asking WH questions, understanding how items go together in categories...using correct verb tense, expanding the length of sentences, describing, [etc]."

⁵ In its response, the District stated it began developing "continuous learning plans" (CLPs) for "its 7,000 plus students receiving special education services, setting an internal deadline of May 15, 2020." The District explained that "CLPs would act as a temporary tool to help focus services and supports that would be most beneficial for student's learning objectives. The CLPs would include information about which IEP goals will be targeted during school closure and how, and how often services will be provided."

Further, in their reply to the District's response, the Parents stated the Student attended general education sessions without any support from the special education teacher, IA, or SLP throughout the closure. The Parents stated they "figured out his daily schedule and lesson plans, helped him to stay on task and behave appropriately during the online sessions, and prompted him to follow directions and turn in his work." The Parents noted the Student "would have learned little or nothing without our constant support.

14. On April 1, 2020, the SLP emailed families, including the Parent, to check in and offered support with speech and language. The SLP stated, "If you would like, we can schedule a Microsoft Teams video conference with you and your child on one end and me on the other. This way I can provide you with some input regarding how to help your child improve their speech and language skills."
15. On April 2, 2020, the Student's case manager emailed the Parents to share information on a community virtual social skills group. The Parents responded that they were already part of the group and that the Student recently participated in a session. The Parents asked if there would be "any planned special education instruction during school closure time."
16. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
17. On April 6, 2020, the case manager responded to the Parents' April 2, 2020 email that she was waiting on additional information and expectations about special education services. The case manager noted she was providing reading, math, and life skills instruction to "students who are scheduled into my class." The case manager also stated, "we are offering resource help for students in gen ed classes that need support with their gen ed assignments."

According to the District's response, "it appears that, because [the Student] was not enrolled in [the case manager's] study skills class, she did not initially include him in these classes."

18. The District was on spring break from April 13 to 17, 2020.
19. On April 21, 2020, the Parents' attorney emailed the District's attorney and attached a letter regarding completing a functional behavioral assessment (FBA) for the Student. The letter also stated: "Also, please be aware that [Student] has yet to receive a continuous learning plan [(CLP)], nearly six weeks into the closure, compounding his need for compensatory education."
20. On April 29, 2020, the case manager emailed the Parents that she was going to be trained on how to create and implement a CLP on May 5, 2020.
21. On May 5, 2020, the case manager contacted the Parents to check on the Student and stated she was "wondering if there was anything I might be able to support him in." She also offered to have the Student join the following special education classes, stating, "the following options will be offered in the Continuous Learning Plan that I am developing, but they are available immediately, should [Student] choose to access them":

- Special Education Resource Class: 11:10 am to 12:10 pm Monday through Friday for writing support; and,
- Life Skills Class: Group support Thursdays from 9 am to 10 am.

The case manager also offered to have a weekly one-on-one check in with the Student every Wednesday from 10:30 to 11:00 am.

22. On May 8, 2020, the SLP emailed the Parent with a reminder that the SLP was available for video conferences and provided an additional resource for speech and language. This resource had some activities related to social communication, although the activities did not address the scenarios presented in the Student's IEP goals.
23. On May 12, 2020, the Parents emailed the Student's case manager regarding the special education classes she offered on May 5, 2020. The Parents stated they were concerned about "generic references to 'life skills' and 'resource classes'" because they had "no apparent relationship to [Student's] IEP." The Parents stated, "We understand that the IEP is still in effect, and that the continuous learning plan is supposed to reflect which of [Student's] services will be delivered, and how and when." The Parents requested the case manager provide information on how the Student's "IEP requirement for 30 minutes a day of specially designed instruction in social/behavior skills and 10 minutes a day of specially designed instruction in writing" would be provided, "using the alternate methods available to you." The Parents stated that "a check-in does not sound like instruction."
24. On May 12, 2020, the case manager emailed the Parents to arrange to stop by, bring cookies, and connect with the Student.
25. On May 13, 2020, the case manager responded to the Parents' May 12, 2020 email and stated:
- ...During this time of distance learning, [specially designed instruction] will not be delivered in the ways or for the number of minutes it is delineated in the IEP. The learning plans being developed are to help support students [sic] access the content in their classes. Though we will support [Student's] needs in accessing the curriculum, this does not mean that [specially designed instruction] will be delivered as it is expected to be delivered per the IEP.

