

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-70**

### **PROCEDURAL HISTORY**

On June 12, 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 Seattle School District (District). The Parent 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 18, 2020, OSPI received additional information from the Parent and forwarded it to the District on June 19, 2020.

On June 19, 2020, OSPI received additional information from the Parent and forwarded it to the District on June 22, 2020.

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 no later than July 14, 2020.

On July 15, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on July 16, 2020. OSPI invited the Parent to reply.

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 Parent on July 22, 2020.

On July 25, 2020, the Parent requested an extension of time to reply to the District's response to the complaint. OSPI granted this request and asked the Parent to reply by August 4, 2020.

On August 4, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

OSPI considered all 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, case manager, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

During the COVID-19 school facility closures, as students received general education instruction and student support services, districts must provide students with disabilities with the special education services—related services and specially designed instruction—supporting a free appropriate public education (FAPE). The U.S. Department of Education Office for Civil Rights (OCR) and Office for Special Education and Rehabilitative Services (OSERS) indicated the "exceptional circumstances" presented during the school facility closures caused by COVID-19 "may affect how all educational and related services and supports are provided" to students with disabilities. There is not an expectation that IEP services would be delivered exactly as the IEP states. *Questions and Answers: Provision of Services to Students with Disabilities During School Facility Closures for COVID-19* (OSPI March 24, 2020); *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (OCR/OSERS March 21, 2020) ("It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities...during this national emergency, schools may not be able to provide all services in the same manner they are typically provided...The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency...FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students.")

While there was not an expectation that districts implemented a student's IEP as written during school closures caused by COVID-19 in spring 2020, districts must have had a plan for how students with disabilities were to receive a FAPE, including the provision of special education. *Questions and Answers* (OSPI, March 24, 2020); *Questions and Answers* (OSPI, May 5, 2020). See also, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (U.S. Department of Education, March 13, 2020) ("SEAs, LEAs, and schools must ensure that to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under the IDEA"). All schools were expected to have begun providing educational services for all students by March 30, 2020, which OSPI termed "Continuous Learning 2020." OSPI Bulletin 024-20 (March 23, 2020).

The individualized special education services being provided to a student during the school facility closures as part of continuous learning, were to be documented in writing using a student's annual IEP, IEP amendment (particularly if services to be provided during the closure were significantly

different from what the IEP indicated), prior written notice, or optional "Continuous Learning Plan" (CLP) or similar document. Districts had flexibility in how they chose to document decisions made in real-time. *Questions and Answers* (OSPI, April 13, 2020). Districts were encouraged to prioritize parent communication, including discussions of how special education services were to be provided during the closures. *Questions and Answers* (OSPI, May 5, 2020).

**Specially Designed Instruction:** The purpose of the IDEA is to ensure that all students eligible for special education have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1; WAC 392-172A-01005. Special education includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

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

## FINDINGS OF FACT

1. During the 2019-2020 school year, the Student attended a District elementary school, was in the second 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 August 29, 2019 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The Student's August 2019 IEP included annual goals in communication (/R/ and /TH/), reading (reading, oral reading fluency, independent reading and use of assistive technology), social/behavior (emotional regulation and self-advocacy, perspective taking, trust building, and answering questions), and written language (spelling). The Student's IEP provided the Student with the following specially designed instruction and related services, provided in the *special education setting*:
  - Written Language: 150 minutes weekly (provided by a special education teacher)
  - Communication: 90 minutes monthly (provided by a speech language pathologist (SLP))
  - Reading: 150 minutes weekly (provided by a special education teacher)

- Social/Behavioral: 60 minutes weekly (provided by a special education teacher)
- Social/Behavioral: 150 minutes weekly (provided by special education staff)
- Speech Language Pathology (related service): 30 minutes monthly (provided by an SLP)

The Student's IEP included an extensive list of accommodations and modifications, and 200 minutes per year of occupational therapy as a support for school personnel. The Student's IEP indicated the Student would spend 77.7% of his time in the general education setting.

4. On February 25, 2020, the occupational therapist (OT) noted in her communication log that the Student receives "200 minutes yearly of occupational therapy support as an accommodation of Support for School Personnel" and that after that date, "10 minutes remain." The OT noted her plan was to "continue to monitor and check-in regularly."
5. On March 11, 2020, the District notified families that it would be closing schools for at least 14 days, beginning on March 12, 2020.
6. Also, on March 11, 12, and 16, 2020, the Student's general education teacher provided the students in her class with optional learning packets and supplemental activities to work on during the time they were not in school.
7. The case manager also emailed families on her case load, including the Parent, on March 12, 17, and 20, 2020, with optional social emotional resources, including a problem-solving resource (with a page on perspective taking), a thinking traps visual, a positive self-image activity, mindfulness activities, a mood meter, and the teacher outlined other ideas and resources for bringing social emotional education into the home. The case manager also offered 1:1 connection meetings on Zoom to check in on overall emotional health.
8. On March 12, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in King, Snohomish, and Pierce counties through April 24, 2020 (the closure was extended State-wide on March 13, 2020). The District, per this proclamation, extended its closure through April 24, 2020.
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, for elementary teachers:
 

General education teachers...were directed to develop lessons and learning activities and connect with students and their families to communicate academic learning targets, social and emotional goals and corresponding activities. Teachers were directed to connect creatively with their class or smaller groups of students...and provide at least one math, one literacy, and 2 additional, standards-aligned learning activities each week. General education teachers were directed to contact elementary students a minimum of twice a

week through email, phone, videoconferencing, or Schoology.<sup>[1]</sup> Moreover, teachers were instructed to provide differentiated instruction for students needing more support or more challenge, via small group or 1-1 feedback and coordinate tiered instruction for students in collaboration with special education.

Special education teachers were instructed to coordinate instruction for students in collaboration with general education teachers and support staff (IAs, specialists, ELAs) and ensure 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 and check-ins to support families and students in meeting individual goals and provide needed accommodations for distance learning. Special education teachers were also charged with communicating with families to assist students in making progress on their IEP goals.

11. On March 24, 2020, the SLP emailed families resources for ways they could support students' speech and language therapy work while schools were closed. The resource included ideas for students working on speech sounds and students working on language skills.
12. Also, on March 24, 2020, the case manager emailed the Parent to check in. The case manager offered to set up a weekly Zoom meeting with the Student. The teacher stated she was concerned the Student might be "struggling with the stress/anxiety brought about by all of this change and uncertainty" and that she was there to help the Student "remember/utilize all the coping mechanisms he has already learned."
13. On March 26, 2020, the case manager emailed her students videos created by case managers on calming tools, spelling, compromising, and making schedules.
14. On March 30, 2020, continuous learning began in the District, and according to the District's response, "explicitly prioritized contacting students with IEPs."<sup>2</sup>
15. Also, on March 30, 2020, the case manager texted the Parent and the Parent expressed an interest in having the case manager set up a time to play video games with the Student. The Parent also shared that the Student's "rigidity" was a challenge to doing academics at home.
16. Between April 1 and 2, 2020, the Parent and case manager texted and discussed ways to engage the Student in virtual learning, including a plan to get the Student "used to seeing/hearing [case manager] on a screen." They also discussed the Student's struggle to engage in whole class Zoom meetings due to the Student becoming dysregulated.

