

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-112**

### **PROCEDURAL HISTORY**

On September 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 September 15, 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 September 29, 2020, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on September 30, 2020.

On October 5, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on October 6, 2020. OSPI invited the Parent to reply.

On October 11, 2020, the Parent requested an extension of time to provide a reply to the District's response. OSPI granted the extension and asked the Parent to submit a reply by October 26, 2020.

On October 22, 2020, OSPI requested that the District provide additional information, and the District provided the requested information the same day. OSPI forwarded the information to the Parent on October 23, 2020.

On October 25, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on October 26, 2020.

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

### **ISSUES**

1. Did the District follow procedures to conduct progress monitoring and reporting per the Student's individualized education program (IEP) between March and June 2020?
2. Did the District implement the Student's IEP, specifically speech services, between March and June 2020?

### **LEGAL STANDARDS**

**IEP Implementation during School Facility Closures for COVID-19:** At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's

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

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

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

The individualized special education services being provided to a student during the school facility closures as part of continuous learning, were to be documented in writing using a student's annual IEP, IEP amendment (particularly if services to be provided during the closure were significantly different from what the IEP indicated), prior written notice, or optional "Continuous Learning Plan" (CLP) or similar document. Districts had flexibility in how they chose to document decisions made

in real-time. *Questions and Answers* (OSPI, April 13, 2020). Districts were encouraged to prioritize parent communication, including discussions of how special education services were to be provided during the closures. *Questions and Answers* (OSPI, May 5, 2020).

**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**

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

1. During the 2019-2020 school year, the Student attended a District elementary school and was eligible for special education services under the category developmental delay.
2. The District's 2019-2020 school year began on September 4, 2019.
3. The Student's May 13, 2019, individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The Student's May 2019 IEP included annual goals in the areas of communication (articulation s, z, th, sh, and ch), adaptive/life skill (routine transitions, seat work), and social/behavior (self-regulation, social inferencing, unstructured play, winning/losing). Progress toward the annual goals was to be reported at the trimester via a written progress report. The Student's IEP provided the Student with the following specially designed instruction and related services:
  - Communication: 90 minutes per month (provided by a speech language pathologist (SLP) in the special education setting)
  - Social/behavior: 30 minutes twice per week (provided by a special education teacher in the special education setting)
  - Social/behavior: 15 minutes, 10 times per week (provided by special education staff in the general education setting)
  - Social/behavior: 300 minutes per week (provided by special education staff in the general education setting)
  - Adaptive life skills: 150 minutes per week (provide by in the general education setting)
  - Occupational therapy (related service): 120 minutes per month (provided by an occupational therapist (OT) in the special education setting)

The Student's IEP indicated the Student would spend 93.6% of his time in the general education setting.

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.
5. Also, on March 11, 2020, in response to concerns from the Parent about the Student's increased aggressive behaviors, lack of progress, and behavioral intervention plan (BIP) implementation, the Student's IEP team met. According to the prior written notice from the meeting, the team reviewed the Student's BIP and discussed additional interventions, and the team agreed to hold monthly meetings to review data.
6. In the Parent's reply to the District's response, the Parent stated she did not see this prior written notice until May 1, 2020, and that the monthly meetings to review data did not occur.
7. On March 11, 2020, the Student's general education teacher began providing learning resources and activities. The documentation provided in this complaint indicated the general education teacher sent out weekly emails with activities, resources, and updates throughout the remainder of the 2019-2020 school year.
8. On March 12, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in King, Snohomish, and Pierce counties through April 24, 2020 (the closure was extended State-wide on March 13, 2020). The school closures were subsequently extended for the remainder of the 2019-2020 school year.
9. On March 16, 2020, the Parent emailed the OT and SLP and asked for resources or guidance on "what you were working on or planned to have worked on over the next 6 weeks," and asked if they had any worksheets or resources they could send.

The OT responded and suggested they go for walks once the Student was recovered from being sick, and that she would check in once the Student recovered to discuss writing ideas. The SLP also encouraged the Student to get well first, and then suggested that they "find word list online with pictures" and that "playing go fish or memory are great for articulation."

