

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-42

PROCEDURAL HISTORY

On May 17, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Kent 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 May 17, 2021, 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 4, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on June 7, 2021. OSPI invited the Parent to reply.

On June 12, 2021, OSPI received a detailed reply with attachments from the Parent. This reply was forwarded to the District by OSPI on June 14, 2021.

On June 18, 2021, OSPI received a revised response from the District and forwarded it to the Parent on the same day.

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

SCOPE

The Parent's complaint and the District's response offer information regarding events outside the one-year timeline of a complaint investigation and reference findings from SECC 20-38, which is described and referenced when relevant. This decision references events that occurred prior to the investigation period; specifically, events involving school facility closures and guidance from OSPI regarding the provision of special education services to eligible students during spring 2020. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District implement the Student's individualized education program (IEP) to the maximum extent possible during the spring 2020 school facility closures, from May 18, 2020 through the end of the school year?
2. Did the District delay amending the Student's IEP when he returned to a full-time District placement during the 2019–2020 school year?

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 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. 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).

IEP Implementation during Spring 2020 School Facility Closures for COVID-19: During the Spring 2020 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).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324; WAC 392-172A-03110. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

FINDINGS OF FACT

Background: 2019–2020 School Year

1. During the 2019–2020 school year, the Student was eligible for special education services under the category of other health impairment and attended a District high school.
2. The Parent and District were parties involved in special education citizen complaint (SECC) 20-38 regarding special education services provided during the 2019-2020 school year. The decision in SECC 20-38 was issued on May 7, 2020. As a result of the decision, the District was required to convene the Student's individualized education program (IEP) team prior to June 19, 2020, to consider specific topics identified in the decision regarding the Student's specific special education needs. The decision also directed the District to issue a prior written notice with specific details from the meeting.
3. The Student's December 19, 2019 IEP was in effect prior to the spring 2020 COVID-19 school facility closures. According to the December 2019 IEP, the anticipated date the Student would begin attending the District high school on a full-time basis was February 27, 2020. The Student's December 2019 IEP included the following measurable annual goals, summarized:
 - **Social/Emotional 1 (pragmatic language skills):** Appropriate responses in social communication opportunities or hypothetical social situations, based on at his communicative partner's non-verbal behavior/social cues. (Speech language pathologist (SLP) supported)
 - **Social/Emotional 2 (pragmatic, oral, non-literal language skills):** Appropriate tone, body orientation, facial expressions, and sarcasm in social communication opportunities or hypothetical problem situations. (SLP supported)
 - **Adaptive Skills 1 (goal setting, planning):** Using the "Get Ready, Go, Done" method for a new assignment or task and instruction.
 - **Adaptive Skills 2 (adaptive skills):** Application type forms requiring personal information.

- **Speech Language (vocabulary, expressive language):** Use of compensatory word retrieval strategies (can include but not limited to: synonyms, antonyms, visualization, categories, description, phonemic cues, semantic cues).
- **Behavioral Instruction:** Completing assignments improving behavior from needing adult proximity and multiple reminders to completing with 2 or less reminders per class period.
- **Written Expression:** Story continuation when give a story starter, presented orally, with 1-minute think time and 3 minutes write time at the instruction level.
- **Written Expression:** Paragraph writing with word prediction software improving spelling and reducing spelling errors. (Occupational therapist (OT) supported)
- **Basic Reading Skills:** Correct words read when given a list of 25 random 4-5 syllable words.
- **Reading Comprehension:** Restoring correct vocabulary terms in a reading passage.
- **Reading Fluency:** Improving correct words per minute on a 4th grade level passage to 90 correct words per minute on a 5th grade level passage.
- **Math Problem Solving:** Solving math problems at a 3rd grade level math.

According to the December 2019 IEP, progress was to be reported to the Parent via a “copy of the goal page” each quarter. The IEP included the following specially designed instruction and related services:

- Math problem solving: 250 minutes weekly
 - Reading Comprehension and Reading Fluency: 900 minutes weekly provided concurrently
 - Written Expression: 250 minutes weekly
 - Behavioral Instruction: 250 minutes weekly
 - Social emotional and Adaptive: 250 minutes weekly provided concurrently
 - Basic Reading Skills: 900 minutes weekly
 - Occupational Therapy: 90 minutes monthly
 - Speech and Language Services: 90 minutes monthly
4. On March 13, 2020, the Washington Governor announced 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. The school facility closures were subsequently extended through the rest of the 2019–2020 school year.
 5. 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 March 30, 2020.
 6. The District was on spring break from April 7 to 11, 2020, and continuous learning began on April 13, 2020. Teachers began offering virtual office hours for students on April 27, 2020.
 7. On May 7, 2020, the District communicated with the Parent regarding the Student’s continuous learning plan (CLP). The CLP included the following special education and related services: 10 minutes weekly of behavior instruction from a special education teacher; 30 minutes weekly of math instruction “online through Mobymax” from a special education teacher; 30 minutes monthly (in three 10-minute sessions) of writing instruction from an OT; and, 30 minutes monthly (in three 10-minute sessions) of speech language instruction from an SLP. The CLP further stated:

[Student] will receive instruction in writing/[occupational therapy], behavior and speech and language through weekly emailed assignments provided collaborating by the [special education teacher], OT and SLP. Math instruction will be provided through Moby Max, an online resource, following [Student's] completion of a placement test within the program. In addition, [Student] will be provided independent reading, writing, and math assignment [sic] to complete.

The CLP noted the Student's secondary transition and graduation planning would prioritize "Career exploration" and be addressed through use of "online videos about careers that interest [Student]."

8. According to the Parent, the May 7, 2020 CLP was only a draft. In her response, the Parent provided an updated version of the CLP, as revised on May 13, 2020, in which the Parent stated the Student was to receive:
 - "Individual Skills" Class – 55 minutes once a week with individualization if needed. Individual Skills class usually involves the IEP goals related to behavior, written expression, and speech. The Parent stated in her reply to the District's response that the Student did not receive these services.
 - Math – Mobymax 30 minutes 5 times weekly – The Parent stated her concern was that Mobymax is a computer-based program without an instructor and that there was "to be an assessment first to determine where to place the [Student]. The items [Student] worked on didn't have anything to do with any IEP goals and didn't assist [Student] with anything he need [sic] to learn or where his deficiencies were. [Student] had very specific math goals he should've been working on and he wasn't provided with that."
 - Written Expression – CLP provided written expression through occupational therapy only (10 minutes once a week) and was concurrent with the Individual Skills class.
 - Speech Therapy – CLP stated the Student was only to receive 10 minutes once a week, which the Parent stated "doesn't provide hardly any assistance."
 - Reading (Comprehension/Fluency/Basic Reading Skills) – The Parent stated this was missing from the CLP. According to the Parent, "[t]his was a teacher led class during remote learning and the teacher would usually do 55 minutes and up to 2 hours (combined classes). This was one of the very few classes where [Student] was receiving much of any instruction."
 - Secondary Transition – The CLP specifically stated for career exploration that the Student should watch online videos about careers that the Student is interested in. Once the Student's career awareness class went to remote learning, "there never was any class. I always had to ask teacher for schoolwork for [Student]. I think he received maybe two assignments if you want to call them that...one was a copy of a utility statement and [Student] had to answer questions from reading the statement."
9. The District provided meeting notes from the May 13, 2020 CLP revision meeting and the notes corroborate the Parent's contention that the May 13, 2020 CLP was to be used to provide services during school facility closure period. The meeting notes do not provide an explanation of the team's decision to not provide specially designed instruction in basic reading, reading comprehension, and reading fluency.