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<sup>1</sup> 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>.

<sup>2</sup> 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, report services will be provided."

17. On April 3, 2020, the Student attempted to participate in a general education class Zoom meeting, but according to an email from the Parent, the Student "ended up crying in the corner" because a question during the meeting triggered his anxiety and he became dysregulated.

In a text message exchange, the Parent and case manager discussed the Student's struggle to engage in the whole class Zoom. The case manager responded in an email with ideas to help prepare the Student for the questions, including asking the general education teacher to send the questions out ahead of time. The Parent responded she tried to prepare the Student and she believed the Student was also confused about the general education teacher muting everyone during the meeting, which triggered "more anxiety about not having any control."

In her reply to the District's response, the Parent also stated the questions, such as the question asked during the Zoom meeting, are "known triggers for [Student]" and that "difficulty with questions has been a part of his IEP goals for years."

18. Also, on April 3, 2020, the case manager reached out to families with resources on creating a schedule, creating an activity menu, and creating a reinforcement menu. The teacher also provided other activities and resources for families (e.g., a 30-day Lego challenge, a sensory scavenger hunt, several reading activities, and a math activity). The teacher shared videos made by other teachers at the school for students to watch on subjects, such as meditation, reading fluency, compromising, and relaxing their minds.

19. Additionally, on April 3 and 6, 2020, the general education teacher notified families she would be using Schoology to communicate, share assignments, and provide resources moving forward. She notified families that there were materials parents could pick up at the school.

The Parent responded that they were not currently at home (they had temporarily relocated to another part of Washington). Based on later emails, the general education teacher worked on a way to get the Student the materials via mail.

20. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.

21. Also, on April 6, 2020, the case manager scheduled and invited students to a daily 30-minute virtual check-in, during which students could log on and talk with her.

The case manager also sent out a weekly schedule, which included her daily check in (with information about what to expect: "smiling at each other," sharing life updates, "silly/fun would you rather questions" or discussion, and connecting), other grade level groups the teacher was offering (first, fourth, and fifth grade), and parent office hours.

In the case manager's communication log, which the District provided as part of its response to this complaint, the case manager noted that "future group emails included an agenda for each meeting and user friendly formatting, Continued [sic] reminders for setting up 1:1's and

attending parent office hours, and weekly videos from the special education team" were sent out weekly throughout the rest of the school year.

22. On April 7, 2020, the Parent emailed the case manager and asked if the teacher could put together the reading game she was playing with the Student during their last virtual meeting, so that the Parent could work on reading with the Student. The case manager responded that she would send the materials and noted she and the Student had been "bouncing around in terms of what he's covered based on his interest and emotional ability day by day." The Parent and teacher scheduled a meeting to set the game up.
23. On April 8, 2020, the case manager and Student met for a "connection meeting" to check in, per the Parent's request that they focus on the Student's social-emotional needs.
24. On April 8 and 9, 2020, the Parent and case manager texted regarding the teacher's meetings with the Student and discussed setting up a meeting with a preferred peer to play a computer game. The case manager, in her communication log, noted the Parent "shared reflections of [the Student] and celebrating the difference that connecting is making!"
25. On April 11, 2020, the case manager emailed families regarding picking up or dropping off (or mailing) materials to families and shared a new set of videos for students to watch related to social/emotional skills. The case manager emailed the Parent directly to let her know she planned to mail the Student's supplies to him.
26. Also, on April 11, 2020 (and April 21 and 23), the case manager and Parent texted and discussed the Student "initiating conversation about setting up another time to see [case manager]" and the Student's "growing willingness to connect...[and] willingness to work on reading." The teacher shared a game app that she suggested as a way for the Student to practice his reading. They also discussed setting up a connection with a peer.
27. The District was on spring break from April 13 to 17, 2020.
28. On Friday, April 17, 2020, the general education teacher emailed families in her class, including the Parent, regarding small book groups that would start the following week.

The Parent responded to the email from the general education teacher, and copied the case manager, regarding what school was going to look like for the Student for the remainder of the school year. The Parent expressed concern with the Student's ability to participate in the book groups and noted the "'distance learning' thus far has failed to take into account the level of [the Student's] difficulty adjusting to the change of no school and his social communication issues and anxiety that come from his autism disability when it comes to social communication over a new platform." The Parent stated distance learning needed to include "1:1 time with a trusted teacher on a regular basis to build routine and predictability...regular 1:1 interaction via phone or video chat to 1) establish rapport over a new mode of communication 2) build ideas that may work for teaching and learning 3) teach lessons that provides content where [Student] can learn." The Parent noted she was trying to work on

reading and math with the Student, but that “looking through the general education classroom Schoology page to try to find work that is appropriate for [Student] has been prohibitively difficult.”

The Parent further emphasized that she did not consider the “current framework thus far” to support the Student’s learning or provide a free appropriate public education (FAPE). The Parent stated “there doesn’t seem to be a path forward for distance learning that will work for [Student]” and that they needed “an individualized plan that meets needs that arise from the current situation as well as takes into account [Student’s] disability.” The Parent requested an IEP meeting.

29. Also, on April 17, 2020, the general education teacher emailed the case manager about the Student participating in reading groups. The general education teacher said she was “not planning to put him into a reading group...because during the school year he was with you during those times. BUT I am worried he will feel left out or need some alternative activity.”

30. On April 17, 2020, the case manager also emailed families the weekly schedule, with the group Zoom check in meeting. The Parent responded and asked if the case manager had a time in mind to connect with the Student, or for the Student to play a game with another student.

The case manager responded on April 20, 2020, and stated she scheduled time Thursdays at 10:15 for the Student to play a game with another student. The case manager also offered multiple times for a weekly individual meeting with the Student.

The case manager also scheduled a “connection meeting” with the Student for the following day, April 21, 2020. The teacher stated the plan was to connect, and then if it was going well, they could play trivia, “do some ‘would you rather’ questions,” or learn a game for sounding out words.

31. On April 20, 2020, the OT emailed families to offer “further [optional] resources for extension and enrichment for children who receive [occupational therapy] services” and shared she would be holding office hours Mondays from 11:00 am to 1:00 pm. The resources included an occupational therapy activities calendar, resources for handwriting practice, a graphic organizer tool, self-regulation yoga break activities, a typing club, and a break taking form.

32. On April 23, 2020, the Student and case manager met via Zoom and played “Minecraft.” The teacher noted this encouraged “verbal explanation skills and collaboration.”<sup>3</sup>

33. On April 23 and 24, 2020, the Parent and general education teacher exchanged emails regarding the weekly schedule and the book group, and the Student’s continued resistance to participating. The Parent noted the Student was doing some reading with his father and

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<sup>3</sup> The case manager’s communication log noted she had similar Minecraft sessions with the Student, which targeted social connection and communication (social emotional) on April 30, May 7, May 14, May 21, May 28, June 4, June 11, and June 18, 2020.



that she hoped the case manager would be able to start working on some specially designed instruction in reading with the Student the following Tuesday.