10. 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.
11. On March 25, 2020, the Parent emailed the OT, stating, "We have a great routine set with 3 academic blocks of reading, writing, and math. Things are going well! I was overwhelmed by all the educational resources...I found some things that work for us and am ignoring the rest."
12. On March 26, 2020, the Parent emailed the Student's case manager, sharing that the Student was doing well and they continued to do a "math, reading, and writing block each day mixed in with fun activities...I have continued my regular practice of playing 'playmate' where we practice losing, sharing, taking turns, etc. and we are also working through a textbook on social skills." The Parent also stated, "If you have any suggestions on things to work on, let me know."

13. On March 27, 2020, the case manager emailed families of students on her case load to let them know that she would be sending out a weekly link that would “lead you to activities and videos you can choose from during the week,” and that she would be checking in each Tuesday.
14. On March 30, 2020, continuous learning began in the District.
15. On March 31, 2020, the case manager emailed the Parent to check in, see how the Student was, and see if the Student had tried any of the activities the case manager sent out March 27, 2020. The case manager provided activities and suggestions from a curriculum (“Superflex”) that the Student had been working on for social skills prior to the closures.

On April 1, 2020, the Parent replied that they were doing well and had established a good routine. The Parent requested workbooks or hard copy materials (instead of online links) for the Student; and, according to the District’s response, the special education teacher worked to get the Student non-electronic resources.<sup>1</sup> The Parent also asked if the case manager had “any specific suggestions on strategies for [Student] related to writing or math? Or targets (like write 3 sentences a day)?”

The case manager provided a graphic organizer for writing and shared some strategies for writing and math.

16. Beginning on April 3, 2020, the general education teacher began sending weekly learning activities each Friday, posting curriculum and homework on Schoology, and checking in with students and families on Tuesdays.
17. The District’s response also stated the Student’s special education teacher provided the Student “activities and resources to work on social/behavior and adaptive life skills” on Fridays via Schoology and would check-in on Tuesdays. According to the District, “starting in late April, [the special education teacher] held a social group through Teams each Tuesday and Thursday for thirty minutes. During this time, using Superflex curriculum, [the special education teacher] provided [the Student specially designed instruction] in social/behavior and adaptive life skills.”
18. On April 9, 2020, the case manager emailed the general education teacher and asked for some feedback on some of the Student’s goals (transitions, seat work, and unstructured play). The general education teacher responded with feedback on the Student’s progress in each area.
19. Beginning on April 10, 2020, the general education teacher began conducting weekly class meetings via Microsoft Teams. According to the District’s response, the Student attended “the majority of his live meetings, but occasionally, when [Student] lost attention, the Parent would

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<sup>1</sup> The Parent noted in her reply to the District’s response that she never received workbooks related to the Student’s social goals or speech; although, she stated she did receive many tools from the OT and that the general education teacher organized and dropped off the Student’s workbook’s and school supplies.

work with him...rather than having him attend the virtual class." The District also stated the Student participated in the "discussions" on the teacher's "Schoology Homeroom page."

20. Also, on April 10, 2020, the case manager emailed the Parent materials from the speech therapist and a social story about distance learning. The speech materials included different general activities for "if your child is working on speech sounds [and/or] language skills..."
21. The District was on spring break from April 13 to 17, 2020.
22. On April 22, 2020, the Parent emailed the case manager and asked about the plan for speech services. The Parent stated, "we haven't received communication outside of the sheet you sent me." And, according to the Parent's complaint, she also called the principal and was informed the Student's SLP was on leave.
23. On April 23, 2020, the substitute SLP emailed the Parent to introduce herself and stated, "at this time we are not providing direct therapy for speech, but I am available to provide resources and discuss with you any concerns you may have."

The Parent responded and stated:

What would be helpful for me is a review of what his goals are in the IEP (what was being worked on) and some guidance/resources on how to work on those. I received the general communication from SLP department with some suggestions but something more specific like: Work on 'th' sound for 5 minutes twice per week for 2 months. And then providing some specific worksheets for the sounds he is working on or a short list of fun, hands on ways to practice those sounds or other goals (pragmatic speech).

