

## SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-91

### PROCEDURAL HISTORY

On July 23, 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 Lake Washington School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On July 23, 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 August 11, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On August 24, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

OSPI considered all of the information provided by the Parent and the District as part of its investigation.

### ISSUE

1. Did the District implement the Student's individualized education program (IEP) during the March 2020 through June 2020 school facility closures?

### LEGAL STANDARDS

**IEP Implementation:** At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

During the COVID-19 school facility closures, as students received general education instruction and student support services, districts must provide students with disabilities with the special

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

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

The individualized special education services being provided to a student during the school facility closures as part of continuous learning, were to be documented in writing using a student’s annual IEP, IEP amendment (particularly if services to be provided during the closure were significantly different from what the IEP indicated), prior written notice, or optional “Continuous Learning Plan” (CLP) or similar document. Districts had flexibility in how they chose to document decisions made in real-time. *Questions and Answers* (OSPI, April 13, 2020). Districts were encouraged to prioritize parent communication, including discussions of how special education services were to be provided during the closures. *Questions and Answers* (OSPI, May 5, 2020).

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

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

**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**

### **Background**

1. OSPI received this complaint from the Parent on July 23, 2020. The Parent, in her complaint, alleged the District failed to "make an appropriate education accessible to my child during school closure." The Parent alleged the District failed to provide services in the areas of social and emotional development, along with speech/language therapy (SLP), occupational therapy (OT), physical therapy (PT), and vision therapy (VT) services according to the Student's individualized education program (IEP).

The Parent later provided the following statement:

In the response, the district stated that "[t]he method for serving [the Student's IEP goals during the COVID-19 school facility closures] was agreed to be through weekly parent coaching meetings with [the Student's special education teacher] and consultation with other service providers as needed, weekly materials provided via email and One Note and disseminated to parents.'...My husband and I never agreed to this. In fact, we repeatedly requested for services to be provided directly to our daughter, either in-person or via teletherapy. Our requests were denied, without a proper IEP process...

...Our daughter's private physical therapist resumed in-person services on April 27, in full compliance with the Governor's orders as well as all applicable health guidelines. Her three private occupational therapists each resumed in-person services during the first week of June, also in full compliance. Her school-based therapists never resumed direct therapy, in-person or virtual.

### **2019-2020 School Year**

2. At the start of the 2019-2020 school year, the Student was a five-year-old preschooler who attended a District preschool and was eligible for special education services under the category of traumatic brain injury.

3. On September 12, 2019, preschool classes began in the District.
4. The Student's October 1, 2019 IEP was in effect prior to the COVID-19 school facility closures. The Student's October 2019 IEP included annual goals in the areas of social/emotional behavior, PT, SLP, OT, and VT services. Progress toward the annual goals would be measured by "classroom data and probes," "observation of performance on a distinct set of items by staff," "staff and therapist data," and "SLP and SPED (special education) team data." Progress for six goals would be reported by both a "copy of the goal page" and "written progress report" each semester and for four other goals, progress would be reported by a copy of the goal page. The Student's service matrix provided specially designed instruction and related services for two different time periods: October 4, 2019 to July 31, 2020, and August 1 to September 30, 2020. The IEP provided the Student with the following specially designed instruction and related services through July 31, 2020:
  - Social/Emotional: 30 minutes, 4 times weekly (provided by special education team in a general education setting)
  - PT: 30 minutes, 1 time weekly (provided by a physical therapist in a special education setting)
  - VT: 30 minutes, 1 time weekly (provided by a vision specialist in a special education setting)
  - OT: 30 minutes, 1 time weekly (provided by an occupational therapist in a special education setting)
  - SLP: 30 minutes, 1 time weekly (provided by a speech/language pathologist in a general education setting)

The Student's October 2019 IEP additionally provided the Student with the following accommodations and modifications:

- Seating/positioning
- Use of sensory/fidget items
- Visual aids
- Adult proximity
- Preferential seating specific to student need
- Directions need to be reworded and/or simplified to ensure comprehension
- Allow additional processing time
- Adults should provide phonemic (sound) cues when student is struggling to find a word before providing a whole word response/option

Staff supports for school personnel included "IEP dissemination process is followed with staff" and "video training for staff working with [Student]."