The Parent asked the teacher to send her the book plan, students in the group, and group plan ahead of time, because that would increase the Student's chances of participating. The general education teacher responded and explained that because the Student was usually with the case manager during book groups, it was up to him if he wanted to do the whole group reading lessons that were being posted or join a group. The general education teacher stated she could "set it up however [Student] is comfortable," noted the "EPIC!" book program had a "read to me feature," and sent an example of what they would be doing during small group time.

The Parent responded that the story was "both too difficult for [Student] to read independently and yet not at his cognitive level for reading comprehension" and that the Student would be "flat out offended" if the Parent showed him the book and questions, so they would pass on the group opportunity.<sup>4</sup>

34. In regard to the reading group, the Parent, in her reply to the District's response, further explained that the reading group was an "example of how [Student's] disability precluded his involvement in an area of strength—reading comprehension—and led to further isolation from his general education classroom and missed out on what could have been a meaningful engagement within a small group setting." The Parent explained the Student had not previously participated in these groups and thus, "was not socially connected to an existing group," and that the reading content "was not at his relatively high reading comprehension level nor at his low ability to decode" (the book was a picture book).
35. On April 27, 2020, the general education teacher sent the Parent an invitation and link for the first reading group meeting.
36. On April 27 and 28, 2020, the case manager and Parent texted and reviewed what the teacher and Student's first academic session would look like and discussed the Student's "growth in willingness to engage in academic tasks."

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<sup>4</sup> In this email exchange, the Parent also asked, "Am I correct in understanding that he has done no reading comprehension work this year?" The general education teacher clarified that the Student was getting reading comprehension and provided information about the District reading curriculum. The teacher explained that there were four different types of reading lessons, and that while pre-closure, the Student missed the small group reading lessons, this was because he was receiving specially designed instruction during that time. The case manager also discussed the Parent's concerns with the Parent regarding the Student's reading comprehension instruction ("specifically at his advanced level") and the case manager provided an explanation of her services. The Parent clarified that she believed this was an issue of a "denial of FAPE due to [Student's] twice exceptional nature and the lack of instruction being provided at his advanced level in the General Education setting." OSPI notes that while the Parent had these concerns regarding services during the closure, some of the email discussion also reflected concerns about services provided prior to the closure, which are not at issue in this complaint.

37. On April 28, 2020, the case manager met with the Student via Zoom and played a “sound out game and Wheel of fortune,” which the Student was “familiar with from our work together in school.” This game targeted the Student’s reading goals and the case manager noted in her communication log that the Student “willingly participated” although the “Wheel of fortune style questions- [were met with] minimal success.”

38. On April 28, 2020, the Parent emailed the special education and general education teachers regarding the Student and his learning. The Parent stated:

We had good news from this mornings [sic] 1:1 time with [case manager]—[Student] was able to spend the time doing the ‘Sound Out’ game that he and [case manager] had done previously as part of his [specially designed instruction] at school...He also had a chance to check out the Wheel of Fortune game and seemed to think it was okay. He definitely has enjoyed the Jeopardy game that [case manager] had ready for one of the drop in sessions last week...

The Parent also stated they watched the video the general education teacher sent about the week plan and that the Student “got pretty emotional during that time...he said that he didn’t like how things were mixed up with other classes...[and] the combination of these individual difficulties means he is not able to engage in the general education plan.” The Parent stated the Student “agreed to do reading/word work as well as math work” with the Parent and that the Student “believes that he is already doing the reading group work with his dad, since they read part of a story every day and talk about it.” The Parent stated the Student was willing to work on multiplication and division, and that he had been “spending a lot of time doing social communication” with other students through Facebook messenger and Minecraft.

The Parent also referenced the District’s “[District] Guidance and Expectations for Continuity of Learning” document and stated:

Unless I’m missing something, these guidelines indicate that we can set up differentiated instruction for [Student] both around his areas of need for support (reading and writing) and for his area of needing more challenge (math)...Anyhow, the guidance from the district seems to indicate that we have some flexibility in finding more ways to get [Student] engaged in learning with his classroom teacher as well as case manager. So, I just wanted to start the conversation, as he has not been able to access the general education plans due to his unique needs.

39. In response to the Parent’s April 28, 2020 email, the general education teacher forwarded the email to the principal and another District staff person, stating she was:

Differentiating in both Math and Reading and that both are accessible to [Student], whole group reading comprehensions lessons with video and discussion prompts presented orally, small reading group focused on comprehension, differentiated math within the strand we are on (which is not multiplication and division because we have already done that and we are on Money and Time now).

The general education teacher stated she would love the rest of the teams’ thoughts and support.

One of the District's special education services supervisor (special education supervisor) advised them to take a "team approach to developing his learning plan." She suggested they decide what they can do to support him, develop the plan, and send it as a draft to the Parent for input. The supervisor stated, "[Student] may need the work expectations to be narrowed down to just the most important areas of learning for him."

40. On April 30, 2020, the case manager forwarded a blank continuous learning plan (CLP) template for the Student to the Parent so the Parent could see "what it looks like and can give input as I start building on for [Student]."
41. On May 1, 2020, the Parent responded to the case manager's email about the CLP, stating the Student was "so eager to learn when he's ready, but with the switch to the online environment/remote learning" was challenging for the Student. The Parent stated the Student "runs and hides, doesn't want to talk, needs his body sock, lots of movement, refuses to engage due to dysregulation/overload, etc." The Parent stated she had been using some manipulative word blocks with the Student and that he "is cooperating really well when it comes to math lessons."
42. On May 3, 2020, the general education teacher reminded families that they could come to school to pick up their children's materials and shared information about a social studies assignment for the following week.

The Parent replied on May 4, that there was "no need" to make a packet for the Student because social studies was "too far down his list for [her] to tackle getting him to do anything organized" and they were not in Seattle to pick up the packet. The general education teacher suggested that, if he was interested, the Student could color the flags for his countries.

43. On May 4, 2020, the special education supervisor emailed the District's advanced learning program specialist for special populations (advanced learning specialist) to ask if she could help them support the Student's advanced learning needs. The advance learning specialist, who was already familiar with the Student, agreed to assist the team.
44. On May 5, 2020, the case manager met with the Student for her weekly check-in and they did a lesson on "specific sounds followed by trivia game." The case manager's communication log noted the lesson focused on the "Oi vs Oy" sounds and they played the "Wheel of fortune trivia game."

After the meeting, Parent emailed to let her know that it was too much of a stretch for him emotionally as they covered a "different idea and a new game." The Parent stated the Student "did amazingly," but then "had a panic attack two minutes after we got off the call." The case manager replied that she understood and wanted to "find a way to introduce a topic earlier so he can feel comfortable with the ideas by the time they play the game." The teacher stated she would continue thinking about strategies to support the Student.

45. On May 6, 2020, the Student joined the case manager's group social emotional Zoom. The case manager's communication log noted the Student "was always invited to join/participate in my daily check in" and listed the dates he attended and participated either partially or fully, including: May 6, May 13, May 27, June 3, and June 10, 2020.
46. On May 7, 2020, the Parent emailed the SLP regarding direct speech services and asked to schedule "some 1:1 time" for the Student.

