

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-84**

### **PROCEDURAL HISTORY**

On June 17, 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 Issaquah School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On June 18, 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 29, July 1, and July 7, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on July 7, 2020. OSPI invited the Parent to reply.

On July 8, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on July 10, 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).

**Specially Designed Instruction:** The purpose of the IDEA is to ensure that all students eligible for special education have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1; WAC 392-172A-01005. Special education includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student’s disability; and to ensure access of the student to the

general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

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

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

## FINDINGS OF FACT

1. During the 2019-2020 school year, the Student attended a District elementary school, was in the fifth grade, and was eligible for special education services under the category autism.
2. The District's 2019-2020 school year began on September 4, 2019.
3. The Student's February 19, 2020 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures.<sup>1</sup> The Student's February 2020 IEP included goals in the areas of reading (comprehension), written expression, math (calculation), adaptive, social/emotional, and speech/language (mixed "-wh" questions, personal narrative/asking

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<sup>1</sup> At the commencement of the 2019-2020 school year, the Student's February 25, 2019 IEP was in effect. In its response, the District stated the February 25, 2019 IEP remained in effect at the commencement of the school facility closures. Review of the documentation included with the District's response, however, shows the District updated the Student's IEP following the Student's triennial evaluation and annual review in February 2020, which took place over two days—February 19 and 27, 2020. The resulting IEP was dated February 19, 2020.

questions). The Student's IEP provided the Student with the following specially designed instruction and related services to be provided in the special education setting:

- Math: 50 minutes daily (to be provided by a special education teacher);
- Reading: 50 minutes daily (to be provided by a special education teacher);
- Writing: 50 minutes daily (to be provided by a special education teacher);
- Adaptive: 50 minutes daily (to be provided by a special education teacher);
- Social/emotional/behavioral: 50 minutes daily (to be provided by a special education teacher);
- Speech and language pathology: 30 minutes weekly (to be provided by a speech language pathologist (SLP))
- Speech and language pathology: 15 minutes weekly (to be provided by a SLP as a concurrent service); and,
- Occupational therapy: 60 minutes monthly (to be provided by an occupational therapist (OT) as a concurrent service).

The Student's February 2020 IEP additionally provided the Student with the following accommodations and supports for school personnel:

- Provide a daily written schedule;
- Allow frequent breaks;
- Give adequate amount of time to respond;
- Reduce/minimize distractions in the environment;
- Provide consistent structure;
- Give advance notice of change;
- Hands-on activities;
- Use visual aids/physical clues; and,
- Occupational therapy support for school personnel for sensory processing (1 x/trimester in the special and general education environments).

The Student's IEP indicated the Student would spend 13.57% of his time in the general education setting.

4. 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.
5. The Parent, in her complaint, stated the Student was not provided the following services as outlined in the Student's IEP after school facilities closed:
  - Failure to provide 1,280 minutes weekly of accessible IEP minutes of special education services during the school closure (specifically in areas of speech, "adaptive speech," "adaptive skills," "social skills," "safety skills," "appropriate life skills," "money math," "behavior and emotional skills;"<sup>2</sup>
  - Lack of training on appropriate data collection for student's work;

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<sup>2</sup> It is noted that the Student did not have all of these areas of specially designed instruction and related services on his IEP. It is accordingly assumed that when filing the complaint, the Parent was alleging the Student did not receive the specially designed instruction and related services listed on his IEP, including math, reading, writing, adaptive, social/emotional, speech and language pathology (both as specially designed instruction and as concurrent service), and occupational therapy (as a concurrent service).