To clarify the supports available to [Student]...resource classes are those that are available to students for academic support. Since [Student] receives services for writing, he can get writing support through participating in the resource class meetings. Life skills, as it relates to [Student], refers to social skills support, for which he is also eligible per his IEP. He can participate in the Life Skills class or in one-on-one direct instruction, or both. However, to be explicitly clear, he will not be receiving 30 minutes per day in social skills, nor can we guarantee 10 minutes per day of writing support.

...

I have Wednesday at 10:30 for a one on one check-in in [sic] with him via phone...I offer a group Life Skills class Thursday at 9 via TEAMS. Would you like to add him to my class...We offer 6th grade writing support in the [special education] Resource class at 10. Would you like to add him to my class...I have a Monday home cookie drop off for occasional distant front door visits. Would you like to schedule this?

The Parents responded on May 14, 2020, asking why "10 minutes a day of writing support is not possible...[and] if not 10 minutes, then how many minutes might be possible? Two minutes? Three minutes?" The Parents further asked what the curriculum was for the "Life Skills class" and the "Resource class," and how many minutes of social skills instruction the Student would receive. The Parents stated, "the classes you are suggesting are not in [Student's] current IEP, and without more details, we will be [sic] unable to make an informed decision."

26. On May 15, 2020, the principal emailed the Parents, providing further information about the offered supports. The principal stated that given the COVID-19 crisis, IEPs were not being implemented as written and there "simply is not the bandwidth" to provide services exactly as outlined in the IEP. The principal stated: "...we are not required to deliver [specially designed instruction] during this time. We are, however, required to support students in accessing their class contents to the best of our abilities, which may or may not meet your expectations." The principal provided further information about the life skills and resource classes:

...there is no set curriculum for either of these classes. They are blocks of time during which teachers work to support students in each student's area of need. Neither is an academic class and therefore does not have a curriculum. 'Life Skills' is simply a title for a block of time during which students' social needs are addressed/supported. Since this varies by student, there is no set curriculum. 'Resource' is simply a title for a block of time during which students' academic needs are supported. Since this also varies by student, again there is no set curriculum. The fact that these classes are not on his IEP is irrelevant; even if he were enrolled in them, specific courses are rarely included on an IEP.

Writing support is available Tuesday-Friday, 11:10-12:10. The day you choose would depend on what classes [Student] would need writing support in. If he is working on an LA assignment, he would join on Tuesday; Math is on Wednesday; Social Studies is Thursday; Science in Friday. There are a total of 240 possible minutes per week from which [Student] can access his 50 minutes per week of writing support. [Case manager] has 60 minutes of Life Skills class every Thursday 9 am- 10 am. She has also offered a 30-minute weekly check-in with [Student] during which he would have one-on-one social skills instruction. There are a total of 90 minutes per week that [Student] can access his social skills instruction. [Case manager] has also offered a social distance home visit once a week 'cookie delivery'. This has worked with a lot of the students to keep connections going or to build.

27. On May 15, 2020, the Student's IEP team met to review a recently completed FBA and agreed a behavioral intervention plan (BIP) should be developed for the Student. According to the District's response, at the time of the meeting, the Student's general education teachers reported that the Student was attending and participating in distance learning lessons. They stated the Student was completing work, his work was generally approaching or meeting standards, and that some assignments were above standard. The teachers also noted, for the most part, the Student was following online learning rules and appropriately contributing to online discussions.
28. On May 20, 2020, the Parents responded to the principal's May 15, 2020 email, stating they "believe[d] [specially designed instruction] is required. We do not agree that generic classes are a substitute for [specially designed instruction.]" The Parents stated they had not yet

received a CLP for the Student “or anything else documenting the extent to which [Student’s] IEP is being implemented at a distance.” The Parents reiterated that they did not have enough information to decide whether the Student should attend the resource or life skills class, and that they had offered the case manager’s weekly check-in via phone to the Student and he refused.

The principal responded, stating they were “trying to understand your specific ask.” The principal stated they were working on the CLP, the resource class is where the Student would get his writing support, and the special education teacher was “planning to set up some times to connect with [Student] for [social emotional learning (SEL)] purposes.”

