

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-77

PROCEDURAL HISTORY

On June 15, 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 24, 2020, the District requested an extension of time to respond to the complaint. On June 25, 2020, OSPI granted this request and asked the District to respond no later than July 10, 2020.

On July 10, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on July 13, 2020. OSPI invited the Parent to reply. The Parent did not reply.

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?¹

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).

¹ The Parent indicated in her complaint that because her IEP was not implemented, the Student only received general education services during the school closure and accordingly did not make progress on IEP goals.

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 K-8 school, was in the second grade, and was eligible for special education services under the category other specific learning disability.²
2. The District's 2019-2020 school year began on September 4, 2019.

² While the Student has overall average cognition and above average reading skills, the Student also has a specific learning disability that impacts her ability to express herself in writing due to difficulty utilizing letter/sound knowledge to express her ideas in writing. Additionally, the Student has trouble applying phonics and structural analysis skills to decode words and presents with delays in the area of communication, namely receptive and expressive language. According to her November 2019 IEP, the Student's "receptive language delay makes it difficult for [Student] to follow the sequence of events when given grammatically correct sentences, impacts her ability to participate in classroom discussions, ask/answer questions, give explanations, report past events and express her thoughts/ideas."

3. The Student's November 25, 2019 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The Student's IEP included multiple annual goals in the areas of communication (irregular past tense verbs, "why questions"), reading (decoding, oral reading accuracy), and written language (grammar and mechanics, written communication), and required progress reporting each trimester. The Student's IEP indicated the Student would spend approximately 89% of her time in the general education setting and provided the Student with the following specially designed instruction, all to be provided in the special education setting:

- Reading, 90 minutes weekly, to be provided by special education staff;
- Written language, 90 minutes weekly, to be provided special education staff; and,
- Communication, 90 minutes monthly, to be provided by a speech language pathologist (SLP).

The Student's November 2019 IEP included the following accommodations:

- Access to additional time for testing/assignment completion;
- Access to untimed assessments; and,
- Positive reinforcement for self-advocacy, self-esteem and/or independence.

4. On March 11, 2020, the District notified families that it would be closing schools for at least 14 days, beginning on March 12, 2020. That same day, the Student's general education teacher provided math packets to the students in her class to work on during the anticipated two-week closure. The general education teacher also emailed the parents of the students in her class to notify them of the items she was able to send home with the students to work on during the closure, in addition to the math packet.
5. 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 District, per this proclamation, extended its closure through April 24, 2020.
6. Also, on March 12, 2020, the Parent emailed the general education teacher in response to the general education teacher's email, stating that she had asked the Student about the items she was supposed to have brought home with her and noted that the Student did not have the items with her. The Parent also asked if there was anything the Student should be working on "over the next month plus" and if the teacher recommended any learning apps.
7. On March 13, 2020,³ 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.
8. Also, on March 13, 2020, the general education teacher emailed the Parent to confirm that the Student did not have the math packet or other items that had been sent home with the other

³ According to the District's response, following the Governor's proclamation, from March 15-23, 2020, the District "designed and implemented a coordinated approach to supplemental learning," including "providing students with learning packets and access to teacher-generated videos in various subjects." On March 23, 2020, the District began broadcasting educational programming from a local television channel and the special education department developed a webpage to deliver materials and information.

students in her class because she had left before the general education teacher had spoken to the class regarding the school closure. She said she would send an email the next day.

9. On March 18, 2020, the general education teacher emailed the Parent, saying she had not heard from the Parent and wanted to check in on how the Student was doing.⁴
10. On March 19, 2020, the Parent responded via email that the Student was doing "great," and that she had signed the Student up for the classroom application recommended by the teacher for the Student to keep in contact with the school.

Also, on March 19, 2020, the special education teacher emailed all families to provide a "mid-week check in," and told families they could reply to the email if they had questions.