In response to the Parent's email and because she did not have guidance from her supervisor regarding teletherapy, the SLP contacted the case manager to see if there was a group she was running with the Student that the SLP could join so she could provide some social communication support.

On May 8, 2020, the SLP emailed the Parent that they were trying to get some additional guidance and clarification on teletherapy, and that she would be in touch when she had more information.

47. On May 8, 2020, the SLP shared with families some additional speech and language resources. She provided resources for articulation, expressive and receptive language, fluency, and social and pragmatic language.
48. On May 12, 2020, the OT emailed families to check in and remind them that she was still holding virtual office hours.

The Parent responded, copying the case manager, and stated that the Student had not been able to access any general education content offerings. The Parent stated she felt the general education instruction did not provide meaningful content for the Student and was increasing his anxiety. The Parent stated the Student's "sensory processing and anxiety disability related adverse impact has increased significantly with the switch to remote learning opportunity model of education." The Parent noted that she was staying in touch with the case manager, but that week had stopped trying to stay in touch with the general education teacher or her classroom offerings. The Parent stated she saw "no way for [Student] to receive FAPE or any semblance of [least restrictive environment (LRE)]."

The OT and Parent emailed several times regarding the Student's sensory needs, and the OT provided the Parent with a list of strategies and ideas.

49. Also, on May 12, 2020, the Student had a reading lesson ("riddles and spelling") with the case manager.

The Parent, in her input to the Student's CLP, noted that giving the Student a summary of what to expect for the session allowed him to engage and work with the teacher better. The Parent also noted the Student continued to need "a lot of pressure...and movement...while engaging in video chat."

50. On May 13, 2020, the District shared with staff a copy of a communication that went to families that contained a clarification regarding the delivery of therapy services. The District clarified that they were “not **officially** providing ‘teletherapy’ currently,” but that if a student “needs... speech language therapy, it can be delivered in a variety of ways, though it should be expected that those services will look differently than they did while students were being served in school buildings. We are not guaranteeing the delivery of therapy in the amount or format that is written into the IEP, which was originally meant to be delivered in person.” (Emphasis in original.) The District noted many staff have been providing “direct, one-on-one...SLP services to students during school closure. Direct service provision to students may be reasonably provided over video call.”
51. On May 14, 2020, the general education teacher checked in with the Parent after the Parent reminded her that the Student was not participating in the social studies project. The Parent stated that they were doing okay, so long as she did not ask the Student to think about general education classwork. The Parent stated the Student was “able to do some word work 1:1 with [case manager] with good engagement and no adverse effects afterwards” and that he was “gaining confidence in working on reading and math” with the Parent. The Parent also described some of the challenges the Student was having.
52. Also, on May 14, 2020, the Student and case manager met and worked on reading. The teacher shared with the Parent some of the words the Student read and that they discussed “how there are more than one way to learn to read.”
53. On May 18, 2020, the case manager emailed the Parent a copy of the Student’s progress report for second trimester, which reported the Student’s pre-closure progress (December 2019 through March 2020), as follows:
- **Reading:** Significant progress made – “[Student’s] comfortability with reading is improving steadily. He is scoring a 13/15 on the reading rubric and is so close to meeting this goal!”
  - **Reading (oral reading fluency):** Significant progress made – “[Student] is able to read a whole elephant and piggy book now with emotion :) That said, it is extremely taxing for him and he struggles to regulate later in the day (when at home) following extended reading practice. Regular, low stakes reading practice would be helpful for building his stamina.”
  - **Reading (independent, assistive tech.):** Little or no progress made – “[Student] continues to want to practice reading with a peer during silent reading. During other subjects (math and science especially) [Student] is reluctant (and typically melts down after school if pushed) to bring it into the classroom. This is due both to his extreme concern over looking different, as well as glitches in technology, or even the knowledge that a glitch may occur increase [Student’s] anxiety and raise the emotional risk too high for him to be willing to utilize the tech. When I have tried in the sped setting he is unable/unwilling to work through the glitches and to practice the tech. During these times he often asks if we can ‘just work on reading normally.’”
  - **Written Language (spelling):** Not applicable this grading period – “Still rockin’ it :)”
  - **Social/Behavior (emotional regulation, self advocacy):** Not applicable this grading period – “03/2020 OT Update...OT has continued to support [Student’s] teachers and staff as needed with implementation of sensory related accommodations. [Student] continues to find success with using a wiggle seat cushion, access to movement breaks, access to alternative seating

options during carpet time (such as option to sit in a desk chair), preferential seating, and breaks a [sic] needed in the resource room.”

- **Social/Behavior (perspective taking):** Goal/objective met – “Prior to the closure [Student] was showing huge growth on this skill. He was regularly checking in with [general education teacher] when he was frustrated by kids not following directions and was open to positive intent.”
- **Social/Behavior (trust building):** Significant progress made – “[Student] was making good strides on this front. Via STEM lessons...he was building up a strong rapport and comfortability. He was also showing more willingness to share his questions/frustrations with [staff] as well in writing group.”
- **Communication (/R/):** Goal/objective met – “There is no current data on this goal as the SLP maternity substitute focused on the /th/ sound during their work together.
- **Communication (/TH/):** Goal/objective met – “[Student] has mastered the production of /th/ across word positions in sentences (80% of measured trials). Great work, [Student]! He is currently accurately producing them at the reading level in 50% of measured trials.
- **Social/Behavior (answering questions):** Goal/objective met – “On nearly every opportunity I provided, [Student] answered all questions without dysregulation! He needed to know that answering questions was the focus prior to our time, and needed to know how long he needed to do it but he did it and did it well!

54. On May 19, 2020, the case manager met with the Student to continue working on reading. According to the communication log in the Student’s CLP, the Student “engaged successfully throughout [a] lesson” in reading, which consisted of: “Trivia Maker – Multiple choice spelling and collaborative story writing.”

The Parent, in her input to the Student’s CLP, noted the Student “did well with the lesson and with being flexible with new content offered” and that the Student was “gaining confidence with this format and with reading in general.”

55. On May 20, 2020, the case manager sent the Parent a copy of the Student’s CLP. She indicated that the CLP was completed by her, along with the general education teacher, OT, and SLP. She also noted that they had guidance from the advanced learning specialist, special education supervisor, and another District special education program specialist (program specialist). On the CLP, the initial plan for services included:

- Twice weekly communication from general education staff, once with the lesson plans for the week and once with information from the specialists.
- Weekly communication from the case manager with links for YouTube videos on social skills and agenda for the upcoming week’s groups.<sup>5</sup>
- 30-minute group daily check in with case manager offered to provide routine and structure Monday through Friday.

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<sup>5</sup> The District’s response included examples of the case manager’s weekly schedule from throughout the closure. The schedule included a daily check-in 30-minute Zoom meeting each morning from 9:30 to 10, which focused on social-emotional, checking in, and sharing, and often included a “read aloud” story, a daily question or poll, and an activity or trivia. The schedule also included other Zoom meetings scheduled on specific days (e.g., parent office hours, 1:1 Zoom meetings, other grade level Zoom meetings).