5. Prior to the school closure, the Parent stated the Student received the following private therapy services: PT: 60 minutes, two times weekly; OT: 60 minutes, four times weekly; and SLP: 60 minutes, two times weekly.
6. According to the District, from March 11 to April 3, 2020, all District schools were closed due to the COVID-19 pandemic and no educational services were provided to any students. The District stated it had no obligation to provide special education services during this period of time, but the Student's IEP team provided the Parent with "daily activities and resources in all areas of service through the use of a classroom One Note."

7. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis.
8. On March 16, 2020, the Student's special education teacher and general education teacher sent a letter to all parents with preschoolers, stating that the District would be closed until April 24, 2020, but the District offered to provide "enrichment activities" to Students. Regarding special education services, the email stated:

Additionally, you might have more questions on how this effects your child's IEP or special education services. This is something we are working through with the Office of Public Education and unfortunately there are not a lot of answers yet. If you have questions about your child's IEP or ways that you can be supporting their goals at home please do not hesitate to reach out to me directly.

9. On March 17, 2020, the Parent replied, asking if teletherapy was an option. The special education teacher responded:

I can definitely relate to your fear of what this time away from services will result in for our preschoolers. At this time we have to be conscious of only offering services that can be accessible by all students which means we cannot offer tele-therapy as not all students can access internet or interfacing platforms. This is not a decision made at the teacher or therapist level but much higher than that. I am sure that you understand the logistics, so let's just talk about what we can do!

The special education teacher provided the Parent with information about a private SLP company that was apparently providing teletherapy.

10. The District developed three continuous learning plans (CLP) for the Student—two undated CLPs and a third with contacts recorded beginning later (April 13, 2020).
11. One of the CLPs was developed by the physical therapist, but was not dated. The PT CLP included the skill focus and instructional plan:

SDI Areas	Skill Focus	Instructional Plan
<b>Gross Motor</b>	Will emphasize gross motor skills that assist in [Student's] ability to access and participate in an elementary school setting while also continuing to work on her overall gross motor goals of improving strength, balance, and coordination.	<p>How: Provide individualized PT program that includes different activities that can be performed at home.</p> <p>Who: PT to provide, parent to complete with student.</p> <p>Duration: Complete 2-3 times per week.</p>

Beginning on March 20, 2020, the PT CLP showed the communication between primarily the physical therapist and the Parent regarding the Student's PT program that included climbing stairs, putting on clothing, hitting a tennis ball, and riding a bicycle, among other individual activities, on the following dates:

- March 20
- April 20
- April 14
- April 21

- April 28
- May 1
- May 5
- May 6
- May 7
- May 12
- May 13

- May 19
- May 21
- May 26
- June 1
- June 2
- June 3
- June 15

12. The second undated CLP provided the skill focus and instructional for each of the following service areas:

SDI Areas	Skill Focus	Instructional Plan
Communication (OK for preschool staff to address)	SLP is a related service supporting communication needs at home -Categories, describing, naming -Support advocating for needs	<b>How:</b> Weekly SLP resources published through OneNote; student specific materials or suggestions given to parent upon request. <b>Who:</b> SPED (special education) teacher disseminates weekly materials; parents implement strategies and facilitate activities at home. Parents will follow up with questions/concerns. <b>Duration:</b> Materials gathered and disseminated weekly; SLP joins teams meetings on bi/tri-weekly basis or at parent request.
Social Skills/Emotional	-Advocate for needs -Label emotions	<b>How:</b> Getting weekly activities from sped teacher to implement at home. Activities target IEP goals and overall deficits in this content area at home. <b>Who:</b> Parents facilitate materials and activities sent by Sped Teacher. Parents will follow up with questions/ concerns. <b>Duration:</b> Weekly staff check ins.
Fine Motor/Sensory	OT supported related classroom goals that developed or maintained [Student's] visual motor, fine motor and sensory processing skills.	<b>How:</b> OT provided student specific materials and participated in TEAM meetings with staff and family. <b>Who:</b> SPED teacher consolidated weekly materials and emailed them to [Student's] family. <b>Duration:</b> Weekly student specific materials provided. Attended TEAM meetings every other week.
Gross Motor	Will emphasize gross motor skills that assist in [Student's] ability to access and participate in an elementary school setting while also continuing to work on her overall gross motor goals of	<b>How:</b> Provide individualized PT program that includes different activities that can be performed at home. <b>Who:</b> PT to provide, parent to complete with student. <b>Duration:</b> Complete 2-3 times per week.