10. The Parent alleged in her complaint that the District failed to implement the Student's IEP between May 18 and June 19, 2020. According to the District's revised calendar, this was a period of approximately five weeks' worth of instructional days.
11. The District provided documentation of an IEP team meeting on May 20, 2020 and notes regarding the meeting. The notes identify a review of the Student's goals, planned revision of adaptive goals, and planned communication from the Parent regarding possible revision of behavior and math goals.
12. The District provided meeting notes from a June 3, 2020 meeting with the Parent to discuss the Student's level of participation, benefit from concurrent services, and availability for individual support when needed. There was no IEP amendment or prior written notice associated with this meeting.
13. The District provided documentation from the June 10, 2020 IEP amendment meeting, including notes documenting discussion of the Parent's concerns, removal of a goal, decision that a spelling goal would be reviewed later by team, transition planning, additional language added regarding medical-physical information, discussion of extended school year (ESY) services, discussion of sports eligibility, and discussion of the Student's schedule for the 2020–2021 school year.
14. On June 17, 2020, the District issued a prior written notice, proposing to amend the Student's IEP as required by and outlined in SECC 20-38, and that included additional topics related to graduation, consideration of a reevaluation, and the provision of ESY services July 6 through August 6, 2020 in reading, written language, and math.
15. Regarding services during the spring of 2020, the District provided a copy of the SLP's "Closure Instructional Log" with the following relevant notations specific to service minutes for the Student:
 - May 21: 30 minutes – social skills and vocabulary support; Student response: "excellent participation during session."
 - May 28: 30 minutes – social skills and vocabulary support; Student response: "excellent participation during session - Student recalled working on homophones on white board 'isn't that the thing where two things sound the same but are different'."
 - June 4: 30 minutes – social skills support; Student response: great "participation and attitude during class."
 - June 4: 60 minutes – vocabulary development support; Student response: "no difficulty reading, answered inferential questions and made predictions about story. Great participation."
 - June 11: 30 minutes – social skills support; Student response: "appeared more tired and fatigued but able to complete work provided verbal cues from teacher. Was aware that things may say to incoming freshman may not be the appropriate thing to say but it's how he feels."
 - June 11: 60 minutes – vocabulary development; Student response: "no difficulty reading or with participation; used context clues from sentence to determine unknown vocabulary word with 50% accuracy".

The District also provided the OT's "Professional Service Log" that included the following relevant notations:

- May 21: "30 minutes of Individual Work: MS teams video meeting for independent skills class (Student, sped teacher, OT and SLP), discussed goal, planning it, instruction in typing his plan into Canvas for his class."
- May 28: "30 minutes of Individual Work: MS teams video meeting for independent skills class (Student, sped teacher, OT and SLP) discussed goal of Get Ready, Do, Done, planning it, instruction in typing and downloading Cowriter Universal to his laptop."

16. The OT and SLP issued a joint progress report, dated June 2020, that reported the following:

- Writing Goal: "Data is based off what was collected up to March 17th. OT provided [Student] support via MS teams sessions, collaborative with his Independent Skills teacher, as well as his language arts teacher and SLP. Prior to the school closure, [Student] had not wanted to use the word prediction software and would use it only during OT sessions, not in the classroom. During the...CLP...teams sessions, [Student] was willing to hear more about the software supports and agreed to download the newer versions available. OT was able to instruct [Student] on how to download word prediction software...He was able to download the support software for his written expression on 6/4/2020 and will be provided continued instruction in use of it when school reopens in the Fall."
- Adaptive Goal (Get Ready, Go, Done): "Goal was discussed during meeting with parent, vice principal, administration from the [District], Case manager, Sped teacher, gen ed teachers, OT, and SLP on 5/20/2020. Parent agreed this goal will remain in the IEP as an area of support for [Student]. Based on the CLP developed during the COVID-19 mandatory school closure no new data was collected on this goal area. During the CLP, OT provided [Student] support via MS teams sessions, collaborative with his Independent Skills teacher and SLP, during which time goal setting and planning were discussed. [Student] was able to identify the components for setting a goal and why he would set a goal. He continues to want to 'Go' and perform the steps for the goal, rather than plan what is needed, time required, materials required to successfully complete the goal. OT will assess his progress towards this goal when school reopens in the Fall."
- Communication (understanding emotions and actions of others): "Goal was discussed and amended during meeting...on 6/3/2020. The IEP amendment meeting with the whole team present was conducted on 6/10/2020. Therefore, this goal has not been directly targeted due to recently amended goal and mandatory COVID-19 school closure. [Student] has been participating in his individual skills and reading classes via video conference on MS teams with SLP and OT present."
- Communication (improving pragmatic language, oral expression, and non-literal language): "Goal was discussed and amended during meeting...on 6/3/2020. The IEP amendment meeting...was conducted on 6/10/2020. Therefore, this goal has not been directly targeted...[Student] has been participating in his individual skills and reading classes via video conference on MS teams with SLP and OT present."
- Communication (word retrieval strategies): "Goal was discussed and amended during meeting...on 6/3/2020. The IEP amendment meeting...was conducted on 6/10/2020. Therefore, this goal has not been directly targeted...Informally, he was observed to use context clues in a sentence to determine the meaning of a word in 1/2 opportunities (50% accuracy) independently during his reading class via video conference. [Student] has been provided speech/language homework via email from the SLP."