- Email sent detailing ways to set up a schedule, build out a behavior plan with reinforcement, and basic practices the school staff use with their child.
- Weekly 1:1 video chat session with case manager to provide social connection and provide reading instruction/activities [Student] can engage with.
- Twice weekly Parent Office Hours offered with case manager offered for additional support.
- Social group with peer once weekly via TEAMS and Minecraft.
- Twice weekly virtual whole class meeting.
- General education teacher office hours 1x/week.
- Weekly spreadsheet schedule with hyperlinks and plan for each day of the week (released on Thursdays for the following week for planning ahead).
- General education daily videos in all subject areas explaining lessons and independent practice.
- Schoology page with all lessons and videos accessible at any time.
- Small leveled Reading Groups using EPIC! books (access to audio versions) offered 1x per week.

The CLP also included the following plan for coordination and related services with related service providers:

- OT developed fine motor and/or sensory self-regulation resources sent to families by OT and/or case manager.
- OT available as needed to consult with case manager and general education teacher.
- OT available as needed to consult with family over email.
- OT attends weekly meeting with the Special Education Team.
- OT office hours weekly on Monday 11:00-1:00pm -available for optional video family consult at that time as needed.<sup>6</sup>
- From SLP: Bi-monthly email to family containing speech/language therapy materials and resources.
- From SLP: Attend weekly meeting with special education team.
- From SLP: Email coordination with case manager as needed.
- From SLP: Offer to attend a 30 minutes/week social peer group coordinated and facilitated by special education case manager.

Under parent supports, the case manager included "curriculum that fits [Student's] unique profile as a twice exceptional learner." And, under staff supports, the teacher included "access to (or instruction in creating) lessons/curriculum that can be interactive over ZOOM or teams, Additional training in...TEAMS and ZOOM, and clearly communicated expectations and specific requirements of the special education and general education teachers during remote learning to ensure equity and learning for all students."

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<sup>6</sup> The documentation in the complaint included the OT's services log, which indicated the OT checked in regarding the Student and communicated with the Parent throughout the closure period on at least March 23, March 30, April 2, April 21, April 28, May 1, May 4, May 6, May 11-13, May 20, May 22, May 27-28, June 1, June 3, June 10, and June 17, 2020. The OT provided the following, summarized: updated the Student's progress report, sent resources to the Parent on multiple dates (sensory strategies, activity-a-day calendar for sensory and fine motor activities, apps to practice visual-motor skills, sensory-motor path activity, etc.), notified the Parent of office hours, collaborated with the case manager and Student's school team, attended weekly special education team meetings, communicated with the Parent regarding the Student being dysregulated and offered strategies, and attended the Student's IEP meeting.

56. Also, on May 20, 2020, the Parent provided feedback on the CLP (District portions of CLP abbreviated, Parent feedback in bold):

- Twice weekly **whole class general education** communication from general education staff...lesson plans...information from the specialists. **I read these, but they don't offer much that translates into practice with [Student].**
- Weekly...links for YouTube videos on social skills and agenda for the upcoming week's groups. **We haven't accessed the videos but the schedule is much appreciated.**
- 30-minute group daily check in with case manager...**[Student] is not able to engage much when we join these sessions. He often gets dysregulated and needs to leave the meeting. We are prioritizing Wed and Fri for joining the daily group, based on his tolerance for trying and our family schedule.**
- Email sent detailing ways to set up a schedule, build out a behavior plan with reinforcement, and basic practices...**generalized emails don't really capture [Student's] needs and have not been helpful.**
- Weekly 1:1 video chat session with case manager... **This format works! We have had several sessions were [Student] has engaged well in this context.**
- ...Parent Office Hours...**the timing of these office hours just hasn't worked with our family schedule/needs. So these have not been useful for [Student's] benefit.**
- Social group with peer...**This has been important and useful for [Student]. This time where [Student] is involved in working with his teacher and a peer in Minecraft...serves multiple purposes: social connection with a peer, social communication (especially for him— answering questions, explaining how something is done, working with a peer to help someone else), and buy in for when she asks him to try hard things, as she is showing her willingness to let him teach her as well as vis versa.**
- ...virtual whole class meeting. **These have not been accessible for [Student]. Not really part of his individualized plan.**
- General education teacher office hours...**from the description, this was a time for students to share their work with their teacher and [Student] will not share, so we haven't attended.**
- Weekly spreadsheet schedule with hyperlinks and plan for each day of the week...**[Student] has not been able to maintain emotional regulation when presented with any of this work.**
- General education daily videos in all subject areas explaining lessons and independent practice. **[Student] has not been able to maintain emotional regulation and focus to engage in learning through this format.**
- Schoology page...**finding the right work for [Student] was daunting for me as a parent, then when I try to get him to engage, his emotional regulation breaks down.**
- Small leveled Reading Groups using EPIC! books...**[Student] was not in a reading group prior to school closure and feels no connections or reason to engage in this reading group, refusal to try, his emotional regulation breaks down when I try to talk with him about this idea.**

The Parent also provided input related to some of the related services, including:

- OT available as needed...**we have had one consultation, much of it was in line with what we area already doing but it was nice to get school OT's input.**
- From SLP: Bi-monthly email to family...**I have required speech language services myself as a child. My need for training is much more than can be given in an online resource. It would**



**require at least an hour of my time up front with someone to ask questions about my technique to then provide 5 minutes of potential services to [Student].**

- From SLP: Offer to attend a 30 minutes/week social peer group coordinated and facilitated by special education case manager. **I have not heard about this opportunity prior to today (5-20-2020)...**

Finally, under "parent support needed," the Parent added: "Parent training in content delivery, especially for areas of disability for the parent as well (articulation, phonemic awareness, etc.)"

57. Also, on May 20, 2020, the Parent emailed the case manager and Student's IEP team some feedback in advance of the IEP meeting, including her thoughts on planning for the 2020-2021 school year. The Parent reiterated that she had witnessed the Student's "lack of ability to connect with general education in this new remote learning model." The Parent stated the Student's "access to LRE & FAPE has gone down significantly." The Parent also noted the Student had "grown capable of doing some reading/word [specially designed instruction] work with [case manager] via direct video online, his anxiety/emotional regulation/sensory processing have not supported online sessions with his classroom group, and in [case manager's] smaller group, he usually will not let me turn on the video or sound." The Parent stated, "when we try to look at the online general education offerings, his response is emotional overload and shutdown."

58. On May 26, 2020, the case manager met with the Student and they played a "Jeopardy style" reading trivia game. The case manager noted the Student was engaged and she incorporated "categories for areas of preferred interest as well as body movement and social emotional," which "allowed him more choice for when he would face the challenge of reading."

The case manager's communication log noted that similar reading trivia sessions were held with the Student on June 2, 9, and 16, 2020.