	improving strength, balance, and coordination.	
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The second CLP documented mostly inquiries to the Parent about what activities and instruction were going well and explaining the materials that were sent to the Parent. The contacts occurred on the following dates:

- March 31
- April 13
- April 14
- April 20
- April 21
- April 27
- April 28
- May 5
- May 12
- May 19
- May 26
- June 2
- June 9

13. On March 21, 2020, the Federal Department of Education, Office of Special Education and Rehabilitative Services (OSERS) issued guidance for school districts regarding closures due to COVID-19.<sup>1</sup> The guidance, in part, stated:

The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. Consider practices such as distance instruction, teletherapy, and tele-intervention, meetings held on digital platforms, online options for data tracking, and documentation. In addition, there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments.

14. 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.

15. Also, on March 23, 2020, the Parent emailed the District superintendent as a "public comments question," asking when the Student's related services would begin since the services were important to the Student's development. On March 30, 2020, the superintendent replied to the Parent. After informing the Parent that her comment would be read at the School Board meeting, the superintendent stated, in part:

...Our staff and our teachers' association have been working on defining services moving forward, knowing that some things can work well delivered remotely while others cannot. We hope to provide as many services as possible, knowing we still have to be compliant with the safety/distance factor and the realities of what can be done. I also know that some national organizations have pushed back on what services should/could be delivered remotely, and speech services is one of those areas. Our special education staff is working with state officials to make determinations on what can move forward for special education services. Our goal is to do as much as possible given what is reasonable.

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<sup>1</sup> *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (U.S. Department of Education, March 13, 2020).

16. The District was on spring break from April 6 to April 10, 2020.
17. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
18. On the same day, the Parent emailed the District special education director (director) in reference to the Governor's statement about school closure. The email stated, in part:  
 I have a daughter on an IEP that legally mandates [District] to provide PT, OT, speech, vision, and social/emotional services. She has not received any of these services since school closed on March 11. I have inquired previously about teletherapy options and have been told that those are not possible at this time. It seems that Governor Inslee's proclamation makes it possible for [District] to provide in person services to her. I understand that [District] is already providing emergency childcare that adheres to DOH guidelines, so I know that the district already has experience with safely providing in-person interaction in a school setting. What are [the District's] plans for providing services -- either in-person or remotely -- to kids on IEPs?
19. Also, on April 6, 2020, OSPI issued guidance on Continuous Learning 2020, which included recommended 30 minutes as a guideline for maximum student commitment each day, for pre-kindergarten.
20. On April 7, 2020, the director replied to the Parent. The director, in part, stated:  
 ...At this time, we are not providing therapy or special education services within our schools, in order to maintain the health of students and staff. However, we intend to provide special education online instruction starting the week of April 20th, in alignment with general education services. As we move into online learning, your child's therapists will be providing some degree of direct support. We are currently working with our therapist groups and association to consider what those services will entail.
- You should have been contacted by your child's case manager and therapists last week. If you haven't, please let me know and we'll follow up with staff. While we recognize that it doesn't provide the same support as direct instruction and services, there are some specific resources on our district web page for students in special education. There are a variety of learning activities available - including activities designed by our therapists. In addition, our school counselors are able to provide social emotional support if needed. Your daughter's teacher should be able to connect you with these supports.
21. Beginning April 13 through June 15, 2020, the third CLP documented the contacts between the various service providers and the Parent about status updates, implementation questions, and SLP resources. Contacts between the Parent and the District occurred on the following dates:
- April 13
  - April 14
  - April 20
  - April 27
  - May 5
  - May 12
  - May 18
  - May 25
  - June 2
  - June 9
  - June 15