The June 10, 2020, IEP amendment also documented information regarding the Student's progress with prior communication, adaptive, and academic goals. Each adaptive and academic goal was identified as "updated May 2020." Progress information included:

- Social communication (appropriateness of response to communication partner's nonverbal communication): "During social communication opportunities, [Student] can determine if his verbal or non-verbal response is appropriate or inappropriate in 10% of opportunities independently. Participation and willingness to complete therapy tasks varied from session to session which impacted workload and performance. Because of this, limited data is available for determining if [Student]'s response is appropriate or not when given hypothetical social situations."
- Social communication (improving pragmatic language, oral expression, and non-literal language): "During a 5-minute social communication opportunity while speaking with a preferred adult, [Student] uses appropriate tone of voice, body orientation, facial expressions, and sarcasm/jokes in 80-90% of opportunities independently. When disinterested, fatigued, and/or communicating with a non-preferred communicative partner, accuracy decreases and ranges from 0-50% of opportunities independently. Participation depended heavily on mood and motivation."
- Word Retrieval Strategies: "[Student] can complete the following compensatory word retrieval strategies: 90% accuracy independently naming 3-5 words in a category; 50% accuracy independently providing correct definitions when provided homophone; 50% accuracy independently naming synonyms; 90% accuracy independently naming antonyms."
- Adaptive (personal information): "The IEP team has decided to revise [Student's] goal to memorization of his personal information rather than relying on technology to look up the information as needed. He is currently able to complete 2/7 items from memory (date of birth, phone number)."
- Adaptive (goal setting): "[Student]'s teachers agree that he has shown increased maturity over the last year. He comes to class, knows the expectations and gets right to work on his entry tasks. He continues to need reminders around appropriate classroom volume and on-task behavior skills. [Student] continues to need support with planning, organization and attention to task completion, requiring adult proximity and multiple verbal reminders to complete assignments. He is better able to focus on independent work while wearing his headphones."
- Math: "The IEP team has decided to add additional math goals focusing on skills needed in his woodworking class (and any other potential arts or manufacturing classes) and for adaptive/functional life skills. [Student] will work on measuring objects' lengths to the nearest 1/8 inch and centimeter using a standard ruler or tape measure. He is currently able to do so with 0% accuracy. He will receive instruction on converting fractions to decimals using a calculator. He is currently able to do so with 0% accuracy. [Student] will also work on money skills through solving of real world story problems involving total cost and change."
- Reading Fluency: "Given an 8th grade level reading passage, [Student] read 79 total words with 11 errors (68 correct words per minute)."
- Reading Comprehension: "Given a 5th grade level reading selection from a novel being read in class...[Student] was able to correctly answer 3 of 4 multiple choice comprehension questions on May 22, 2020."
- Writing: "[Student] has received limited instruction on writing this school year while attending [private program]. Given a writing prompt, one minute think time, and three minutes to write on 5/22/2020, [Student] was able to write 20 correct writing sequences...This included two complete sentences that began with an initial capital letter, 36 total words, and 27 words spelled correctly (75% spelling accuracy)."

17. The District also provided a CLP service log from the Student's special education teacher, documenting the following services provided by the special education teacher, OT and SLP:

- May 21: 60 minutes – "MS teams video meeting for independent skills class, discussed goal, planning it, instruction in typing his plan into Canvas for his class. OT attended [second special education teacher's] class for second half."
- June 4: 60 minutes – "MS teams video meeting for independent skills class, OT instructed [Student] in downloading Cowriter Universal from google chrome extensions store, opening Word in Office 365 and how to use the program. [Student] participated fully throughout the session, following instructions throughout the session and asking for help as needed. End of session discussion for next week's session, [Student] to instruct OT, SLP and teacher in an activity. OT attended [second special education teacher's] class for second half."
- June 11: 60 minutes – "MS teams video meeting for independent skills class, reviewed [Student's] work for the assignment giving instructions on doing a task. He wrote instructions for brushing your teeth. Teacher and OT worked with student on giving more specific details. OT discussed using graphic organizers when [Student] has a writing assignment and taught him what a graphic organizer was. Teacher and OT will work with [Student] next school year on using graphic organizers. OT attended [second special education teacher's] class for second half. [Student] participated throughout the session, reading out loud, providing answers to teacher's questions and coming up with predictions and words to figure out definitions."