- Would like lessons to be given by qualified paraeducator instead of requiring parents to provide instruction and services; and,
  - Not addressing Student's attention issues, particularly without a 1:1 paraeducator.
6. On March 15, 2020, the District provided the Parent with a progress report on the Student's IEP goals.<sup>3</sup> In each area, it was noted that an IEP meeting was held on February 27, 2020 for the Student's annual review; and accordingly, more time was needed to achieve data to establish benchmarks.
  7. On March 19, 2020, the Parent emailed the executive director of special services (executive director) and director of special services (director), expressing concern that the information she had been receiving from the District regarding the school closures did not include information about students with IEPs. She asked for clarification from the District on what its plan was moving forward. Later that same day, the director responded to the Parent's email and informed her that the District "leadership team" had sent out communication on March 18, 2020 through the District's "E-News", outlining their "Emergency Education Learning Resources" for all students during the closure from March 23, 2020 through April 24, 2020, and that the Parent should anticipate hearing from the Student's IEP team regarding additional resources the following week. The director added that the executive director had shared an update on special education services through the E-News link that day and provided the Parent with a link to access the newsletter.
  8. Also, on March 19, 2020, the Parent emailed the special education teacher for directions on how to complete a money math activity provided earlier that day for all students in the Student's special education class. The Parent wrote that the Student was not understanding the value of the coins. The same day, the special education teacher responded with suggestions of sample activities to assist the Parent in engaging the Student. The special education teacher also offered suggestions of activities the Parent could try, which targeted different IEP goals if math was difficult for the Student.
  9. On March 20, 2020, the Parent emailed the executive director and other administrative staff to "stress the need [for] parent orientation" on how to use the websites and resources being provided.
  10. On March 21, 2020, the special education teacher provided the Parent a link to a website she created for her classroom and provided instruction on how to access additional websites containing activities to do with the Student that would target his individual IEP goals. She added, "As you saw in the video sent, if you have him perform an activity, ask him -wh questions about it. Encourage what he can tell you about himself, and then write a paragraph in more detail about the event to scaffold it (You are teaching him the appropriate way to construct a personal narrative...)"

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<sup>3</sup> The Student's IEP required progress be reported each trimester.

11. On March 22, 2020, the Parent emailed the special education teacher and asked for more information on how to implement a math activity provided, explaining that the Student seemed "confused." That same day, the special education teacher responded to the Parent's email with information on how she had worked with the Student in the classroom using the same math resource she had provided the Parent. The special education teacher also provided the Parent suggestions of different methods the Parent could try to address the same goal targeted in the activity sent, as well as different activities targeting different goals if working on the math goal was not an option.
12. 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.
13. On March 23, 2020, continuous learning began in the District. The District's efforts included developing continuous learning plans (CLPs) for all students with an IEP, to facilitate and document the District's services and supports that would be provided during distance learning to each student.
14. On April 3, 2020, the special education teacher and SLP jointly emailed the Parent to ask how the previous week went. The Parent responded that the Student needed more structure and academic content related to his IEP. The Parent added that the activities provided did not make up the entire "6 hours of school." That same day, the special education teacher responded with suggestions, including using a video the SLP had made for the Student to work on his reading comprehension, and offered activities the Student could do to work on life skills (making a sandwich, unloading the dishwasher, etc.). The SLP also responded to the Parent's email with a template for an additional activity to work on sequencing. The Parent responded, "Thank you this was helpful. I'm creating right now some schedules and resources."
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, the special education teacher emailed all parents of students in her class a link to an optional lesson plan for the week related to the kitchen that would "reinforce many of the adaptive tasks we work on at school." The special education teacher additionally sent a separate email to the Parent with a resource that directly related to the Student's writing IEP goal with instructions for how the Parent could implement the activity with the Student.
17. On April 7, 2020, the special education teacher emailed the Parent a remote learning student needs assessment to fill out to inform the District of any needs the Student and/or family had during remote learning.
18. From April 13-17, 2020, the District was on spring break.

19. On April 15, 2020, the SLP emailed the parents of students she and the OT served to explain how they would be providing services following spring break. In her email, she explained:

Each Monday, you will receive a power point containing the lessons for the week. This will be sent by your classroom teacher but will include lessons from both the occupational therapist and the speech language pathologist. The occupational therapist will be targeting sensory activities within cooking, art, and/or within the social portion of the power point. Her focus will be on providing meaningful sensory stimulation for your child. The speech language pathologist will include activities each week based on the theme with language strips or vocabulary concepts created to expand your child's expressive and receptive language. Additionally, the therapist will be working collaboratively with the teacher to design social scripts supported by Coreboards and/or sentence strips. Other activities may be included depending on your child's needs...