22. From April 20 to June 12, 2020, the end of the school year, the District described the following services that were provided to the Student and Parent:

From April 20, 2020 through the end of the 2019-2020 school year, the District implemented a curriculum-based remote learning model. During that time, Student and Parent were provided weekly updated early learning activities aligned with the Student's areas of Specially Designed Instruction and the district adopted preschool curriculum. Additionally, in-home strategies including visual supports, speech and language activities, fine and gross motor activities as well as enrichment websites and strategies on assisting students with self-care at home were provided to the Parents. [Special education teacher] scheduled weekly meetings using Microsoft Classroom Teams to provide [specially designed instruction] in social/emotional as well as related support in SLP, OT and PT. Topics were focused on reviewing the progress with materials provided, private therapies as well as determining additional needs/supports in the home. [Special education teacher] maintained regular communication with Parent, conducted weekly check-ins, provided individualized supports for Parents to use at home, and answered questions and provided supports for Parent. The Speech Language Pathologist and Occupational and Physical Therapists consulted with the Special Education teacher and Parents to provide appropriate materials and resources to address Student's language and motor skills during remote learning.

23. Also, on April 13, 2020, OSPI issued an updated Q&A guidance document, which said the following:

A-5. Would the state be willing to authorize related service staff to work remotely without all of the American Speech-Language-Hearing Association (ASHA) requirements being in place?

OSPI does not have the authority to waive ASHA requirements. Both an ESA Credentialed SLP and a DOH credentialed SLP can deliver services via a telehealth model. There are no Professional Educators Standard Board (PESB) regulations which would prevent any of Washington state educator roles from practicing virtually.

There are existing resources within the state and many districts to meet the WA Telepractice Requirements for audiologists and speech-language pathologists at the current time, and OSPI recommends that districts strongly consider adapting services in this manner, to meet the needs of their students. Additionally, the U.S. Department of Health and Human Services has released notice of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency which permits flexibility to provide services using widely available communication apps such as FaceTime or Skype when used in good faith to provide telehealth treatment or diagnostic services. The accompanying FAQs on Telehealth and HIPAA during the COVID-19 nationwide public health emergency provides more guidance on this topic.

24. On April 14, 2020, the Parent informed the District during a video chat that the Student was receiving private PT, but wanted some activities and skills to work on at home that related to attending school.

25. On April 17, 2020, the District associate superintendent emailed the District leadership team and stated the following information would be sent to the teachers in the District. The email, in part, stated:

Teachers may elect to use Teams for live interactions with their students once they have completed the required training. We encourage teachers using videoconferencing with Teams in this first week or two to consider it for class check-ins, review, discussions, etc. For now, we are asking that teachers hold on using videoconferencing to deliver primary instruction and/or to introduce new concepts. Video lessons and voice-over PowerPoints are an option initially to deliver primary instruction and/or introduce new concepts for teachers who choose to do so. These options provide flexibility for students and families.

26. On April 23, 2020, the director emailed all special education staff information about child find, instruction, a specially designed instruction planning form, technology, extended school year (ESY), and compensatory services. Regarding instruction, the email stated, in part:

In alignment with our agreement with [education association], special education staff can engage virtually with students online with Microsoft Teams. We would recommend that you consider utilizing this option as an option for providing modified [specially designed instruction] (although it is not required). We recommend working with groups of students or if you are working 1:1, please ensure that the parent is present or use a paraeducator/therapist so you are not working alone with a child.

27. June 12, 2020 was the last day of the 2019-2020 school year for the District.

28. On June 15, 2020, the District held a virtual meeting that included the Parent to conduct a review of the Student's IEP. The IEP continued to provide goals in the areas of social/emotional, communication, fine motor, gross motor, vision/orientation and mobility, and occupational therapy, but the goals were revised to address the Student's present levels. The service matrix remained the same.