29. In the Parents’ reply to the District’s response, the Parents stated that due to the Student’s “behavior disability, [Student] could not access the weekly calls with the teacher” and that he “refused to attend the life skills and resource classes after seeing the class materials, which were not relevant to him.” The Parents stated, for example, the life skills handout “dealt with how to cook, clean, sew, [etc...]” The Parents stated the Student’s IEP goals are for social-behavior skills, writing, and communication—not life skills. The Parents also stated, “as for the resource class, we are familiar with that class because our daughter attended it before schools closed, and we understand it is like a study hall where students work on assignments with minimal instruction.”

The Parents stated, “although we were told that [Student] could ‘ask for writing support’ in the resource class, this was not offered to fulfill his IEP minutes” because they were told specially designed instruction was “not required” and because the resource class was not previously part of the Student’s school program. Thus, the Parents stated, “we do not believe that the May 5 email inviting [Student] to belatedly join the special education teacher’s existing online classes was in any way fulfilling the IEP.”

30. Beginning on May 22, 2020, a different special education teacher began working with the Student and Parents to schedule times she would meet with the Student individually “to help address the social/behavior needs in his IEP.” According to the documentation, the special education teacher and Student met for 30 minutes on the following dates and discussed the following, summarized:

- May 22: Pandemic and effect on daily living
- May 27: Executive functioning strengths and weaknesses questionnaire
- May 29: Team meetings, teacher expectations, sustaining engagement for long lessons; reviewed executive functioning questionnaire
- June 3: Next year’s schedule, year-round school, protests
- June 5: Online challenges, feelings about confidential information shared at school
- June 10: Role as a coach, role as a teacher’s assistant, confidentiality, peer to peer coaching
- June 12: Report on garden Student is tending, sustaining engagement for long lessons, methods to motivate, classroom expectations

31. On May 22, 2020, the Student's case manager sent the Parents a copy of the Student's CLP. The plan for services included the following for general education, special education, and related services:

- "Monday: 60 minutes of [general education] math instruction with the special education teacher also attending class."
- "Monday and Thursday: 60 minutes of [general education] Social Studies instruction with the [special education] teacher also attending."
- "Tuesday: [General education] [language arts] 60 minutes with [special education] teacher attending the class."
- "Friday: [General education] Science 60 minutes with [special education] teacher also attending."
- "[Special education] Writing support is available Tuesday-Friday, 11:10-12:10. The [special education] teacher attends the [general education] class and can support with assignments. The day you choose would depend on what classes [Student] would need writing support in. If he is working on an LA assignment, he would join on Tuesday; Math is on Wednesday; Social Studies is Thursday; Science in Friday. There is a total of 240 possible minutes per week from which [Student] can access his 50 minutes per week of writing support."
- "IEP Case manager has 60 minutes of Life Skills class every Thursday 9 am - 10 am. [Case manager] has also offered a 30-minute weekly [social emotional learning (SEL)] connection with [Student] via phone. There is a total of 90 minutes per week that [Student] can access his social skills instruction."
- "IEP case manager has also offered a social distance home visit once a week for SEL connection called 'cookie delivery'."
- "IEP case manager monitors student's performance in [general education] classes with [general education] teachers."
- "IEP case manager forward emails regarding SEL social skill online resources to parents."
- "SLP has Bi-Weekly contact with Case manager."
- "SLP sent activities to parent via email."
- "The [occupational therapist (OT)] attends the [special education] meeting and consults with the case manager."
- "OT has office hours on Tuesday 12 to 2:00."

The CLP also noted the Parents had requested "one on one" specially designed instruction for the Student for written expression.

According to the District's response, "It appears [the Student] did not access the special education support services, with the exception of his one-on-one meetings with [special education teacher.] It also appears that [case manager] did not follow up regularly with [Student] and Parents once it became apparent that he wouldn't participate."

32. On June 15, 2020, OSPI received the Parents' complaint and subsequently opened this investigation.

33. On June 17, 2020⁶, the Student's IEP team met to review the Student's draft BIP and amended the Student's IEP. The team agreed to reconvene prior to the start of the 2020-2021 school year.
34. On June 18, 2020 (and previously on May 13, 2020), the District completed progress reporting on the Student's annual IEP goals. The progress reporting stated "NA" or "Not applicable this grading period" for each goal and included the following comments: "5/20 progress data unavailable at this time due to COVID 19 closure. Progress data unavailable at this time due to Covid 19 closure. Progress will be updated as soon as feasible after school resume."