11. On March 23, 2020, the Washington Governor issued a "Stay Home, Stay Healthy" Order, which required residents to stay home, unless they needed to pursue an essential activity. The same day, OSPI issued guidance, instructing districts that education must continue while school facilities are closed. OSPI's guidance outlined an expectation that "continuous learning" would begin for all students by Monday, March 30, 2020. The District provided its educators with guidance⁵ and expectations for continuous learning the same day.
12. On March 25, 2020, the District's speech language pathologist (SLP) emailed the Parent to provide information on what the Student had been working on prior to the school closures and to offer ideas for "speech and language enrichment activities" while at home. She noted the Student was working on "answering 'why' questions when read a short story and identifying irregular part tense verbs to use in a narrative retell." She provided a few ideas for the Student to continue working on her language IEP goals, including:
 - "Read books together or watch movies and ask questions (e.g. Why is she sad? Why did the boy do that?);"

⁴ According to the District's response, the general education teacher also reached out to the Parent on March 14, 2020 and did not receive a response from the Parent.

⁵ According to the District's response, "General education teachers in elementary schools 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 to 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. Moreover, teachers were instructed to provide differentiated instruction for students needing more support...via small group or 1:1 feedback and coordinate tiered instruction in collaboration with special education." Special education teachers were instructed to "design [and] coordinate instruction for students in collaboration with general education teachers and support staff ([Instructional Assistants (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."

- "Pause to discuss new words heard when watching movies/shows or when reading books/magazines;"
- "Identify parts of the story narrative (characters, setting, problem, solution) when reading books or watching movies;" and,
- "Identify verbs when reading books and then provide the irregular form if applicable (e.g. the boy will sing/the boy sang, the girl feels sad/ the girl felt sad)."

The SLP attached a link to find different language activities and attached a word document of suggested activities that was organized by grade level and activity area, which the Parent could use to select appropriate activities based on the Student's needs.

13. On March 27, 2020, the general education teacher emailed the Parent individually to check in on the Student and to see if the Student was able to access the online classes, noting that she had not been present for previous Zoom sessions. The Parent did not respond.
14. On March 30, 2020, the special education teacher emailed the Parent a written document he developed containing the Student's IEP goals,⁶ an explanation of how the Parent could support the Student's learning at home,⁷ including specific strategies and activities to target the Student's IEP goals.⁸ The document also noted the Student's IEP was due April 22, 2020.
15. On April 3, 2020, continuous learning began in the District, and according to the District's response, it "explicitly prioritized contacting students with IEPs."
16. On April 3, 2020, the general education teacher emailed all parents and reminded them to sign up for a one-on-one "family chat" if they had not already done so.

⁶ This document was referred to as the Student's "goal sheet." This District began developing formal continuous learning plans (CLPs) after students returned from spring break in April 2020 and set an internal deadline within the District that a CLP be developed for each student with an IEP by 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."

⁷ In the document, the special education teacher explained, "[Student's] goals are focused around reading and writing. I've worked with [Student] in the classroom on a variety of writing projects, and we have read together nearly weekly since the start of the year. She's a strong student with a lot of amazing skills. My biggest suggestion is to focus on abstract or imaginative thinking. Her current strengths sit in her ability to manipulate factual data. Extra time reading and writing about things that require inference or use a lot of symbolism require inference or use a lot of symbolism would be a great place to start working towards her goals."

⁸ The written document offered strategies, including fitting writing in daily (writing letters to family, keeping a journal), practicing reading and then retelling it in detail (especially reading involving symbolism and metaphors, asking "why" questions, or retelling in more than one time-frame), and reading and writing (books, comics, scripts, jokes, etc.).

17. Also, on April 3, 2020, the Student began attending Zoom classes online for her general education classes. Instruction was offered every Monday morning for 45 minutes in the areas of math, writing and reading.⁹

According to the District's response, outside of Zoom classes provided to all students in the general education class, the general education teacher offered additional individualized sessions to students receiving "Tier 2" or "Tier 3" support, as identified by parents during individual parent meetings scheduled with the general education teacher. However, because the Parent did not schedule and attend a meeting with the general education teacher, the Student was not offered and did not receive individualized 1:1 support from the general education teacher.¹⁰

The general education teacher also offered her students weekly small group social-emotional learning (SEL) classes for 30 minutes, as well as weekly optional class "hang-out," which was 45 minutes long and generally focused on art. On Wednesdays, the general education teacher would check in with families and students.

18. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
19. Also, on April 6, 2020, the special education teacher emailed the Parent to schedule the Student's annual IEP meeting.
20. On April 7, 2020, the special education teacher included the Parent on an email that was sent to the parents of all students in his class to check in and inquire if any additional support was needed. The Parent did not respond to the email.

According to the District, by the week of April 7, 2020, the Student's general education teachers were also holding regular and scheduled times for all of their students and families to ask questions. The Parent did not participate.

⁹ The District's response noted the Student's general education teacher also made weekly homework lessons available online and provided weekly schedules and additional resources for families to support students. It is unclear if the Student received or was able to access these assignments and resources until May, due to the Parent having difficulties logging on and connection issues caused by the Student using older technology. The Parent also expressed concerns that due to her working full time, she was often unable to monitor the Student during the workday.

¹⁰ The District's response stated: "[General education teacher] also provided one-on-one support in reading, writing and math lessons for students requiring Tier 2 or Tier 3 support. The frequency was determined by student need and family availability, as discussed with families during the individual conferences, and generally varied between one to three sessions per week for students needing extra support. As [Parent] had not yet been able to connect with the Parent regarding [Student's] individual needs, [Student] was not initially provided any 1:1 instruction time."

21. On April 9, 2020, the general education teacher emailed the assistant principal that she had received limited contact from the Parent and that she was concerned about the lack of work turned in by the Student.
22. The District was on spring break from April 13 to 17, 2020.
23. On April 20, 2020, the special education teacher emailed the families of all students in his class, including the Parent, to provide them with a link to a video called, "Why perfect grades don't matter," and to offer suggestions on talking to their student on stress related to grades and how to manage grade-related stress during the school closures.
24. On April 21, 2020,¹¹ the general education teacher set up student accounts on various digital learning platforms for her class and emailed login directions and passwords to families, including the Student's family. The students were encouraged to complete 30 minutes daily of math, reading, and writing on these accounts.
25. On April 22, 2020, the Parent emailed the general education teacher and explained that she had been trying to login to Schoology,¹² but was unable to access the account. The general education teacher tried to reset the password, to which the Parent responded that she was still unable to access the account.¹³

Also, on April 22, 2020, the Parent responded to the special education teacher's email from April 6, about scheduling an IEP meeting, stating that she was available most days except Mondays and Thursdays. The special education teacher responded and proposed an IEP meeting for May 19, 2020. The Parent did not respond.

26. On April 23, 2020, the special education teacher observed a general education SEL class via Zoom, which the Student attended.
27. On April 29, 2020, the special education teacher sent one email to all families of students in his class to clarify his roll and office hour times. He reiterated he was there to support families and students by answering any questions, having a phone call to "figure out academic options or adjust IEPs," coordinating with teachers, and doing one-on-one work with students "as needed or when possible." He explained that he was trying to reduce the volume of contact happening, but also noted that he "might be the person [parents] email to say, 'My student is

¹¹ The District's response indicated the general education teacher also emailed passwords on April 10, 2020. However, email documentation only confirmed the sending of password information to the Parent on April 21, 2020. It is unclear if the Parent received information prior to that date.

¹² Schoology is a learning management system used by the District.

¹³ The Schoology account utilized an initial from the Student's middle name to create a password. The Parent explained that the Student did not have a middle name, but had two last names but stated that various combinations tried were not working. It appears there was miscommunication with the District regarding establishing the Student's account, which created a delay in the Student accessing the application.

feeling overwhelmed, what should we be prioritizing.’ That might even look like a call with me just to talk about what is and isn’t working for your student.” He also notified families that he would be holding office hours daily from 10:00 to 11:00 am, but could also schedule additional support time if needed. The Parent did not respond to email.