59. On May 28, 2020, the Student's IEP team met and developed his annual IEP. The IEP included annual goals in communication (/R/ sound, "TH" sound), reading (confidence and stamina; decoding, prefixes, suffices, and root words), social/behavior (regulation-reflection and perspective taking), and written language (organization and expanding ideas), and updated accommodations and modifications. The IEP included specially designed instruction in social/behavior, reading, written language, and communication in both the general and special education settings. The IEP also provided professional development on dyslexia and twice exceptional learners as a support for school personnel. The IEP noted the Student would spend 80% of his school day in the general education setting. And, the Student's IEP team determined he was not eligible for ESY services.

60. According to the prior written notice, dated June 3, 2020, at the May 28, 2020 IEP meeting, the team discussed, and the general education teacher gave an update on the Student's progress during the school closure. The prior written notice indicated the team determined that while the Student had higher needs than reflected in his previous IEP, consistency was important for the Student, and until they are back in-person for school and because the

Student had "struggle[d] to engage in virtual learning," it was important he stay "with his current case manager with whom he has a strong rapport."

The prior written notice also documented that the IEP determined it would be "necessary to reconvene the IEP team [in the fall] to re-examine how best to provide FAPE to [Student]...If we are still engaged in virtual/distance learning or a hybrid of the two we will need to discuss ways to increase support in a way that is both effective for the family and manageable for the school team."

61. On May 29, 2020, the SLP emailed families with additional speech and language resources, including resources for articulation, fluency, expressive and receptive language, and social/pragmatic language.
62. On June 2, 9, and 16, 2020, the case manager and Parent met to discuss ways to make remote learning more successful for the Student.
63. In her reply to the District's response, the Parent noted that following the Student's annual IEP meeting, she and the case manager began "crafting an effective continuous learning plan for [Student] to be used the following school year." The Parent stated they were able to "craft ideas together of how we might build these needs [need for differentiation based on Student's cognitive level and high capability]," but were "unable to address...how it would be feasible that a general education teacher would be held accountable for about eighty percent of [Student's] school program that had been in the general education setting prior to school closure and transition to distance learning."
64. On June 12, 2020, OSPI received the Parent's complaint and opened this investigation.
65. In her reply to the District's response to this complaint, the Parent emphasized that "no part of the general education weekly lesson plans were independently accessible" to the Student, even after the Parent "had navigated to the lesson plan for him and read it to him." The Parent stated that "due to lack of modifications or accommodation planning, lessons provided to the whole class by the general education teacher resulted in substantial extra effort and time for [Parent]." The Parent stated she had to find "something that would maybe work for [the Student]," then modify the content and present it in a way that might work for the Student, then attempt to get the Student to engage, "usually to have him then become dysregulated within minutes of attempting work provided by his general education teacher."

The Parent stated the Student did not have regular engagement with or access to instruction in reading, writing, social, and communication. The Parent did state the exception was the Student's engagement in "online social interaction with his [case manager]" because through "persistent contact [case manager] was able to establish rapport over the online medium." The Parent stated the Student "showed good social engagement and was able to read a few words or choose the right word that was read to him during the weekly half hour 1:1 session." The Student also participated in a weekly "1:2 (teacher: students) social engagement in joint attention with video game play."

However, regarding general education, the Student continued to refuse to participate. The Parent noted that in mid-May, she “spent considerable time talking with [Student, convincing him to try connecting with his teacher through the offered office hours.” But, “unfortunately when I tried to access office hours (May 20), we were not let into the meeting and that led to further refusal to try again.” The Parent stated, “upon reflection, this experience indicated a need for more regular planned direct contact to re-establish connection with the classroom teacher.” The Parent further stated the general education teacher’s “genuine care and concern were palpable” (in emails from the general education teacher) and that the Parent felt this highlighted “the need for the District to make sustainable plans, training, and supports for general education teachers so that these teachers will be able to connect with and provide FAPE for their disabled students during distance learning.”

The Parent also emphasized in her reply that the Student also qualifies for highly capable programming, and that “math and reading differentiation offered was not accessible for [Student]” and his “regulation difficulties disallowed access to math and reading lesson plans that were offered.” The Parent also noted the following concerns in her reply:

- The Schoology page was not accessible for the Student, “a student who requires assistive technology or in person support for reading.”
- General education was not modified nor was the Student provided accommodations, or suggestions/instructions specific to Student, given his disability.
- The Student did not have access to his least restrictive environment: general education.
- While case manager provided social emotional engagement, she did not provide “regular instruction in all core content”—specifically, “*regular instruction* in the areas of reading and writing to the level necessary to provide [specially designed instruction].” (Emphasis in original).

The Parent emphasized throughout her reply that she believed “classroom teachers” (general education teachers) needed “more training and support to provide disabled students with [a free appropriate] FAPE during distance learning,” and that the Student need access to both general education and special education.

66. On June 16, 2020, the District entered progress reporting for the Student’s annual IEP goals. For each goal, the District recorded the following: “Not applicable this grading period”, and “June 2020: Due to the state-wide COVID-19 school closure, and resulting remote learning, the team was not able to obtain measurable data on this goal. Progress will be updated when school re-opens and the team is able to collect current performance data.”

67. On June 18 and 19, 2020, the SLP shared with families some additional speech and language resources.

68. June 19, 2020 was the last day of the 2019-2020 school year for the District.

69. In her reply to the District’s response, the Parent also calculated that the Student received approximately “15% of the 5,565 minutes specified in his IEP” based on services provided on the following dates of April through June 2020:

- April 30: 60 minutes, case manager and Student

- April 6: 60 minutes, case manager and Student (“[Student tried class Zoom and shutdown/meltdown”)
- April 21: 30 minutes, case manager and Student
- April 23: 30 minutes, case manager, Student and peer
- April 28: 30 minutes, case manager and Student
- April 30: 30 minutes, case manager, Student and peer
- May 5: 30 minutes, case manager and Student
- May 6: 30 minutes, case manager daily check in group session (“no participation”)
- May 7: 30 minutes, case manager, Student and peer
- May 12: 30 minutes, case manager and Student
- May 13: 30 minutes, case manager daily check in group session (“no participation”)
- May 14: 30 minutes, case manager, Student and peer
- May 19: 30 minutes, case manager and Student
- May 20: 30 minutes, case manager daily check in group session (“low participation”)
- May 21: 30 minutes, case manager, Student and peer
- May 26: 30 minutes, case manager and Student
- May 27: 30 minutes, case manager daily check in group session (“low participation”)
- May 28: 30 minutes, case manager, Student and peer
- June 2: 30 minutes, case manager and Student
- June 3: 30 minutes, case manager daily check in group session (“low participation”)
- June 4: 30 minutes, case manager, Student and peer
- June 9: 30 minutes, case manager and Student
- June 10: 30 minutes, case manager daily check in group session (“no participation”)
- June 11: 30 minutes, case manager, Student and peer
- June 16: 30 minutes, case manager and Student
- June 18: 30 minutes, case manager, Student and peer

70. 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 summarized the learning opportunities that were provided to the Student, as follows:

...the [school] team did provide [Student] continuous learning opportunities following the March 11 closure. In March, when it was unclear schools would remain closed...the [school] team provided [Student] with supplemental learning. Further, [the general education teacher] quickly offered to begin meeting with students and scheduling class meetings. [The Student] was provided with learning packets as well...