The SLP added that special education services and supports "will continue, although services will not be identical to what was offered while attending school in the building," and wrote that both she and the OT were there to support the parents and were available to partner with the parents to provide additional services and supports if needed.

20. On April 16, 2020, in response to the SLP's email, the Parent emailed the SLP and asked what the plan was to address the Student's specific IEP goals during the school closure. That same day, the SLP responded to the Parent and explained that the work sent to her for the Student would include activities designed to target the Student's specific IEP goals. She wrote:

One of the things you will be receiving will be scrambled questions and scenarios for [Student] to practice asking questions. I have also included another book with -wh questions. I also went to [school] and got the documents related to his social goal from my computer. That will be included with the powerpoint. Look at the work offered the first week. If something is confusing, I can explain how to do something through either a pre-recorded zoom or youtube video. One of these will also be included within your packet for the week, so you can see the platform.<sup>4</sup> If you need anything more or feel that he needs work in a specific skill, we can provide that for you. It's really an open communication, and this will be a growing response. Some parents don't want a lot and some want more, so look at the material you receive on Monday and let us know what you think. If you want more, or feel something is not being adequately targeted we can discuss how to proceed. [Sic].

21. On April 19, 2020, the special education teacher emailed the Parent information about two learning platforms she planned to use: Boardmaker<sup>5</sup> and Seesaw.<sup>6</sup> Regarding Seesaw, the special education teacher explained:

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<sup>4</sup> In her reply to the District's response, the Parent wrote that with the exception of one recorded video where the SLP was reading a book, she never received a recorded video from the SLP. She indicated that she felt more video instruction would have been helpful and that she had requested it throughout the spring, but did not receive it.

<sup>5</sup> Boardmaker is an online platform that provides print and interactive materials for students with disabilities.

<sup>6</sup> Seesaw is an online learning platform that allows teachers to upload assignment, students to share their work, and for teachers to provide feedback on student's work.

I will be sending you a code that you can scan. In there I have assigned tasks that support [Student's] goals as well. There are lessons for the week and possibly will extend into next week. This week's themes is community helpers. I added a book on community helpers, a comprehension quiz, and a writing activity. [SLP] added a community helpers powerpoint. [Student] can record his answer by hitting the record [button]. Some have attached worksheets with several pages to do at your leisure. I typically had [Student] complete 3 activities and then delivered reinforcement. You can even upload work samples by taking a picture on Seesaw. If you prefer, just keep a portfolio of [Student's] work. You will also see assignments from [SLP] and [OT]. Again, just complete what you feel works for [Student]. Were you able to get Clicker<sup>7</sup> set up? If not, I will see if I can set you a student account for [Student]. I found a variety of activities that support his writing goal. I will check back in with you and see what you think and make adjustments based on your feedback. Hopefully everything is easy to use. [Sic].

22. Also on April 19, 2020, the Parent responded that she had been doing study time with a schedule and that the Student had a break between activities. She added that the Student was working with his private board certified behavior analyst (BCBA) and that she would let her know how Boardmaker went with the Student's BCBA.
23. On April 20, 2020, the special education teacher emailed the Parent information on how to access the Student's individualized Seesaw account she created. The Parent responded to the special education teacher and the SLP, communicating that she had gone to access the materials on Seesaw, but needed help. She specifically asked for help implementing a "zones of regulation" activity and asked if the special education teacher and SLP could record and post a video with instructions. The Parent also wrote that she did not understand the math activity. The Parent added that she did not believe the pdf materials were enough and that she needed more instruction and demonstration on how to implement what she did receive.
24. Also on April 20, 2020, the special education teacher and SLP responded to the Parent's email to help explain how to implement the zones of regulation activity and added that they could provide her with instructional videos regarding how to implement activities if she thought it would be helpful, but noted they were unable to provide instructional videos for the Student.
25. On April 22, 2020, the Parent emailed the director of special education and the special education teacher and stated that "although [Student's] teacher and speech pathologist have been fast in answering questions and providing guidance and that is appreciated, the program the district sent to us...is not enough to provide [Student] with what he needs to keep his school routine and to prevent regression." The Parent wrote that the Student required an "interactive presentation of materials" to assist both the Student and her in her efforts to implement activities with the Student, and expressed that "Parents can guide students but I'm not a speech pathologist or a teacher."
26. On April 23, 2020, the special education teacher responded to the Parent that it would be helpful to schedule a time to develop the Student's CLP: "During that time we can talk about

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<sup>7</sup> Clicker is an online tool to support students with autism with reading and writing.



the best delivery model as well as activities that will support [Student] best." She added that they could discuss additional supports and methods the Student was familiar with. The Parent responded the same day that they could schedule a Zoom meeting and that either she, or the Student's BCBA, could set up a meeting.