28. On April 30, 2020, the special education teacher observed a general education SEL class, which the Student attended.
29. On May 5, 2020, the special education teacher emailed the general education teacher, noting he had not received a response from the Parent regarding scheduling an IEP meeting. He asked the general education teacher if she had been in contact with the Parent. The general education teacher responded that she had not heard from the Parent, but stated the Student had been attending Zoom classes and the optional SEL hangouts.
30. On May 6, 2020, the general education teacher emailed the Parent to inquire how the Student was doing. That same day, the special education teacher emailed the Parent to follow up on scheduling the IEP meeting he originally tried to schedule on April 22, 2020. He indicated he was working on a draft IEP and would provide it when ready.¹⁴ He offered to try and make a special request to hold an evening meeting to accommodate the Parent’s schedule or to see what options were available for the Parent to extend permission over email.

The Parent responded the same day that she thought they already had a meeting scheduled for May 19, 2020 at 2:00 pm and that she was available on the proposed date. She expressed concern in her email that the Student was falling behind. The special education teacher responded that because the Parent had not responded to his April 22, 2020 email to confirm the May 19, 2020 IEP date, he did not schedule the meeting at that time and was not sure the date was still available. He stated they could postpone the meeting until school was back in session if the Parent wanted, could see if May 19 was still available, or could hold the meeting without the Parent—an option he said involved him sending the Parent the updated draft IEP so the Parent could make notes and request changes—and which the special education teacher would then bring to the next meeting.

31. On May 11, 2020, the Parent emailed the general education teacher, asking for clarity regarding log-ins, stating that she was worried “[Student] is falling more behind without additional services that she is supposed to receive.” She noted that she had only received homework the previous week and was only then made aware of the apps the Student was using. She also stated that she had only recently been able to log into Schoology after much difficulty and that she “didn’t see any actual assignments or tasks to do in there.” She added that she only works from home a few days a week and is unable to supervise the Student or teach her when she is not physically home.

¹⁴ On May 5, 2020, the special education teacher followed up with the SLP to get input on the Student’s communication goals to include with the draft IEP.

Also, on May 11, 2020, the general education teacher resent the login information for digital resources and checked to see if the Parent had been receiving weekly homework. She also explained to the Parent how to access the documents she had been emailing the Parent. The general education teacher also stated, "[special education teacher] and I are happy to help [Student] in any way needed."

32. On May 12, 2020, the general education teacher sent information to all parents in her class regarding how to use the Schoology platform, as well as login information for other apps being used in her class.
33. On May 13, 2020, the Parent emailed the general education teacher and expressed frustration that she did not believe the Student had been receiving any special education services per her IEP. She wrote that she believed the school was supposed to be in communication with the family twice a week to ensure the Student was making progress on her IEP goals and that she did not believe that had happened. She also wrote that the Student was receiving "zero SLP services," and added: "I feel as though [Student] has fallen through the cracks. Partly because I cannot devote more time to [Student's] education needs due to my work demands and partly because her IEP is non-existent now." Later that day, the general education teacher responded to the Parent. She encouraged the Parent to reach out to the special education teacher and assured her he would be responsive.

The same day, the Parent also emailed the special education teacher and asked to have a meeting "ASAP," stating she had concerns that the Student was falling behind and not making "reasonable and measurable progress on her IEP goals," adding that "She is going backwards." She asked what additional services were being provided in addition to the Student's IEP and asked why the Student was not receiving online small groups or assignments weekly like she had been in class. She also stated that the Student had not been receiving reading lessons "specialized to her level over than what is being given under general education." The Parent also inquired about speech services and added that the Student was also experiencing access issues because she had older technology that could not run some of the online programs being offered by the school, and which the Student could not independently use when the Parent was working. The Parent wrote that she was trying to help the Student and was "open to more help and options."