In their reply to the District's response, the Parents stated the lack of data in the progress report confirms that "no work had been done on [Student's] IEP goals during the closure."

35. June 19, 2020 was the last day of the 2019-2020 school year for the District.
36. In its response, the District stated it followed OSPI guidance and that the Student's IEP could not have been "implemented as written during a mandated statewide closure." The District stated the Student was provided continuous learning opportunities and that he received "regular instruction in all core content [general education] classes"—the Student "attended and participated in the majority of his remote classes."

However, the District acknowledged that,

it appears [Student's] special education teacher did not follow either District or OSPI guidance with regard to collaborating with [the Student] and his family and ensuring [the Student] received support. She failed to offer him any services or check-ins between March 30, when continuous learning was expected to begin, and May 5, when she finally offered to do weekly check-ins, as well as have him join her special education instructional sessions. It is also not readily apparent that she collaborated with [Student's] general education teachers prior to May 22, when she indicated on the CLP that she attended the general education classes in order to help support her students.

The District acknowledged that all students will likely require additional supports upon return to school as the "COVID-19 pandemic has created a major disruption in the delivery of all education" and maintained, per the U.S. Department of Education's guidance, that the IEP team was the appropriate venue to make a determination about compensatory services for a particular student. The District stated this was not a situation where it "has intentionally or negligently denied FAPE to a student; it was a forced response to a national crisis not within the control of the District."

While the District "maintains that it is not obligated to make up all of the missed services, the District is aware that there were legitimate issues with [the Student's] special education

⁶ The documentation in the complaint included a draft IEP, dated June 19, 2020. The District's response noted this date was an error and the District confirmed with a meeting participant that it occurred on June 17, 2020. It is not clear if the draft IEP amendment was finalized; however, the documentation provided in the complaint indicated the team would communicate on August 25, 2020 to schedule another IEP meeting.

services during the closures; the guidance was not properly adhered to." Thus, the District offered 10 hours of compensatory social/behavioral services and 2 hours of compensatory written language instruction for the Student. The District also proposed convening a meeting once normal school operations have resumed for the purposes of determining if additional services are necessary.⁷

37. The Parents stated in their reply to the District's response that the Student received no special education between March 30 and May 21, 2020, and only 210 minutes of special education between May 22 and June 18, 2020. The Parents stated the Student missed approximately 41 hours of instruction and requested the same amount of compensatory services.

CONCLUSIONS

Issue One: IEP Implementation – The Parents alleged the Student was not provided services outlined in the Student's individualized education program (IEP), including specially designed instruction in writing and behavior/social, and speech therapy. The Parents alleged that because special education services were not provided, the Student would not have been able to access the general education offered without constant Parent support.

March 30, 2020 through May 5, 2020

Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs could not be implemented as written as school facilities closed and districts transitioned to distance learning. Here, the Student's December 2019 was in place prior to the school facility closures and the IEP required the Student receive the following specially designed instruction and related services:

- Social/behavior: 30 minutes, 5 times a week (to be provided by a special education teacher, in the special education setting)
- Writing: 10 minutes, 5 times weekly (to be provided by special education staff, in the general education setting)
- Speech Language Pathology (Related Service): 90 minutes monthly (to be provided by speech language pathologist (SLP), in the general education setting)

After the District closed school facilities on March 11, 2020, the Student's IEP was not implemented as written, which during this time does not represent a violation of the IDEA by itself. However,

⁷ For students eligible for special education generally, the District stated it is "committed to keep its FAPE obligation at the forefront of its decision-making, taking into account the specific needs and circumstances of each student with disabilities during these challenging times." The District stated it "will need to review the educational impact of these unique circumstances and determine appropriate next steps, taking into consideration whether or not a student has experienced a loss of skills and/or lack of progress as compared to their non-disabled peers, in light of the child's circumstances. Upon returning to buildings, [the District] has prioritized special education students and will need sufficient time to determine the best way to address the needs of all their students and time to collect data to determine the best way to remedy loss of learning." The District further stated that to "effectively ensure students regain skills and make progress in their educations," it "will need time to carefully assess and plan for additional supports and services."

that does not end the analysis as—despite the statement in several District emails that specially designed instruction was not required—the District still had an obligation to provide students with special education services (i.e., specially designed instruction) during the school facility closures.