27. On April 26, 2020, the special education teacher again reminded the Parent that the District had a new form to fill out (the CLP), which would enable them to decide on key areas they would like to focus on during the school closure. She added that, "Knowing we only have 90 minutes per day of activities for all minutes of related services to support [Student], this form gives some options on how we want to approach the objectives/activities...Looking forward to planning together."
28. On April 27, 2020, the SLP emailed the Parent that she found another site she thought the Student might like, called "Boom cards"<sup>8</sup>, that she believed would also support his IEP goals. She provided the Parent with a username and password she had created and attached information on how to use it. She noted that she thought the Student could use the platform to complete independent activities for 15 minutes per day. The Parent initially had difficulties accessing it, but was eventually able to resolve any access barriers.
29. From April 27 through 30, 2020, the Student accessed seven activities on Seesaw that were created by the special education teacher for the Student. For each activity, the Parent provided feedback to the special education teacher (e.g., how the Student engaged with the activity, if the Parent had questions regarding how to implement the activity, if the Parent would like the special education teacher to create more or less of that kind of activity for the Student). The special education teacher responded to the Parent's feedback to provide support and used the feedback to inform future activities added to Seesaw.<sup>9</sup>
30. On April 28, 2020, members of the Student's IEP team met for three hours via Zoom to develop a CLP for the Student. The Parent, SLP, OT, and special education teacher attended. According to the CLP, the Student was to receive the following services during the closure, to begin on May 1, 2020:

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<sup>8</sup> Boom cards enables teachers to create individual lessons for students on specific topics.

<sup>9</sup> From April 27 through June 15, 2020, the Student continued to access activities through Seesaw. The Parent provided feedback on each activity and then the special education teacher and/or the SLP would reply. Examples of feedback and responses included: (Parent) "This was hard...[Student] was crying a lot and not getting it so I did not do all of them. I think I have to have an extra visual to help me." (Special education teacher): "Thanks for letting me know. I'll see what I can do;" (Parent) "[Student] really surprised me! I thought that he was not paying attention but he did it all independently," (Special education teacher): "That's great! I'm glad he did so well;" (Parent): "Amazingly enough, I needed to prompt him only once and he had some wrong but he did really well." (Special education teacher): "That's great! This one was harder. I wondered how he'd do. I'll make another one like this next time;" (Parent): "I'm trying to search but I'd like to ask for social stories that will explain why we can't travel, as you know this is something [Student] likes..." (Special education teacher): "I will see what I can find or make..."

- Reading,<sup>10</sup> 30 minutes, 5 x weekly, to be provided by the special education teacher;
- Writing, 30 minutes, 5 x weekly, to be provided by the special education teacher;
- Math, 30 minutes 5 x weekly, to be provided by the special education teacher;
- Adaptive, 15 minutes 5 x weekly, to be provided by the special education teacher;
- Social/emotional, 15 minutes, 5 x weekly, to be provided by the special education teacher;
- Speech language pathology, 30 minutes, 1 x weekly, to be provided by the SLP;
- Speech language pathology (related service), 30 minutes, 1 x weekly, to be provided by the SLP; and,
- Occupational therapy (related service), 20 minutes, 1 x weekly, to be provided by the OT.

The CLP noted the Student did not need internet provided or a laptop and had no other assistive technology needs. The CLP also noted that no family training was needed to implement the CLP, stating that:

[Parent] will be working on the Social Emotional/Adaptive skill goals. SLP provided video tutorials on how to use Storyboard and Social Emotional goal binder/program. Parent is using the Zones material provided to her coupled with video lessons made by the team. However, she may not use it on a daily basis. Team provided materials, task analysis sheets, videos,<sup>11</sup> etc. Parent will also be teaching new activities, such as doing the laundry.