34. Also, on May 13, 2020, the District's SLP department met for the first time since the school closure and it was suggested that an "SLP task force" be created to address teletherapy and service delivery models, which previously were not being used in the District. Prior to May 13, 2020, documentation showed most SLPs in the District were instructed to offer distance learning materials to families and to stay in contact with families, but streamline communication through case managers.
35. On May 14, 2020, the special education teacher responded to the Parent's email and noted that due to the nature of distance learning, increasing support for students often resulted in more strain for families, which was a consideration that needed to be balanced. The special education teacher also noted he was often on the small group or one-on-one calls with the

general education teacher to provide support to students with IEPs. The special education teacher proposed convening the IEP team on May 20, 2020, and offered to add 30 minutes on to the Student's Wednesday small group session for him to do academic activities with the Student. He also added that he was available most days from 10:00 to 11:00 a.m., and could work with the Student during that time as well.

36. On May 14, 2020, the Parent responded to the special education teacher's email, stating she could meet for an IEP meeting on June 20 or 21, 2020. The Parent stated that one additional one-on-one session between the Student and special education teacher would be "sufficient for the moment."
37. On May 18, 2020, the general education teacher emailed the Parent to check in and see how the Student was doing after she missed a class.
38. On May 19, 2020, the special education teacher included the Parent in an email to the families of his students, reminding them of his office hours and outlining ways he could support students through consultation with general education teachers and direct support. He also asked the parents to reach out to him to set up additional 1:1 time for their student if needed to discuss concerns regarding IEP goals.¹⁵ He explained that his support was being coordinated with each student's general education teacher and looked very different from student to student ("for some [students] it means observations in class and contact with parents, for others it may look like small group activities"). The special education teacher noted that if parents would like to schedule more time for him to meet with their student, they should contact him. He also stated that he was "making every effort to mirror the level of contact each family is presenting. That is to say if families seem to need more time to respond or have longer periods of time between interactions, then out of respect I'm easing off on frequency of contact to avoid creating the perception of pressure or obligation."
39. On May 20, 2020, the special education teacher emailed the Student's IEP team a draft of the Student's IEP in advance of the IEP meeting scheduled for the next day. In his email, he noted that the SLP likely had a conflict and would not be able to attend the meeting.
40. On May 21, 2020, the Parent emailed, stating she was concerned the SLP would not be attending, "as speech is an integral part of [Student's] learning disability," which was the result of a speech-related communication disorder. The Parent additionally noted that she had only received one email from the SLP teacher since March and that it only contained a list of enrichment activities. The Parent and District subsequently exchanged emails regarding the Parent's concerns and agreed to postpone the IEP meeting until May 26, 2020, to accommodate the SLP's schedule.

¹⁵ It is noted that much of the support from the special education teacher was offered through the platform of Microsoft Teams (MS Teams) instead of Zoom. There were multiple communications where the Parent noted that the Student was unable to access MS Teams on the Student's iPad, which was older and slower and did not tolerate MS Teams as well as Zoom. For this reason, the documentation showed the Student was frequently unable to attend classes or services offered through the MS Teams platform.

41. On May 22, 2020, the special education teacher emailed the assistant principal and explained that for students on his case load, he was connecting with general education teachers and participating in Zoom calls, but not hosting any of his own. He explained that he held meetings with students in groups via Microsoft Teams, and that contact with students only occurred through email with parents.
42. On May 25, 2020, the Parent spoke with the assistant principal and general education teacher to express difficulties the family was having with distance learning. Specifically, she noted the password for accessing different apps still did not work and that the Student was unable to independently navigate multiple applications. As a result, the Student had not yet accessed many of the digital learning apps. The Parent was provided technical support for accessing online apps and information on how to best structure the Student's day based on the Student's age. The assistant principal and general education teacher also discussed approaches the Parent could use to practice reading with the Student and offered to print materials for the Parent to help her organize online lessons for the Student.
43. On May 26, 2020, the Student's IEP team convened for the Student's IEP meeting. Present at the meeting were the Parent, the special education teacher, general education teacher, SLP, and assistant principal. The team reviewed the Student's annual IEP and updated her goals; however, no changes were made to the services matrix from the previous IEP. The team also discussed the Parent's concerns regarding distance learning and additional approaches and supports available. The assistant principal offered to meet with the Student to provide 1:1 instruction. The Parent accepted the offer.
44. Also, on May 26, 2020, the District developed a CLP¹⁶ for the Student. The CLP described the initial actions provided to the Student during the closure as follows:
- "Coordinate with Student's general education teacher to determine the access to core material,"
 - "Provide Student's guardian contacts and general education teacher with IEP goals and recommendations for each goal, with informal advice and examples of how this might look in an at home teaching setting (Completed as of April 2, 2020),"
 - "Weekly communication via email with family regarding updates, changes, or general check-ins," and,
 - "Teacher directed instruction set up with Gen Ed teacher two days a week, focusing on SEL, Reading and Math."¹⁷
45. On May 27, 2020, the special education teacher emailed the Parent the final IEP. Also, on May 27, 2020, the SLP emailed the special education teacher additional enrichment activities in speech for the Student to try.