The District provided a Mobymax report for math, indicating that the Student completed 567 problems in the month of May, with a total time of 203 minutes at grade level 3.4. The June Mobymax report indicated the Student completed 201 problems, with a total time of 135 minutes at Grade level 3.5.

The District also provided relevant email correspondence, including:

- Work completed by the Student on a reading comprehension packet on the book the class was reading.
- Collaboration between woodworking teacher and special education teacher on math tasks to support general education assignments.

The District did not provide additional progress reporting or email correspondence on the Student's career awareness goal or academic goals, including any documentation of the individual assignments that were to be sent to the Student via email in the reading.

18. 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) between May 18 and June 19, 2020. Specifically, the Parent stated the Student did not receive the services required pursuant to his IEP and that she did not receive a final 2019–2020 fourth quarter progress report. In her reply to the District's response, the Parent contended that the District's documentation does not identify the services provided during remote learning and "some of the 'services' are questionable if they can even be considered special education services under OSPI guidelines."

During the spring 2020 COVID-19 school facility closures, as students received general education instruction and student support services, districts must provide students with disabilities with special education services—related services and specially designed instruction—supporting a free appropriate public education (FAPE). However, given the exceptional circumstances of the COVID-19 pandemic, the federal Department of Education and OSPI recognized IEPs could not be implemented as written as school facilities closed and transitioned to distance learning. Here, the Student’s December 2019 IEP was in place prior to the school facility closures and included the following specially designed instruction and related services:

- Math problem solving: 250 minutes weekly
- Reading Comprehension and Reading Fluency: 900 minutes weekly provided concurrently
- Written Expression: 250 minutes weekly
- Behavioral Instruction: 250 minutes weekly
- Social emotional and Adaptive: 250 minutes weekly provided concurrently
- Basic Reading Skills: 900 minutes weekly
- OT: 90 minutes monthly
- Speech and Language Services: 90 minutes monthly

The Student’s IEP goals focused on areas such as appropriate social communication, task and assignment completion, personal information in form documents, word retrieval, written expression, reading skills (correct words, vocabulary terms, correct words per minute), and solving math problems.

Between May 18 and June 19, 2020, the Student’s IEP was not implemented as written, which during this time alone does not represent a violation of the IDEA. However, the District still had an obligation to provide students with special education services during the school facility closures to the maximum extent possible. On March 23, 2020, OSPI communicated the expectation that districts would begin providing educational services to all students by March 30, 2020; and, as instruction was being provided to all students, districts must have a plan for how students eligible for special education services would receive a FAPE.

The District and Parent met on May 7 and 13, 2020, and through these meetings, created a continuous learning plan (CLP) for the Student. The CLP indicated that the Student was to receive approximately 55 minutes per week in the areas of individual skills (behavioral instruction, writing, and adaptive) and 150 minutes per week in math; 30 minutes per month of speech concurrent with behavior/individual skills; and 30 minutes of occupational therapy per month concurrent with written expression/individual skills. The CLP also indicated the Student was to receive independent reading, writing, and math assignments, and explore career options with online videos.

The District provided some progress reporting and instructional logs in June 2020 that indicate the Student was provided the occupational therapy and speech and language services delineated in the CLP and which focused on his goal areas (e.g., social skills, vocabulary development, planning for task/assignment completion, and use of assistive technology in writing). The District provided an instructional log for three weeks of “Individual Skills,” which indicated the Student likely worked on his adaptive goal (task/assignment completion), worked with the OT, and worked on writing goals. However, the documentation did not provide sufficient information to determine

exactly which goals were implemented in each session, whether the Student worked on other goals—such as his reading goals—and to what degree the Student made progress. The documentation also included a record that the Student accessed math services, even though it was provided through an online math program, and moved from working on math problems at a 3.4 grade level to a 3.5 grade level.

There was no progress report or instructional log regarding the Student's career awareness goal, and no documentation that career videos were sent to the Student to support this goal. There is also little documentation of the individual reading assignments that were to be emailed to the Student, aside from one email related to a reading comprehension packet. While information was updated in the Student's IEP present levels of academic and functional performance on June 10, 2020, it is unclear the exact amount of progress the Student made during the five weeks of instructional time from May 18 to June 19, 2020 for a variety of reasons, including that most of the present levels were updated in May 2020; some goals noted there was limited data available, and while some of the present levels provided information about the Student's progress on the previous goal, other goals instead noted that the Student's goal had been changed.