24. On April 24, 2020, the case manager emailed the Parent that she would be starting small groups the following week to "do small lessons in math, reading, writing and social groups." For the first meeting, the case manager stated she would be "reading a story from the Superflex curriculum" and provided the materials.
25. On April 27, 2020, the SLP emailed the Parent the Student's IEP goals for speech and "resources/word lists for each of his sounds." The SLP stated the Student should use "each word 5 times in a phrase (e.g., 'a silly [insert target word]') or a short sentence (e.g., 'I see a [target word]'). Work on sounds for maybe 15 minutes twice a week. The 'S' packet I attached also lists some fun ways to practice sounds..." The attached materials included other ways to practice speech sounds; word sheets for "S" and "S-Blends;" "articulation playing cards" for "z;" and, articulation games and activities for "voiced/voiceless TH," "SH," and "CH."
26. On April 30, 2020, the Parent emailed the case manager in response to the case manager's request for feedback about the small group meeting. The Parent stated, "the lesson went well," although it was "too much online in one day and back to back with the [general education] class." The Parent also stated it was "helpful when the [case manager gave] exercises to extend the learning."

27. On May 1, 2020, the OT emailed the Parent regarding scheduling weekly small group lessons for the Student. The Parent responded they might be interested and would give it a try, and that they were "trying to limit our online video conference time to once per day" as the online video conferences were tiring and stressful for the Student.
28. On May 5, 2020, the Parent emailed the general education teacher to apologize for leaving that day's class meeting early and stated the Student "really struggled today with online learning." The Parent stated, "engaging online was difficult." The Parent and teacher emailed several more times to discuss strategies and suggestions for the Student.
29. On May 14, 2020, the special education teacher provided the Parent with the Student's draft CLP. The Student's CLP noted the plan for services included:
- Weekly check-in Tuesday by email;
  - Weekly communication and weekly materials posted Friday for groups the following week by email and on Schoology;
  - Small group instruction for social group Tuesdays and Thursdays on Schoology;
  - "Sent out email with link to Teams meeting April 20-24<sup>th</sup>," and,
  - "Opened Schoology page for assignments and meetings April 27<sup>th</sup>."

The CLP also noted the following regarding speech services<sup>2</sup>:

- "SLP – Send Speech and Language activities weekly through SPED teacher."
  - "SLP – Email parents list of general Communication activities for student."
  - "SLP – consult with case manager and team."
  - "SLP – available to provide specific information with parent if interested."
30. In her reply to the District's response, the Parent noted that the CLP was inaccurate with respect to speech services and that she did not receive weekly emails with speech activities.
31. On May 15, 2020, the case manager emailed the Parent the Student's second trimester progress report. The progress report had entries from March 12 and 18, April 2, 2020, and indicated the Student made the following progress:
- Communication (articulation): "some progress made...[Student] is currently producing th in phrases 50% independent and 50% with a non-verbal model."
  - Communication (articulation): "significant progress made...[Student] is aware of sh and ch in words he is independently still prompting himself by using his finger in front of his mouth for sh sounds in words and phrases. [Student] has met this goal for initial position of words and is making progress with final position of words."
  - Adaptive/Life Skill (routine transitions): "some progress made...[Student] has had some challenges to stay in his own space during transitions. He has an easier time when the transition is in class from one subject to another. Afternoon transitions are harder because there are more outside the classroom. Overall he is able to transition staying in his own space or safe body about 60% of the time."

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<sup>2</sup> The CLP also included information about the Student's occupational therapy services; however, some information about occupational therapy services are omitted from this decision because the Parent noted she did not have the same concerns about occupational therapy in spring 2020 that she did about speech services.