In April...the team began providing more robust lessons, with almost daily Zoom class and small group meetings. [The case manager] stayed in close contact with Parent to collaborate on how to support [the Student] during the closures and frequently met with [the Student] over Zoom to work on reading and social/behavior concerns. [The case manager] held office hours for families, worked directly with students on their goals, and provided ongoing consultation with [the general education teacher] on how to support [the Student] in his reading, writing, and social/behavior goals...all members of the [school] team regularly communicated with Parent regarding how [the Student] was doing

and...concerns over remote learning. Finally, when staff felt they needed additional suggestions, particularly around [the Student's] advanced learning needs, they reached out to the appropriate Advanced Learning Department staff so they could help ensure *all* of [the Student's] needs were being considered.

The District acknowledged that the Student "struggled [in] accessing remote learning during the closure," but noted the team provided regular instruction in core content, and "targeted support in reading, writing, social, and communication." The District stated the Student's IEP team would "be engaged in recovery planning for [the Student] in an individualized manner when school resumes."

## CONCLUSIONS

**Issue One: IEP Implementation** – The Parent alleged the District failed to provide services in the Student's individualized education program (IEP)—specially designed instruction and related services—and failed to ensure the Student could access his least restrictive environment (LRE) in the general education setting 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 could not be implemented as written as school facilities closed and districts transitioned to distance learning. Here, the Student's August 2019 IEP was in place prior to the school facility closures and the IEP required the Student receive the following specially designed instruction and related services:

- Written Language: 150 minutes weekly (provided by a special education teacher)
- Communication: 90 minutes monthly (provided by a speech language pathologist (SLP))
- Reading: 150 minutes weekly (provided by a special education teacher)
- Social/Behavioral: 60 minutes weekly (provided by a special education teacher)
- Social/Behavioral: 150 minutes weekly (provided by special education staff)
- Speech Language Pathology (related service): 30 minutes monthly (provided by an SLP)

The Student's IEP also included 200 minutes per year of occupational therapy as a support for school personnel.

After the District closed school facilities on March 11, 2020, the Student's IEP was not implemented as written, which during this time, alone does not represent a violation of the IDEA. However, that does not end the analysis as the District still had an obligation to provide students with special education services 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 elementary school teachers, including that special education teachers were to coordinate instruction in collaboration with general education teachers and support students in making progress toward IEP goals. General education teachers were instructed to provide "differentiated instruction for students needing more support or more challenge."

## Specially Designed Instruction

Overall, the District did not implement the Student's IEP as written, which, as discussed above, is not a violation during this time period. Here, the documentation in this complaint—including the Student's continuous learning plan (CLP)—indicates that after March 30, 2020, the Student was provided special education services. For example, the Student was provided with consistent instruction in social emotional/behavioral and social communication through virtual meetings and lessons with the Student's case manager. The case manager provided resources and activities to families; met with the Student 1:1 throughout the closure; held a daily 30-minute group social emotional meeting, which the Student participated in several times and was always invited to; and, conducted meetings with the case manager, Student, and a peer to play a computer game together, which the case manager noted allowed practice in social communication skills, verbal explanation, and collaboration. The Parent stated the social interactions with the case manager were successful and through "persistent contact [the case manager] was able to establish rapport over the online medium." The Parent stated the Student "showed good social engagement and was able to read a few words or choose the right word that was read to him during the weekly half hour 1:1 session."

The Student's IEP also included 200 minutes yearly of occupational therapy as a support for school personnel, which prior to the closure, there were only 10 minutes remaining. The occupational therapist (OT) provided support throughout the closure—both to the Student's school team and directly to the Parent as the OT shared general resources with families throughout the closure and specific strategies and suggestions related to the Student's sensory needs to the Parent.

While the Student received regular social emotional instruction and occupational therapy support, his written language and reading instruction were less consistent. During the case manager's 1:1 meetings with the Student, she provided some instruction in reading and writing that targeted the Student's IEP goals (e.g., reading games, sounding out words, specific sounds, riddles, spelling, and collaborative story writing). In April 27 and 28, 2020, text message exchange indicated the Student's first academic sessions were just beginning as the Student had shown "growth in willingness to engage in academic tasks." However, this in part appears to be due to the Parent requesting the case manager focus on the Student's social emotional needs and in part due to the Student's difficulty engaging in virtual learning. The focus throughout most of April was largely on checking in with the Student and helping him manage his anxiety and become more comfortable engaging with virtual learning. While perhaps not ideal, OSPI finds it is reasonable the District focused on the Student's social-emotional and social communication needs to a greater extent than reading and writing, given the Student's unique challenges engaging and the circumstances of the transition to virtual learning.

Overall, OSPI finds the District sufficiently provided opportunities for specially designed instruction and the Student accessed special education services during the closures. While the number of minutes did not match the Student's pre-closure IEP, the Student's case manager diligently tried to address the Student's needs and provided instruction. OSPI finds no violation. However, given that the Student did receive far fewer minutes of instruction in reading and writing,

OSPI strongly recommends the District consider these areas in particular for recovery or compensatory services.

### Speech Language Pathologist (SLP) Services

It is not clear that the Student received specially designed instruction in communication<sup>7</sup> or speech language pathology as a related service during the closure. The SLP sent out resources throughout the closure, which while not specific to the Student's IEP goals, contained resources and activities that could have addressed the Student's goal areas (e.g., Student's IEP included goals related to specific speech sounds and resources include speech sounds exercises). However, the Parent stated in her input to the Student's CLP that she was requesting Parent training in order to be able to use the resources to work on speech with the Student. The Parent further requested direct speech services at the beginning of May 2020. District documentation noted that, while the District was not "officially" offering teletherapy, District staff had been providing "direct, one-on-one...SLP services to students during school closure" and that "direct service provision to students may be reasonably provided over video call." However, direct 1:1 services were not offered to the Student in response to the Parent's request, and while the SLP offered to join the case manager's social emotional group to support social communication, there is no documentation in the complaint that the SLP ever joined the case manager's group or provided the Student direct support.

Thus, OSPI finds the District did not make sufficient efforts to provide the Student services from an SLP in either form of specially designed instruction in communication or speech as a related service. OSPI finds a violation. The District will be required to hold an IEP meeting for the Student, wherein it specifically discusses whether compensatory services in communication/speech are needed for the Student and a plan to provide these services in the fall, if the District continues to offer distance learning.

### Progress Reporting

As progress monitoring and progress reporting are part of IEP implementation, OSPI expected districts to continue monitoring and reporting progress to the extent possible during the closure. While OSPI does not expect this would necessarily include progress on every IEP goal (as the district may not have worked on every goal, given the understanding that IEPs were not necessarily implemented as written), or that it would necessarily look the same as pre-closure progress reporting. However, if a district provided special education services, OSPI expected districts to be able to report some information about a student's progress during continuous learning.

Even though the District provided the Student some access to some special education instruction, the District did not document what, if any, progress the Student made on any of his individualized

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<sup>7</sup> The documentation does indicate that the case manager provided the Student instruction in and opportunities to practice social communication. However, the Student's specially designed instruction in communication was to be provided by an SLP and focused on specific speech sounds (/R/ and /TH/) and the Student's speech language pathology related service was also to be provided by an SLP.