Regarding parent input, the CLP stated that the:

Parent would like to focus on reading comprehension, written expression and [Parent] will work on adaptive and social goals through his daily routines.<sup>12</sup> [Student] receives ABA and SLP services through private therapies and [Parent] requested that he have ample time to complete those activities. In addition, she will be using her own learning materials in conjunction with teams and would like to have the ability to select activities that [Student] is interested in.

The CLP also explained that there were some IEP goals that would not be focused on during the closures. These included social/emotional and adaptive/occupational therapy. The following rationale was provided:

- **Social/Emotional:** "Team delivered [Student] personal Zones of Regulation material to [Parent]. Speech Pathologist, [SLP] provided lesson via video for [Parent]. [Parent] will use [Student] actual goal material throughout the day to help him regulate his feelings. Team will

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<sup>10</sup> Under "temporary adjustments during closure," the CLP noted that in the areas of reading, writing, and math, the "Parent will use materials provided by team but will also be using ABA materials and working on the goals in different ways."

<sup>11</sup> The Parent reiterated in her reply that she did not receive videos containing instruction, with the exception of one video where the SLP read a story and one video instructing the Student on making a sandwich.

<sup>12</sup> According to a statement provided by the special education teacher, which was included with the District's response, during the Zoom meeting to develop the CLP, the team spent the first 90 minutes discussing how the team would concentrate on these areas, as the Parent expressed that she would like them to be focused on during the closure. The special education teacher stated the Parent indicated she did not want speech and language services because she believed the Student would be receiving them through private therapy. The special education teacher wrote that the Parent had requested the SLP support the Student's reading and writing goals by using picture scenes to enhance comprehension skills.

continue to give supports but parent reports that she will lead instruction and use materials through [Student's] day."

- **Adaptive/occupational therapy:** "Team provided 5 step task analysis sheets and sample video to correlate to [Student's] goal. This goal [sic] requires [Student] to seek help when he is unsure of how to complete a step within the task. [Parent] will support this goal by having [Student] complete teacher provided tasks as well as parent led ideas. [Parent] will begin by teaching him to do laundry and seek help when needed. Parent will provide pictures and videos."<sup>13</sup>
- **Speech and Language:** "SLP will support reading and written language goal as original goal was to answer questions in a natural setting or to gain access to an item. The SLP will address the entire goal area of communication. The other area was to retell an event in [Student's] school day. The team determined that this goal would be supported by focusing on events in a story/through increased focus on wh questions."

The CLP provided the following accommodations would be changed during remote learning:

- "Provide a daily written schedule" – The CLP stated that sample schedules would be provided instead and that the Parent would "continue to modify depending on their family schedule;"
- "Reduce/minimize distractions in the environment" – No change, except that the Parent would use the Student's ABA room for learning.

The CLP stated that progress monitoring for reading, writing, and math would be completed by the Parent.

In her reply, the Parent stated that she did not receive a copy of the CLP and that she was never informed that she was supposed to be collecting data on the Student's progress. The Parent additionally stated that she was never trained how to collect data.

31. On April 30, 2020, the SLP emailed the Parent to notify her that she had posted several assignments for the Student on Seesaw. She asked the Parent to give her feedback on the assignments she provided so she could plan for the following week and could "make/create things that would be best for [Student]." She added that she would "record a book and ask questions to see if that platform works next for next week." She also asked the Parent if she liked videos on everyday speech<sup>14</sup> or preferred questions posted to a different platform. She emphasized that it was helpful to get specific feedback so he could work in partnership with the Parent and find what works best in a remote learning setting. The Parent responded the

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<sup>13</sup> In the special education teacher's statement provided with the District's response, the special education teacher explained that the Parent had indicated she would be addressing the social/adaptive goals with her ABA therapist, and that while not requested, the team "provided sorting activities via Seesaw and picture cards as a supplemental activity to support the social/emotional goal." The special education teacher additionally explained that "The premise of [Student's] goal is to complete a task and seek help when he reaches a step he is unsure of what to do next...The team provided his previous task analysis sheets and a video of making sandwiches, (emptying dishwasher, microwaving food, making sandwiches, etc.). [Parent] requested more challenging tasks and the team provided sample lists." However, the special education teacher explained that while they provided examples of activities to the Parent, they believed the Parent was working with her ABA team to complete these tasks.