29. As part of the investigation, OSPI requested the Student's special education progress reports from the District based on the October 2019 IEP. The District did not provide any progress reports. The following progress information was gleaned from June 2020 IEP:

- Social/Emotional (identifying emotion): "GOAL MET. Based on classroom data collected from October 2019-March 2020 [Student] is able to identify her emotion on 5/5 observed opportunities. Parent's report that she is able to identify basic emotions as they related to the Zones of Regulation."
- Social/Emotional (advocate for needs): "GOAL MET AS WRITTEN. Based on data collected from October 2019-March 2020, [Student] is able to advocate her needs by communicating in appropriate proximity and clearly stating her needs. It is worth noting that [Student] is less comfortable advocating for herself in less familiar environments or with less familiar adults. Parent's report she is able to ask for help when needed at home but attempts to be independent whenever possible."
- Communication (naming objects, etc.): "[Student] has made good progress on this goal! Across most recent data taking sessions, [Student] was able to independently name described objects in 4/5 opportunities and independently name 4 objects within categories (e.g. clothing items, farm animals, fruits, vegetables) in 4/5 opportunities. [Student] continues to benefit from phonemic cues in 1/5 opportunities. Describing objects using Semantic Feature analysis was

- not able to be introduced or targeted before the school closure and start of distance learning. [Student] would benefit from continued therapy to target increasing her semantic network through learning and practicing systems such as Semantic Feature Analysis.”
- Communication (asking for help): “SLP data aligns with SPED teacher data. [Student] has demonstrated clear progress in the classroom advocating for her needs to peers and adults. During adult-led tasks that are more difficult for [Student] (i.e. word finding tasks during speech and language therapy), [Student] has demonstrated increase in self-advocacy language such as ‘Let me think about it’ or ‘I need a minute’. During these tasks, [Student] still requires a cue to ask for a hint or ask for the first sound a word when she is having word-finding difficulties.”
  - Fine Motor: Social/Emotional: (advocating for needs): “According to teacher and therapist data, [Student] has met this goal and will advocate for her needs on 4/5 observed opportunities. During self-care tasks such as removing her jacket and hanging it on a hook, [Student] will consistently request assistance from a nearby adult. With verbal and tactile prompts, [Student] can complete the task with moderate physical assistance for bilateral coordination and fine motor skill development. When engaging in a visual motor activity, [Student] will often request help to complete a task such as utilizing tongs, pinching small items, and imitating prewriting shapes. During visual motor activities, [Student] benefits from verbal or visual cues to utilize her affected right side when completing bilateral integration activities (cutting, removing jacket, writing, etc.) and will continue to work on this skill. Overall, [Student] has made great progress on this goal!”
  - Fine Motor: “Due to the unforeseen circumstances of the Covid-19 school closure, the following annual review will be based on data through March 2020 and records review.”
  - Fine Motor: Social/Emotional (label emotion): “[Student] has demonstrated great progress in this area and will consistently utilize the language in Zones of Regulation to identify how she is feeling. During therapist-led activities with peers, [Student] has correctly identified feelings of ‘frustration’ with minimal therapist prompting. Cooperative play skills such as Turn-taking and sharing have been skills [Student] is beginning to demonstrate during therapy sessions with moderate verbal prompting. On several occasions during visual motor activities with peers, [Student] needed support and visual prompting to identify objects on her affected right side. Although visibly frustrated, [Student] demonstrated calming techniques such as deep breaths and verbalizing her feelings during those occasions. [Student] benefits from prompts to utilize visual scanning techniques to identify items on her right side when engaging in classroom activities. Overall, [Student] is doing very well with this goal and is demonstrating increased skills in the area of emotional regulation.”
  - Gross Motor (jumping): “[Student] has made significant progress in her jumping skills over the past few months. She is able to jump up and clear the ground by 1-2 inches as well as jump forwards >6 inches. Prior to the school closure, [Student] was not yet able to jump down from a 7-inch height surface without hand held assistance, however, she has likely made progress on this skill at home.”
  - Gross Motor (stairs): “Goal met.”
  - Recommendations: “[Student] presents with deficits in strength, balance, gait, and independent functional mobility which adversely impact her ability to access and participate in her educational environment. She has made significant progress in her gross motor skills these past few months following her recovery from her surgery, but continues to demonstrate deficits which place her at an increased risk for falls.”