¹⁶ The communication log included with the CLP stated it was emailed to the Parent as an attachment on May 26, 2020, and discussed with the Parent by the assistant principal as part of a pre-IEP meeting in order to determine next steps for supporting the Student.

¹⁷ There was no documentation provided as part of the complaint of this occurring prior to the May 26, 2020 CLP.

46. According to the District's response, following the May 26, 2020 IEP meeting, the general education teacher met with the Student once per week for 30-minute sessions to work on reading, writing, and math. The District stated that during this time, the general education teacher "continued to work with [special education teacher] and [SLP] to align [Student's] instruction with her present levels and IEP goals. [Special education teacher] also continued [to] provide needed support."
47. On May 28, 2020, the special education teacher emailed the Parent a distance learning packet he developed based on his consultation with the general education teacher and SLP, which "focused on [Student's] speech goals and could be implemented over the next four weeks."
48. On June 3, 2020, the Parent emailed the general education teacher to check in. The Parent stated in her email that she noticed the Student had been more engaged in Zoom when the Parent worked from home, as it was easier for the Parent to monitor the Student's activities. The Parent stated the Student had difficulty focusing with Zoom in the group setting and that the Student did not want to participate in the upcoming class writing lesson. The general education teacher responded, offering to check in with the Student on a 1:1 call the following day. The Parent agreed.
49. On June 4, 2020, the general education teacher emailed the Parent to inform her that she had a productive 1:1 session with the Student and that the Student had expressed the challenges she was having with the online format, including that she often forgot passwords or got logged out of applications and was unable to login for class. The general education teacher explained she had worked with the Student on her writing and that they had agreed to meet the following week for another check in.
50. On June 9, 2020, the special education teacher provided an individualized workbook for the Student to work on during the summer. He provided it to the general education teacher so the family could pick it up, along with the Student's remaining school materials at the end of the school year.
51. On June 12, 2020, the District issued a progress report, which for each goal, stated that "Due to statewide COVID-19 school closure and resulting remote learning, the team was unable to obtain measurable data on this goal. Progress will be updated when school reopens and the team is able to collect current performance data."
52. The Parent filed this complaint on June 15, 2020.
53. June 19, 2020 was the last day of the 2019-2020 school year for the District.

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged the District failed to implement the Student's individualized education program (IEP) from March 13, 2020 through June 15, 2020, during the school facility closures caused by the novel Coronavirus (COVID-19). Specifically, the

Parent alleged the Student did not receive the specially designed instruction outlined in her IEP in the areas of communication, written language, and reading; did not receive any other special education services or supports (Parent stated the Student received “only general education” during the school facility closures); and accordingly, did not make progress on her IEP goals.¹⁸

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 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, 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. Districts were encouraged to collaborate with families and prioritize communication during this time.

On March 25, 2020, the District’s speech language pathologist (SLP) emailed the Parent to provide information on what the Student had been working on prior to the school facility closures to support her IEP goals in communication, and to offer ideas for “speech and language enrichment activities” that the Parent could do with the Student while at home. Similarly, on March 30, 2020, the Student’s special education teacher emailed the Parent a goal sheet, describing activities the Parent could do with the Student in support of her IEP goals in reading, written language, and communication. However, after providing the Parent these enrichment activities in late March 2020, the District did not communicate with the Parent regarding an individualized plan for providing special education services to the Student, or document the provision of any special education services—including specially designed instruction or other related services—until May 26, 2020, when it developed a continuous learning plan (CLP) for the Student in collaboration with the SLP. The District was accordingly unable to produce documentation of the provision of specially designed instruction or related services from March 30, 2020 through May 26, 2020.