<sup>14</sup> In her reply, the Parent wrote that she had requested videos but never received them.

same day that she had "browsed through," and was occupied that night but would look more in-depth the following day and respond.

32. On May 1, 2020, the Parent emailed the SLP that she was having difficulties accessing the story comprehension board on Seesaw. The SLP responded to the Parent the same day with ideas to try and resolve the technology barrier so the Parent could access the activities she had provided for the Student. The SLP also told the Parent that while the activity she had originally provided was not interactive, she could change the activity the following week and make it interactive if the Parent would prefer.
33. On May 3, 2020, the SLP emailed the Parent that she posted all of the activities for the week. She added that she made a boom card for the Student's writing goal and asked her to provide feedback for how it went. She added that they may need to make changes, but added they could the following week.
34. On May 4, 2020, the special education teacher emailed the Parent with a story for the Student to start making connections with money.
35. From May 4 through 26, 2020, the Parent accessed 23 activities on Seesaw that were created by the special education teacher for the Student based on feedback and communication the special education teacher had received and continued to receive from the Parent.
36. On June 1, 2020, the special education teacher emailed the Parent to remind her that it was starting to become time to talk about the Student's transition to middle school. She added that she had been meeting via Zoom with the special education teacher at the middle school and had provided her with the Student's IEP to discuss where they had left off and what the Student had been working on. The special education teacher added that she had shared some ideas she had with the new special education teacher and asked the Parent if she had anything she would like the special education teacher to share with the new teacher to help make it a smooth transition.
37. From June 4 through 8, 2020, the Parent and SLP exchanged several emails about the content and difficulty level of the boom cards so the SLP could ensure the boom cards being provided were appropriate for the Student.
38. From June 4 through 15, 2020, the Parent accessed 16 activities on Seesaw that were created by the special education teacher and SLP for the Student based on feedback and communication the special education teacher had received and continued to receive from the Parent.
39. On June 12, 2020, the Parent emailed the special education teacher to ask if she bought money cards for the Student and laminated them, and asked the special education teacher if she could create a lesson plan with two choices for the Student. The special education teacher responded that she would "make it and send it out the next week."

40. On June 17, 2020, OSPI received the Parent's complaint and opened this investigation.
41. On June 18, 2020, the District provided the Parent the Student's progress report. Each goal area noted that "During COVID-19, closure lessons and enrichment activities were provided via email/Seesaw within the goal area. [Student] engaged in these activities 5 out of 5 days...Due to the circumstances surrounding the closure and the nature of remote learning, valid and accurate data, cannot be established at this time. Additional data collection will occur when school resumes to determine [Student's] present level of performance."<sup>15</sup>
42. June 19, 2020 was the last day of the 2019-2020 school year for the District.
43. On June 23, 2020, the Student's IEP team met to review the citizen complaint filed by the Parent and to discuss recovery services. The meeting was held via Zoom. According to the prior written notice (PWN) provided to the Parent the same day, the IEP team reviewed the CLP and determined the CLP was implemented as agreed upon. The team discussed the Student's progress and activities provided throughout the closure, "including, but not limited to: Individualized lessons to correspond to goal areas in reading, written expression, mathematics, videos created to support [Student's] [social] stories [sic], Seesaw assignments, personalized boom cards created and support/email communications, etc." During the meeting, the middle school special education teacher outlined a typical middle school day and the director answered the Parent's questions regarding possible scenarios for what school might look like for the upcoming school year. According to the PWN, the director told the Parent that more information would be provided as it became available to the District. The PWN indicated the IEP team determined the Student would continue to receive 1,280 minutes per week of specially designed instruction according to the CLP. In the District's response, the