On March 23, 2020, OSPI communicated the expectation that districts would begin—if they were not already—providing educational services to all students by March 30, 2020 (“continuous learning”); and, as instruction was being provided to all students, districts must have a plan for how students eligible for special education services would receive a free appropriate public education (FAPE), which consists generally of specially designed instruction and related services. Also, on March 23, 2020, the District outlined expectations for its teachers, including that special education teachers would design and provide learning that is aligned with IEP goals, collaborate with content area teachers to modify content in accordance with the student’s IEP, hold office hours for students and families to provide strategies for students to make progress toward individual goals, and implement accommodations, among other things.

The case manager did not offer the Student special education services until May 5, 2020, when she emailed, stated she was working on the Student’s continuous learning plan (CLP), and stated the following was available to the Student:

- Special Education Resource Class: 11:10 am to 12:10 pm Monday through Friday for writing support;
- Life Skills Class: Group support Thursdays from 9 am to 10 am for social/behavior support;
- Weekly one-on-one check-in; and,
- Weekly socially distance home visit and cookie delivery.

Overall, the District did not implement the Student’s IEP as written, which, as discussed above, is not a violation during this time period. However, the District did not have a plan to provide the Student with special education services until May 5, 2020—over a month after the District was required to have a plan and offer special education services to students, based on the expectation that continuous learning would begin for all students on March 30, 2020. Further, based on the documentation, the SLP’s contact with the family was minimal, support offered only included general activities for parents to provide that did not directly align with the Student’s goals, and the SLP did not offer any services individualized to the Student’s needs. This represents a violation.

The District acknowledged this delay in offering services and the failure to provide the Student special education support between March 30 and May 5, 2020. The District thus offered 10 hours of compensatory services in social/behavior and 2 hours in written language. OSPI accepts this proposed corrective action, with the addition of 2.5 hours of compensatory services in speech language.⁸

⁸ OSPI generally awards compensatory services at a rate of anywhere between 1/4 and 1/2 of the missed instructional time, depending on a variety of factors, including whether any services were provided, whether a student made any progress, and considering that services offered in a 1:1 setting can be provided effectively in a shorter amount of time than a classroom setting. Here, as the SLP did not offer any individualized instruction (unlike specially designed instruction in writing and social/behavior, which was offered as of May 5, 2020), nor did the Student receive any speech services during the closure, nor is there

May 5, 2020 through June 19, 2020

After May 5, 2020, the Parents expressed concern and confusion over what was being offered—asking about the names of the classes and the curriculum used. Further in their reply, the Parents stated the classes offered were inappropriate for the Student (e.g., the material was not relevant to the Student and based on their daughter’s experience with the pre-closure resource class, it was more like a study hall) and these were not classes the Student was in before the closures; thus, the Parents stated the Student refused to participate in them. The case manager and principal did clarify several times that during distance learning, IEPs would not be implemented as written and that the Student could receive instruction in writing skills in a special education resource class, Monday through Friday (depending on what area the Student needed support in: language arts on Tuesday; Math on Wednesday; Social Studies Thursday; Science Friday), and instruction in social skills/behavior during a “life skills” class or one-on-one direct instruction, or both. However, the Parents maintained that these offers did not fulfill the Student’s IEP minutes.

The principal did state in an email that they were “not required to deliver [specially designed instruction] during this time.” This is incorrect. There is no waiver of the IDEA or a district’s obligation to offer a FAPE, which includes the provision of specially designed instruction and related services. However, there is an understanding that IEPs would not be implemented as written during spring 2020 and special education services may look different than those provided in a traditional school setting. Regardless, a district should still be providing special education services, individualized to a student’s needs. Here, though—despite the District’s emailed statements—based on the documentation provided, the District did offer the Student the opportunity to receive special education services in a virtual special education setting. The District offered: 240 possible minutes of writing support (the Student’s IEP included 50 minutes a week in a general education setting) and 90 possible minutes of social/behavior (the Student’s IEP included 150 minutes a week in a special education setting) weekly. While not identical to the IEP in number of minutes or setting/least restrictive environment, OSPI believes the Student would have been able to receive individualized special education services during these times to address his special education needs. Further, while the writing instruction was not offered in the general education setting, the Student was consistently able—albeit, with Parent support—to access his general education classes.