- Adaptative/Life Skill (seat work): "some progress made...[Student] has made some progress for reading. He is able to sit for the 8 minutes reading or listening to a story. He is also able to sit and listen to math instruction for 5 minutes but has a hard time focusing when doing independent work. Math and writing both are hard for [Student]. He needs at least 2 or 3 reminders to stay on task. He can sit and attend to writing for 3 minutes before being off task."
- Social/Behavior (self-regulation): "some progress made...[Student] has had a recent decrease in his ability to self-regulate resulting in increase in negative behaviors and responses. He is needing an increase in support for strategies to regulate currently."
- Social/Behavior (social inferencing): "goal met...Right before school was closed due to Covid-19 we were working on role playing and stories where [Student] had to state how the other person was feeling or what was happening in a story. He was able to name an emotion the other person was feeling and in a story he was able to say how the character was feeling and why they were feeling that way. He was also able to express how he would feel if he were in that situation. He was able to consistently do that 80% of the time."
- Social/Behavior (unstructured play): "little or no progress made...Before the school closure...we were seeing an increase in unsafe behavior in [Student]. The data shows an increase in aggressive behavior at recess and lunch. We had a meeting about this but have not been able to collect any data since the closure. However, he has been able to play with his peers for the entire recess which is 15 to 20 minutes with 2 to 3 adult reminders to have a safe body."
- Social/Behavior (winning/losing): "some progress made...[Student] really enjoys playing with his friends at recess or a fund game in PE. [Student] is able to play with his friends for 8 minutes before he needs a reminder to play with a calm body. He does get frustrated when he plays with one of his friends who wins almost every time they play. We are working on him asking to play a different game or finding other friends to play with. We are also working on what strategies he can use when he is starting to become frustrated."

32. On May 15, 2020, the Parent responded to the case manager's email with the progress report and requested the "progress report data as well." The case manager emailed the Parent the Student's progress data on May 27, 2020.

33. On May 29, 2020, the Student's original SLP emailed the Parent and stated the Student was: Currently working on s, z, th, sh and ch in phrases. He is successful with this and would be a great place to keep working.

- Have [Student] find his sounds in a book and say those sentences using his best speech sounds
- Draw pictures of words with his sounds to play matching or go fish
- Find the lyrics to his favorite song and practice his speech sounds

A really good website to find words is...but it is even better to use words that are a part of his everyday life. Another website (you do have to create an account)...this is a great resource to get articulation words or phrases. There are 'fun decks' which are interactive and articulation books that are great for finding words with his sounds. Let me know if you have any questions or want more ideas!

34. On June 9, 2020, the Parent emailed the case manager with feedback regarding the Student's CLP and learning during the school facility closures. Regarding the Student's speech services, the Parent stated: "I do not receive weekly emails with activities specific to [Student's] speech goals or any guidance related to them I sometimes receive a general email sent to all families but not specific goals."



Regarding the Student's other goals (transition, seat work, self-regulation, unstructured play, and winning/losing), the Parent stated the goals were not being addressed and requested support and guidance on how to work on the goal at home. The Parent stated she "attempts to role play and practice during play time." The Parent also stated she felt the Student had met his social inferencing goal through the occupational therapy sessions and social skills Zoom meetings.

The Parent also listed other areas where she needed guidance (e.g., support the Student during live online lessons, support offline learning, social group with peers, developing a visual schedule, more specific SLP support/resources, and increasing stamina in writing).

35. On June 10, 2020, the case manager emailed a District special education program specialist and forwarded the Parent's June 9, 2020 email regarding the CLP. The case manager asked for assistance responding and stated, "[specially designed instruction] wasn't suppose [sic] to be given correct? Even though I am doing the superflex curriculum for social group."
36. On June 18, 2020, the case manager emailed the Parent the Student's progress report, which stated the following for all the goals: "6/19/20 Due to the state-wide COVID-19 school closure, and resulting remote learning, the team was not able to obtain measurable data on this goal. Progress will be updated when schools re-open and the team is able to collect current performance data." There was one exception; the Student's progress reporting for his adaptive life skills goal (seat work) also stated:

[Student] did participate in some general education small virtual groups and some small virtual social group. [Student] was able to participate and answer questions during small social skills group when he was coloring a color by number paper. He was able to answer questions about a video or book with no more than one prompt from teacher.
37. June 19, 2020 was the last day of the 2019-2020 school year for the District.
38. The District's response provided information about the Student's speech services, as follows: the Student was provided "speech language resources," although, "the District concedes [Student] did not receive direct instruction in speech during the spring, but rather received resources and learning activities designed to assist [Student] in making progress on his speech goals."