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<sup>15</sup> While the progress report did not include any data, it did include some narrative data on the activities the Student participated in during the closures that related to each area of the Student's IEP. For reading comprehension, activities provided to the Student included "listening to stories and looking at picture scenes" to help answer comprehension questions. Activities targeting written expression goals included "making sentences to a variety of picture scenes." For math, the progress report noted that the Student participated in "activities using the dollar up method and lessons that required [Student] to select the nearest dollar amount for the item." In social/emotional, activities included "placing pictures of a variety of pictures in the correct zone. In addition, [Student] used his own Zones of regulation book at home throughout the day. He listened to a variety of social stories about each of the zones and completed activities following the story to demonstrate his understanding of the emotion." Adaptive "activities included making sandwiches, loading and unloading the dishwasher, doing laundry and putting clothes away." Videos and sample checklists were provided and the Parent worked on having the Student "ask for help when he became frustrated or unsure." Speech/language activities included being provided "books with interactive questions targeting -wh comprehension questions: (ex: who, what, where, when, what doing), following directions with prepositional concepts, sequencing, scrambled questions and sentences, making simple inferences and increasing access to simple vocabulary using sorting tasks". Questions targeting emotions and perspective taking were also used.

District additionally noted that at the IEP meeting, the Parent expressed concerns about the accuracy of any data collected due to lack of parent training.<sup>16</sup>

44. On July 8, 2020, the Parent submitted a reply to the District's response. In her reply, the Parent expressed frustration that she did not feel the District communicated with her early on during the school closures regarding its plan to provide special education services to the Student, that she did not receive a copy of the CLP, that the minutes of services provided did not equal the minutes in the Student's IEP, and that the special education services the Student did receive were inadequate because they did not include interactive or recorded video instruction via Zoom or another online platform by a special education teacher and SLP, which the Parent asserted the Student required due to his specific needs.<sup>17</sup> The Parent expressed that she felt the materials and support she received from the District were often either "too easy" or were completed within a few minutes, and that she did not feel qualified to implement them properly due to difficulties engaging the Student. She further expressed that because there was no live video conferencing, she was unable to receive training or support for "error correction" or strategies for redirecting the Student during instruction when he became "frustrated" with an activity. Finally, in her reply, the Parent wrote that she was never asked to collect data as stated in the CLP and that the District had not collected data on the Student's progress during the spring semester.

## CONCLUSIONS

**Issue One: IEP Implementation** – The Parent alleged the District failed to implement the Student's individualized education program (IEP) from March through June 2020. Specifically, the Parent alleged the District did not provide the Student with all the specially designed instruction and related therapies in his IEP and in a format and method that was accessible to him. The Parent further alleged that she did not receive training on how to appropriately collect data on the Student's progress and that the District accordingly did not collect progress data during the school facility closures.

Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs may not be implemented as written as school facilities shut down and districts transitioned to various distance learning formats. While there was not an expectation that districts implement a student's IEP as written during school facility closures caused by COVID-19 in spring 2020, districts had to have a plan for how students with disabilities

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<sup>16</sup> In the District's response, the District wrote that the Parent's main concern was that the Student was not provided "in-person" services. In her reply, the Parent clarified that she never requested in-person services, but rather was requesting direct or live instruction via video or "Zoom," and training for collecting progress data.

<sup>17</sup> In her reply, the Parent wrote, "I requested speech and teaching with video conferencing together with recorded videos as more interactive approach for [Student] and I was denied and that was why this complaint was made because the lack of interactions and appropriate teaching by professionals are not fulfilling my son's right to have a proper education and also made more costly to our family to have additional programs and therapies made to replace the lack of specific education."

were to receive a free appropriate public education (FAPE), including the provision of specially designed instruction and related services. Accordingly, all schools were required to have begun continuous learning for all students by or around March 30, 2020, which was to include a written plan for providing special education services, including specially designed instruction and related services, to students during the school facility closures. In addition, districts were required to document in writing, the individualized special education services it was providing to each student with an IEP.