On May 22, 2020, the Student’s case manager sent the Parents a copy of the Student’s CLP, which recorded the general education instruction already being provided (and that the Student regularly participated in) and the special education instruction and support offered as of May 5, 2020. The CLP also documented that, as of May 22, 2020, the following was occurring:

- “IEP case manager monitors student’s performance in [general education] classes with [general education] teachers.”
- “IEP case manager forward emails regarding SEL social skill online resources to parents.”
- “SLP has Bi-Weekly contact with Case manager” and “SLP sent activities to parent via email.”

any progress data, OSPI will require the District to provide approximately 1/2 of the missed speech services or 2.5 hours (90 minutes per month for 3 months, divided by 2).

- “The [occupational therapist (OT)] attends the [special education] meeting and consults with the case manager” and “OT has office hours on Tuesday 12 to 2:00.”⁹

The Student did receive some specially designed instruction—210 minutes of one-on-one social support from another special education teacher in late May and early June. Ultimately, the Parents declined to have the Student participate in the special education classes offered by the case manager. Despite the Parents’ position, just because the Student did not attend a life skills or resources class prior to the closure does not mean those offerings would not have included individualized instruction during the closure; further, the Student’s sibling’s experience does not necessarily mean the resource class would have functioned as a study hall for the Student. The District on several occasions clarified that written language and social/behavior instruction would be provided, that the name of the class was simply a title for a block of time, and that because instruction varies by student, there was no set curriculum. OSPI finds that the District appropriately offered the Student access to individualized instruction, despite the Student not accessing these offerings. OSPI does note there was no progress data available for the Student during the school facility closures and overall, he accessed very little specially designed instruction during this period. It is undeniable that the school closures have had an impact on the Student—and likely all students—thus, OSPI accepts the District’s proposal to convene the Student’s IEP team following the resumption of normal school operations for the purpose of determining if additional services are necessary.

CORRECTIVE ACTIONS

By or before **September 18, 2020, October 15, 2020, November 6, 2020, and January 8, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Services

By or before **September 15, 2020**, the District will coordinate with the Parents to develop a schedule for a total of 14.5 hours of compensatory services (10 hours in social/behavior, 2 hours in written language, and 2.5 hours in speech language). Services will occur in a one-on-one setting—either in-person or virtual instruction¹⁰—and instruction will occur outside of the

⁹ OSPI notes that the only email included in the District’s response to this complaint related to the case manager forwarding emails regarding social skills resources was the email from the beginning of April about a community social group, which the Student was already participating in. The Parents, in their reply, provided information about the SLP’s emails. No documentation was provided in the complaint regarding whether the Student or Parents utilized the OT’s office hours.

¹⁰ OSPI encourages in-person services if possible, following health and safety requirements. The Parents and District may also agree to virtual instruction. The Parents and District are encouraged to start the compensatory services in August 2020; however, given the unpredictable nature of the public health crisis,

District's school day and may be accessed over District breaks. Services will be provided by a certificated special education teacher and speech language pathologist. The District will provide OSPI with documentation of the schedule for services by or before **September 18, 2020**.

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 **December 31, 2020**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **October 15, 2020** of the compensatory services provided to the Student at that point. 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. By or before **January 8, 2021**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parents for the cost of providing transportation for these services. If the District reimburses the Parents for transportation, the District must reimburse the Parents 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 **January 8, 2021**.

IEP Meeting

By or before **October 30, 2020**, the Student's IEP team will meet to discuss the Student's progress and the impact of the school facility closures. 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 should discuss his progress and the impact of the school facility closures on that progress. The team should also discuss what additional special education services are necessary to help lessen the impact of the closures.

By **November 6, 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) IEP or amended IEP, if applicable; 4) Plan for additional special education services, if applicable; 5) prior written notice; and, 6) any other relevant documentation.

DISTRICT SPECIFIC:

None.

OSPI will consider requests for extensions if necessary based on changes in Department of Health guidance—e.g., further stay at home orders or if in-person services cease to be feasible.

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 July, 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.)