IEP goals as a result of the educational services he received during the school facility closures. The District provided the Parent with a progress report on May 18, 2020, which indicated the Student was making significant progress on many of his goals; however, this progress report only included pre-closure progress data from December 2019 through March 2020. In contrast, the June 16, 2020 progress report stated the following for all the Student's goals: "Not applicable this grading period...June 2020: Due to the state-wide COVID-19 school closure, and resulting remote learning, the team was not able to obtain measurable data on this goal. Progress will be updated when school re-opens and the team is able to collect current performance data." This was reported despite the fact that the Student's case manager was regularly working with him on social emotional, social communication, and some reading skills and that—reportedly—the Student's IEP team discussed his progress during the closure at the May 28, 2020 IEP meeting (see e.g., June 3, 2020 prior written notice; however, OSPI notes the present levels in the Student's May 2020 IEP largely reflect pre-closure data).

Thus, OSPI finds a violation for the failure to provide progress reporting for skills addressed during the school facility closures. The District will be required to collect updated progress data and discuss the Student's progress at the IEP meeting ordered above.<sup>8</sup>

#### Least Restrictive Environment: Access to General Education Class

In her complaint, the Parent also raised a concern regarding the Student's access to general education. The Student's IEP, in place prior to the school facility closures, stated the Student would spend 77.7 % of his time in the general education setting. According to the Student's CLP, the general education teacher sent weekly communications with lesson plans and information from specialists, had a twice-weekly virtual whole class meeting, had office hours once a week, sent a weekly schedule, provided daily videos in all subject areas, explaining lessons and for independent practice, and held small group reading groups.

Throughout the school closures, the Parent raised concerns that the Student was struggling to engage with the general education class meetings and schoolwork (e.g., April 3, 2020 class meeting during which the Student became dysregulated and ended up "crying in the corner" and an April 28, 2020 email from Parent, noting the Student became dysregulated watching the general education video about the week plan). The Parent emphasized that the Student lacked the "ability to connect with general education in this new remote learning model," due to his disability (his "anxiety/emotional regulation/sensory processing" made it challenging to engage with group online sessions). In her reply to the District's response, the Parent reiterated that "no part of the general education weekly lesson plans were independently accessible," and that no modifications or accommodations were provided related to the whole class lessons. One example the Parent gave was of the reading group, which the Student was resistant to participating in and the Parent stated the book was "both too difficult for [Student] to read independently and yet not at his [high] cognitive level for reading comprehension." Ultimately, the Parent stated they would

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<sup>8</sup> OSPI will not order District level corrective action related to this violation as training related to progress reporting has already been ordered in another special education complaint filed against the District. The training ordered in the other complaint will sufficiently address the violation noted here.



"pass" on the reading group, but further explained in her reply that the reading group was an "example of how [Student's] disability precluded his involvement in an area of strength—reading comprehension—and led to further isolation from his general education classroom..." The Parent emphasized throughout her reply that she believed "classroom teachers" (general education teachers) needed "more training and support to provide disabled students with [a free appropriate] FAPE during distance learning," and that the Student need access to both general education and special education.

The Parent also, at the end of April 2020, requested that the Student be provided differentiated instruction around his "areas of need for support (reading and writing) and for his area of needing more challenge (math)," from both his case manager and general education teacher. The general education teacher stated, on April 28, 2020, that differentiated instruction in math and reading were accessible to the Student through "whole group reading comprehension lessons with video and discussion prompts presented orally, small reading group focused on comprehension, differentiated math within the strand we are on." However, it does not appear that the general education teacher addressed the Parent's concern about the Student's ability to engage with the general education offerings, or that the general education teacher was provided support to help her address the concerns the Parent raised.

The District made some efforts to address the Parent's concerns; for example, the case manager suggested sending questions to the Student prior to meetings to prepare him, and throughout the closure communicated with the Parent to discuss ways to make remote learning more successful for the Student. As discussed above, the case manager and Student were relatively successful working together in a 1:1 virtual meeting or a meeting with the case manager and a peer. The District also asked its advanced learning program specialist to work with the Student's team, although there is no documentation that this resulted in any changes to the provision of instruction during the closure, or additional or different supports being provided to the Student.

The Parent also requested an IEP meeting on April 17, 2020, to discuss the Student's education during the closure. While the Student's IEP team did ultimately meet on May 28, 2020, this was for the Student's annual IEP meeting and it was not clear the IEP team met in response to the Parent's April 17 request, or that the team discussed strategies and supports for the Student to more effectively engage with instruction for the remainder of the school year. The IEP team seemed to recognize the challenges the Student was having as the prior written notice documented that the IEP team determined it would be "necessary to reconvene the IEP team [in the fall] to re-examine how best to provide FAPE to [Student]...If we are still engaged in virtual/distance learning or a hybrid of the two we will need to discuss ways to increase support in a way that is both effective for the family and manageable for the school team." However, despite this acknowledgement, it does not appear that any changes were made in spring 2020 to increase the Student's engagement with general education.

Overall, the District acknowledged in its response that the Student "struggled [in] accessing remote learning during the closure." The documentation indicates the District made some attempts to address the Parent's concerns; however, it does not appear that any changes were made based on these attempts or that the Student was provided different or additional supports

to address his struggles to engage with the general education class. Consequently, while the Student previously spent the majority of his time in a general education setting, during the school facility closures, he had limited engagement with general education, due to his disability. OSPI finds that the District's efforts to address the Parent's concerns were insufficient and that the District could have taken other reasonable steps, such as holding an IEP meeting earlier when the Parent requested a meeting to specifically address the Student's educational program in the spring. Thus, OSPI finds a violation, and the Student's IEP team will be required to specifically consider how the Student will engage with general education in fall 2020.

### **CORRECTIVE ACTION**

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

#### **STUDENT SPECIFIC:**

By or before **September 15, 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 the following:

- The progress and the impact of the school facility closures on that progress.
- What compensatory services the Student requires, specifically in communication/speech, reading, and writing.
- The plan to ensure the Student receives services from a speech language pathologist in fall 2020 in a distance learning model.
- The plan to ensure the Student has access to the general education setting (class meetings, general education assignments, peer connections, etc.) OSPI strongly recommends the Student's IEP team consider whether the Student's 2020-2021 school year general education teacher needs additional training regarding the inclusion of students with disabilities and whether the Student's general education teacher and case manager need additional planning time built into the schedule to collaborate.

The IEP team will consider what additional special education services (recovery services) are necessary to help lessen the impact of the closures and provide that recommendation to OSPI for approval. OSPI notes the Parent requested parent training and the Student's IEP team could consider whether to include parent training as part of the recovery services, in order to increase the Parent's ability to support the Student at home.

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

By September 30, 2020, OSPI will review the data used by the IEP team to determine the Student's need for additional services, as well as any plan proposing additional services (including amount, when services will be provided, and timeline for delivering services), and will either amend or approve.

**DISTRICT SPECIFIC:**

None.

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.)