The Student's CLP included a communication log, which included additional notes on some of the speech services the Student received during the closures and stated: "June 5 and 12: Emailed communication activities." However, the documentation in the complaint did not include the corresponding June 5 and 12 emails.

Regarding special education services, the District stated it provided the Student continuous learning opportunities including, "supplemental learning for all core content and strategies to support his goals while learning from home." The District stated in April, the team began providing more robust lessons, with weekly Teams class and small group meetings, and that: "[the general education teacher] provided scheduled lessons, through live instruction and

learning activities [and the special education teacher] provided weekly [specially designed instruction] in social/behavior and adaptive life skills through weekly meetings and supporting materials.”

39. In its response, the District acknowledged that it did not obtain measurable data for third trimester and noted that it would be convening an IEP meeting to discuss the Student’s “progress, update his progress report, and determine if any recovery services are needed.”
40. In her reply to the District’s response, the Parent stated that some asynchronous speech activities were provided, and the Student completed approximately four “15 minute sessions of speech utilizing the attachments sent from [substitute SLP]. However, the parent is not a trained SLP and regression documented in his most current draft IEP reflects the issue that [Student] was not receiving high quality speech services from certificated staff.”<sup>3</sup> The Parent also noted she was not provided training from the SLP or consultation, despite her requests for additional support.

### **2020-2021 School Year**

41. On September 15, 2020, OSPI received the Parent’s complaint and opened this investigation. In the complaint, the Parent alleged the District failed to collect data during the school building closure and that the Student did not receive speech services during spring 2020.
42. On October 13, 2020, the Parent met with District members of the reevaluation team to review the Student’s triennial reevaluation. The reevaluation noted the Student continued to be eligible for special education services, now under the category of autism.
43. On October 25, 2020, the Parent submitted her reply to the District’s response to this complaint. In the reply, the Parent stated she made a request for the Student’s education records in June 2020 and followed up on October 9, 2020, because she had not received all the requested records. The Parent further stated she asked for “supporting documentation and data in early October prior to the current IEP meeting...and nothing has been sent...One might assume there is no data or documentation.” In an email on October 21, 2020, the Parent requested the “documentation used to inform the IEP e.g., progress monitoring data, final CLP document from spring, any data taken from spring.” The Parent also stated the District has failed to take data on the Student’s needs in the fall remote learning environment. The Parent stated that based on this, she believes District staff require “additional training...around data management and reporting as well as supervision of data collection, management, and reporting.”

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<sup>3</sup> The Parent also noted in her reply that “the fall is a perfect example of how speech can successfully be implemented over Microsoft Teams. All other related services ([occupational therapy]) and social/behavior supports for [Student] are being delivered in the exact same manner as the spring, the only difference being speech is now being offered. In fact, speech is the one services that [Student] is able to attend successfully.”

The Parent also stated the Student "continues to have challenges accessing general education remotely and is unable to access all lessons," and the Parent stated that her requests for additional support have not been addressed. In emails to the Student's general education teacher, the Parent reiterated that the Student could not attend "live online" lessons.

44. The Parent provided a copy of a draft IEP, dated October 26, 2020, in her reply to the District's response. In the team considerations section of the IEP, the Parent's concerns were noted as, in part, that the Student expresses frustration with writing and math and "in remote learning, online school environment is very difficult. [Student] is usually unable to engage for more than 15 minutes."

In the general education teacher report, the teacher noted the Student "has attended all of his individual assessment meetings...He attended three of his small group meetings earlier in the year. He has only joined our virtual classroom for regular instruction once and that was for a class meeting, not during academic instruction."