Overall, the documentation supports that the District did provide the Student some special education services during spring 2020. However, the District did not provide the amount outlined in the Student's CLP, which was already reduced from what was called for in the Student's IEP. Based on a comparison of the CLP and instructional logs, the Student attended 180 minutes of individual skills class instead of the 275 minutes outlined in his CLP for the five-week period investigated; and, the Student accessed approximately 338 minutes of math out of the 750 minutes outline in his CLP. The Student also missed 30 minutes of occupational therapy services between May 18 and June 19, 2020. Given that the District failed to provide special education services in accordance with the CLP, OSPI finds the District did not sufficiently offer and provide special education services during the school facility closures. OSPI finds the District in violation.

It is also not clear that the District's CLP offered special education services to the maximum extent possible, as it drastically reduced the amount of special education services the Student was to receive from approximately 1,695 minutes per week to 205 minutes per week of academic and behavior specially designed instruction, and 30 minutes per month in both occupational therapy and speech and language services. Further, the occupational therapy and speech services appear to have been provided concurrently with the individual skills class, which decreased the time the Student could have been working on his other academic and behavior goals. While IEPs were not expected to be implemented as written during the school facility closures, this is a significant reduction in services, on top of the fact that services were not provided as outlined in the CLP. Further, the fact that specially designed instruction was not offered in reading (the Student's largest area of service on the December 2019 IEP) is concerning and indicates that special education services were not being provided to the greatest extent possible.

Given the fact that some instruction was provided in the individual skills class, but not necessarily to the maximum extent appropriate, nor was the CLP fully implemented, the District will be required to provide the Student with the following compensatory educational services:

- The missed 95 minutes of individual skills class, to be provided as specially designed instruction in behavior, adaptive, and writing.
- The missed 30 minutes of occupational therapy.
- Given that the Student made some progress in math, approximately half of the missed minutes of math or 180 minutes of math.
- In addition, the District will be required to provide compensatory education in the areas not provided and missing from the CLP: 95 minutes of reading and 95 minutes of career awareness.

Finally, the Parent stated the District did not provide fourth quarter progress reporting. OSPI notes that the District's progress report was irregular, but given the circumstances of the COVID-19 school facility closures, OSPI did not expect progress reports to look exactly the same as they would prior to COVID-19, while still expecting districts to report on student progress. Taking all the documentation together, OSPI finds that the Parent was provided information about the Student's progress in spring of 2020, in the form of progress reports from the OT and SLP that addressed the Student's writing, adaptive, and communication goals, the updated present levels in the Student's June 2020 IEP, and through the IEP and other meetings wherein progress and goals were discussed. Thus, OSPI finds the District provided sufficient progress reporting given the circumstances and finds no violation related to progress reporting.

Issue Two: IEP Revision – The Parent also alleged the District delayed amending the Student's IEP when he returned to a full-time placement in the District. As an initial matter, OSPI already addressed this issue in the previous complaint, SECC 20-38, in part through the following issue: "Did the District follow proper IEP development procedures, including ensuring Parent participation, in deciding, as of March 10, 2020, to provide the Student with all of his IEP services at a District high school?" Further, in SECC 20-38, OSPI ordered the District to hold an IEP meeting prior to June 19, 2020.

Based on the documentation provided in this investigation, the District and Parent met three times within the timeframe investigated in the instant complaint to revise the Student's IEP. Detailed notes, a prior written notice, as well as a copy of the amended IEP document indicate that the District met its obligation to convene the IEP team and revise the Student's IEP to meet his then current needs. OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **September 3, 2021** and **January 12, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **August 31, 2021**, the District and Parent will develop a schedule for the following hours of compensatory education:

- 95 minutes specially designed instruction in behavior, adaptive, and writing;
- 30 minutes of occupational therapy;
- 180 minutes of specially designed instruction in math;
- 95 minutes of specially designed instruction reading; and,

- 95 minutes of career awareness instruction focusing on the Student's secondary transition plan goals.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider and will be provided in-person. Services must be provided outside the school day and can be provided on weekends or District breaks. Services may be provided in a 1:1 or small group setting, if appropriate.

The District will provide OSPI with documentation of the schedule for services by or before **September 3, 2021**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **January 5, 2022**.

By or before **January 12, 2022**, the District must provide OSPI with documentation that it has completed compensatory services for the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **January 12, 2022**.

DISTRICT SPECIFIC:

None.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ___ day of July, 2021

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.)