30. On July 23, 2020, OSPI received the Parent’s complaint and opened this investigation.

31. OSPI requested information from the Parent about what private services were provided to the Student during the school closure. The Parent provided the following information:

Physical therapy:

- Prior to the week of March 16: In person 60 mins 2x/week
- Starting the week of March 23: Teletherapy 60 mins 2x/week
- At some point, she dropped down to 1x/week, due to her noncompliance in the virtual environment.
- Starting the week of April 27: Resumed in-person services, still at 60 mins 1x/week.
- She's now back to 60 mins 2x/week, as of mid-August.

Occupational therapy:

- Prior to the week of March 16: In person 60 mins 4x/week, with 4 different providers.
- Starting the week of March 23: Teletherapy 60 mins 2x/week, with 2 of her original providers.
- Starting the week of June 1: In person 60 mins 3x/week, with the 2 providers who did teletherapy plus another of her original providers.

Speech therapy:

- Prior to the week of March 2: In person 60 mins 2x/week
- Weeks of March 2, 9, 16: No services, as her regular SLP had some COVID-19 related family challenges that prevented her from delivering therapy.
- Weeks of March 23 and March 30: She got in to see an SLP at [hospital] on an emergency basis for two sessions. One was an evaluation that lasted about 2 hours, the other was a regular 60 min session.
- Week of April 6: She resumed services with her original SLP via teletherapy. The schedule varied a little at first, but was at least 1x/week, sometimes 2x. Sessions started off at 60 mins but were soon shortened to about 30 mins, due to her shortened attention span in a virtual environment.
- She still receives services via teletherapy for about 30 mins 2x/week. This has been the consistent schedule since around May.

## CONCLUSIONS

**Issue One: IEP Implementation** – The Parent alleged the District failed to provide the services in conformity with the Student's individualized education program (IEP) and refused to provide direct support from a speech/language pathologist, occupational therapist, physical therapist, and vision specialist to the Student.

Under normal circumstances, a district must implement IEPs as written. However, during the spring 2020 school closures due to the COVID-19 pandemic, because of health and safety concerns, districts were not necessarily expected to implement IEPs as written. IEP services should have been implemented to the extent possible, including the provision of specially designed instruction, based on the student's individualized needs. If a service was not implemented, a district should have documented why it could not be implemented and what other options were considered. Districts should have clearly communicated to parents what services were being offered and were expected to collaborate with parents about the implementation of the services, including parent capacity to assist in service implementation and the potential need for parent training. Special education services must have begun by March 30, 2020, as districts began "continuous learning," per expectations from OSPI. Districts were expected to continue to monitor student progress toward annual goals and report progress to parents. Like special education services, the district may not have been able to measure progress in the method stated in the IEP because of remote

services. However, districts should still have reported what progress they could, even if an alternative method was used to gather progress monitoring data.

Here, the Student's October 2019 IEP provided for annual goals in the areas of social/emotional, fine motor, communication, vision, and gross motor and services in the areas of social/emotional, SLP, OT, VS, and PT. In March 2020, the District's facilities closed temporarily because of COVID-19, and subsequently closed for the remainder of the school year. On March 23, 2020, OSPI required the District to begin "continuous learning" for all students, starting March 30, 2020. On April 7, 2020, the District informed the Parent that special education services would start the week of April 20, 2020. The District did provide the Parent with enrichment activities for the Student beginning in March 2020; however, it was not clear the activities were individualized to the Student's needs.

In March 2020, the Parent requested either in-person or teletherapy for OT, PT, and SLP. The District superintendent responded that the District was working with OSPI to get guidance on providing services remotely. In April 2020, OSPI provided the following guidance, in part:

There are existing resources within the state and many districts to meet the WA Telepractice Requirements for audiologists and speech-language pathologists at the current time, and OSPI recommends that districts strongly consider adapting services in this manner, to meet the needs of their students...

The Parent continued to request in-person or teletherapy to provide the related services according to the Student's IEP. Because of COVID-19, the District was required to implement the services on the Student's October 2019 IEP to the extent possible. Since some services could not be implemented or implemented in the same way on a remote learning platform, the District was required to document through the IEP, a continuous learning plan (CLP), or some other form of documentation the services that were going to be implemented and inform the Parent of the plan.