During this time, in accordance with the District’s policy on continuous learning, the special education and general education teacher made themselves available to the Parent for office hours and parent check-ins. This was in addition to the enrichment material the Parent had received in March and in addition to the general education instruction the Student received. While OSPI acknowledges that the Parent’s delay in responding to District communications regarding scheduling a check in may have contributed to a delay in the Student receiving additional special education support, the District did not make clear to the Parent what the purpose of a check in was or that if the Parent did not respond to the offer to have a check in, the Student would not be offered 1:1 or Tier 2 support by the general education teacher, even though the Student had

¹⁸ Due to the Student’s specific learning disability in communication, the Student’s IEP indicated the Student’s specially designed instruction in communication was to be provided by a speech language pathologist (SLP).

an IEP and was not receiving direct special education support or specially designed instruction. It was not until April 29, 2020—nearly a month after the District was required to have provided documentation of the individualized special education services it was providing students with IEPs—that the special education teacher clearly articulated to parents in an email sent to all families of students in his class that he was not providing direct instruction. Instead, the special education teacher stated he was only supporting the general education teacher by observing Zoom classes and consulting with the general education teacher as needed. Prior to this, it appears the Parent was waiting for the District to inform her of the plan to provide the Student with specially designed instruction, as previously the Student received her special education services in a special education setting.

Further, the documentation provided in this complaint was not clear as to how the special education teacher's observations of the Student's participation in general education classes would or did support the Student's access to general education instruction, or how this furthered her individual IEP goals. There also was no documentation of what the special education teacher observed during the two Zoom calls he attended, or that the general education teacher was using information she received from the special education teacher to provide specially designed instruction to the Student. On the contrary, the general education teacher suggested any additional support or intervention she provided to students was only provided to students whose parents raised concerns during check-ins—and that the Student did not receive additional support because the Parent had not attended a check-in. It is reasonable that because the District did not provide written documentation of the special education services it was providing to the Student until May 2020, that the Parent would not have known to communicate with the general education teacher regarding her concerns about the Student's special education needs.

Further, even if the District provided the Student some access to learning, the District did not document what, if any, progress the Student made on any of her individualized IEP goals as a result of the educational services she did receive. Instead, the District provided a standard statement for each goal that it was unable to obtain data on the Student's progress.

Thus, while as previously stated, the District was not required to implement the Student's IEP as written during the school facility closures, it was required to have a plan for providing students with special education services, including specially designed instruction and related services, and to have written documentation of the individualized special education services it was providing this Student by or around March 30, 2020. It was further required to have collected data on how the services the Student was receiving impacted the Student's progress on her IEP goals. It is not clear here what the District's plan was to provide the Student with individualized special education services, including specially designed instruction, prior to May 26, 2020—nearly two months after required. The District also did not collect data on how any services the Student did receive impacted the Student's progress on her IEP goals. OSPI accordingly finds the District to be in violation.

The District will be required to hold an IEP meeting and will be required to measure and monitor the Student's progress during the school facility closures prior to the IEP meeting. 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 IEP meeting, the IEP team must consider, based on the results of the updated progress reporting, what additional special education services the Student requires to lessen the impact of the school facility closures. The District must submit the progress report and the team determination of any additional services needed based on the progress report to OSPI for review and approval.

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 18, 2020, and October 2, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **September 11, 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. Because OSPI was unable to determine an amount of compensatory services to order due to lack of progress data available, the IEP team will also discuss what compensatory services are necessary to help lessen the impact of the closures. Any compensatory services provided will be provided after school time.

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 25, 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:

Training

By **September 25, 2020**, the District will develop and conduct training for District level special education administrators (directors, program specialists, and program supervisors) and special

education certificated staff and related service providers,¹⁹ 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 2, 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.)

¹⁹ 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.