Here, the District provided written documentation of the individualized special education services provided to the Student beginning the end of March 2020. While the special education services provided during distance learning did not mirror exactly the services in the Student's IEP and may not have addressed each of the Student's IEP goals, the District was not required to implement the IEP exactly as written due to exceptional circumstances presented by COVID-19. Instead, as previously stated, the District was required to maintain written documentation of the individualized special education services it did provide the Student beginning around March 30, 2020—which the District did. The Student's special education teacher and SLP designed activities for the Student based on his IEP goals and remained in frequent communication with the Parent to help her implement the activities remotely, and to provide alternative activities or to help the Parent try different methods if her feedback indicated one method was unsuccessful at engaging the Student or otherwise unable to be implemented successfully by the Parent at home. Accordingly, OSPI finds no violation regarding the special education services provided during the school facility closures.

However, the District was unable to provide any progress data to show the impact of the special education services provided on the Student's IEP goals. While the District updated information on the Student's baselines and added narrative information about the activities provided during the closure, the District did not collect any other data or train the Parent on how to collect progress data from March through June 2020, in order to be able measure the impact of the school facility closures on the Student. Accordingly, OSPI finds the District to be in violation related to progress reporting.

While the District previously held an IEP meeting to discuss the Parent's concerns in response to this complaint, it did not discuss the Student's progress from March through June. Accordingly, the District will be required to hold another IEP meeting and will be required to monitor and measure the Student's progress during the school facility closures prior to the IEP meeting. At the IEP meeting, the IEP team must consider if the Student requires any additional special education services to lessen the impact of the school facility closures based on the progress data collected. Further, while the District may not have been required to utilize the method of delivery requested by the Parent (live interactive or recorded video instruction), it is noted that the District continued to deny the Parent's request for increased video instruction and Parent training on how to implement instruction and conduct progress monitoring, despite not having progress data to see if using alternative methods of instruction, including relying on the Parent to implement the instruction, was effective. As the District informed OSPI that it will likely be commencing the 2020-2021 school year utilizing a remote service delivery model, the IEP team will also be required to discuss what training the Parent requires to implement the Student's IEP for fall 2020.

The District will also be required to develop a training on measuring progress during non-traditional instruction and provide training to staff.

### **CORRECTIVE ACTIONS**

By or before **August 28, 2020, September 25, 2020, and October 9, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **IEP Meeting**

By or before **September 18, 2020**, the Student's IEP team will meet to discuss the Student's progress and the impact of the school facility closures from March 30, 2020 to June 19, 2020. Prior to the meeting, the District will need to monitor and measure the Student's progress. This could include a review of existing data, Parent input regarding progress at home during the closures, and new assessments to reestablish the Student's baseline on her goals.

At the meeting, the Student's IEP team must discuss the Student's progress and the impact of the school facility closures on that progress. The IEP team must also discuss whether the Student requires any additional services to mitigate the impact of the school facility closures on the Student. If the District will be participating in remote learning for the fall, the IEP team should also discuss if the Parent requires any additional training for the fall 2020 and if the Student requires any changes to the method of the delivery of instruction in order to make progress.

By **September 25, 2020**, the District will provide OSPI with the following documentation from the IEP meeting: 1) Invitation or scheduling documentation; 2) Agenda or meeting notes; 3) Information used to determine the Student's progress on IEP goals during school facility closures; 4) Updated progress report; 5) IEP or amended IEP, if applicable; 6) Plan for additional special education services and supports, including parent training; 7) prior written notice; and, 8) any other relevant documentation.

By **October 2, 2020**, OSPI will review the data used by the IEP team to determine the Student's need for additional services, as well as any plan proposing additional services and parent training, and will either amend or approve.

#### **DISTRICT SPECIFIC:**

##### **Training**

By **October 2, 2020**, the District will develop and conduct training for District level special education administrators, special education certificated staff, and related service providers,<sup>18</sup>

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<sup>18</sup> If the District is able to identify which specific staff were unable to report progress, then the District may opt to train only those staff instead of all District staff identified in the above paragraph.



which focuses on conducting progress monitoring during non-traditional instruction. The training may be conducted remotely.

By **August 28, 2020**, the District will submit a draft of the training materials to OSPI for review. The training materials will include examples. OSPI will approve the materials or provide comments by September 4, 2020 and additional dates for review, if needed.

By **October 9, 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 August, 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.)