In April 2020, the District developed three CLPs for the Student and implemented these plans beginning April 20, 2020. The CLPs called for the Parent to provide the instruction and therapy activities to the Student with weekly support from the special education teacher and other service providers. The documentation showed that the CLPs were consistently implemented. But special education services should have been begun by March 30, 2020, according to OSPI's directive. Excluding the District's spring break from April 6 to April 10, 2020, the Student missed two weeks of instruction.

While the District did provide some amount of special education services to the Student after April 20, 2020, the Parent continued to request in-person services or teletherapy. Given the Parent's requests, the District should have conducted an IEP meeting to address the Parent's request, especially since the Parent was the primary provider of instruction to the Student and in light of OSPI's guidance regarding teletherapy. The IEP team could also have discussed other options for providing more direct instruction or services if there were barriers to providing teletherapy. The District was not required to necessarily fulfill all the Parent's requests, but the IEP team was required to address the request and make the decision on a case-by-case basis. This included providing a cogent and responsive explanation of its acceptance or rejection of the Parent's

request in a prior written notice, and making a decision that was based on the individual disability related needs of the Student.

The District was also required to monitor progress toward the Student's goals that were being addressed during distance learning. Because of the school closure, the District may not have been able to monitor progress as described in the IEP, such as using classroom data and probes for example. But the District was still required to collect and monitor the progress data, the purpose of which was to establish the Student's new present levels beginning Fall 2020, and use the data to determine the need for recovery services, if appropriate. The June 2020 IEP provided information that indicated the Student was generally making progress towards her annual goals, but much of the data appeared to relate to the Student's performance before school closure and did not address the impact of the closure on the Student's progress, despite ongoing contact between the special education teacher and Parent. There was insufficient data about the Student's present levels at the time of the June 2020 IEP to establish baseline data. Pertaining to progress reports, the IEP stated that progress towards six of the annual goals would be reported by a copy of the goal page and a written progress report. Progress toward four other goals would be reported by a copy of the goal page.

Based on the District failing to consider and make a Student-specific determination about the Parent's request for in-person services or teletherapy, conducting progress monitoring during school closure, reporting progress, and starting services by March 30, 2020, a violation is found. The District will be required to hold an IEP meeting and address the Parent's request, as well as whether recovery services are necessary. As part of the determination of whether the Student requires recovery services for services that were missed, the IEP team is required to review the Student's progress, along with the possible impact of the private services.

### **CORRECTIVE ACTIONS**

By or before **October 8, 2020** and **October 30, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **IEP Meeting**

By or before **October 1, 2020**, the Student's IEP team will meet to discuss the Parent's request for in-person or teletherapy, or some other method of providing direct instruction, for Fall 2020 and the impact of the school facility closures from March 30, 2020 to June 19, 2020 on the Student's progress. 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, including the impact of the delay in initiating services following the requirement to begin continuous learning by March 30, 2020. The IEP team should also consider how the Student receiving private services impacted her progress.

By **October 8, 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 **October 15, 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:**

##### **Written Guidance**

By **October 23, 2020**, the District must provide special education staff and special education administrators in the District with written guidance regarding how to respond to parent requests and the findings in this complaint to ensure that IEP teams continue to address parent requests or concerns as appropriate during school closure, including making decisions case-by-case and providing prior written notice.

By **October 8, 2020**, the District will provide OSPI with a draft of written guidance. The guidance must be approved by OSPI.

By **October 30, 2020**, the District will provide OSPI documentation that all special education staff and administrators received the written guidance.

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

As required in SECC 20-67, the District must develop a District-wide plan to ensure that progress towards annual goals is monitored for all students with disabilities during 2020-2021 school year, The District must also provide training to staff. Please refer to SECC #20-67 for specific requirements and timelines. *Note:* The corrective action in SECC 20-67 addresses the violation found here, in referencing the corrective action in SECC 20-67 OSPI is not adding any additional requirements to what is already required by the previous complaint decision.

Dated this \_\_\_\_ day of September, 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.)