The IEP included information from the Student's recent reevaluation and noted the following progress data regarding his services areas, summarized in relevant part:

- Communication: Student had shown "some regression" since March 2020.
- Occupational Therapy: Provided information from the Parent and noted that "despite these challenges, [Student] has made some good progress during the at-home learning" and noted the Parent's dedication to using "the provided strategies to assist [the Student]" and the need for the Parent's 1:1 support of the Student during remote learning.
- Social/Behavior: The IEP indicated the Student's progress on his 2019 IEP goals. For example, the Student met the duration objective of his unstructured play goal but needed to continue working on "sharing first place." Additionally, the Student was transitioning safely 50-60% of the time in the classroom, but still required prompting for his seat work and taking a break goals. The IEP noted the Student needed to continue to work on the previous goals (except his social inferencing goal, which he met).
- Study/Organizational Skills: The IEP indicated the Student's progress on his 2019 IEP goals, including that the Student was staying in his own space during transitions about 60% of the time and that he made progress with attending to reading tasks, but he continued to struggle with math and writing tasks (previously under adaptive). The IEP noted challenges in executive functioning such as task initiation, problem-solving approaches, and working memory.
- Written Language: Provided information from the Parent, noted the Student's present levels, and indicated the Student "has difficulty initiating writing." For example, the Student independently writes lines of text and lists but was not able to write complete sentence with an ending punctuation mark on 10 trials at home or during his reevaluation.

The IEP included annual goals in communication, social/behavior, study/organization skills, and written language, and noted progress toward the goals would be reported at the trimester via a written progress report. The IEP provided the Student with the following specially designed instruction and related services:

- Social/Behavior: 20 minutes, 4 times per week (provided by the special education teacher in the special education setting)
- Written Language: 30 minutes, 5 times per week (provided by the special education teacher in the special education setting)

- Study/Organization Skills: 30 minutes, 5 times per week (provided by the special education teacher in the general education setting)
- Communication: 90 minutes per month (provided by the SLP in the special education setting)
- Social/Behavior: 30 minutes, 5 times per week (provided by special staff in the general education setting)
- Occupational Therapy (related services): 1,000 minutes per year (provided by the OT in the special education setting)

The IEP also included 300 minutes a year of SLP support for social/pragmatic communication as “supports for school personnel,” and 60 minutes, five times per week of instructional assistant support in the classroom. The IEP stated the Student would spend 84.6% of his time in the general education setting.

45. Based on the documentation in the complaint, an IEP meeting appears to be scheduled for November 10, 2020.
46. In her reply, the Parent stated she believed the Student was owed a total of 61.125 hours of compensatory services (57.75 hours of social behavior and 3.375 hours of communication services).

## **CONCLUSIONS**

**Issue One: Progress Reporting** – The Parent alleged the District failed to collect data during the spring 2020 school building closures and failed to report the Student’s progress.

Individualized education programs (IEPs) must include a statement, indicating how a 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. OSPI understands that progress reporting may look different for spring 2020, given the school facility closures, and in recognition of the fact that IEPs may not have been implemented as written. Here, the Student’s IEP required progress reporting at the trimester via a written progress report.

On May 15, 2020, many weeks after the second trimester ended in the District, the Student’s case manager emailed the Parent the Student’s second trimester progress report. The progress report, which contained entries from March 12, March 18, and April 2, 2020, noted the Student was making progress in most goal areas, had met his social/behavior social inferencing goal, and was making little to no progress in his social/behavior unstructured play goal. While the progress report sufficiently reported the Student’s progress, it was not sent within a reasonable amount of time of the end of the second trimester, and thus not at the frequency stated in the IEP. This represents a procedural violation; however, this violation was corrected with the issuance of the progress report on May 15, 2020 and no further corrective action is required.

On June 18, 2020, the case manager emailed the Parent the Student’s third trimester progress report. The progress report provided narrative information for one of the Student’s goals (seat work), stating:

[Student] did participate in some general education small virtual groups and some small virtual social group. [Student] was able to participate and answer questions during small social skills group when he was coloring a color by number paper. He was able to answer questions about a video or book with no more than one prompt from teacher.

However, for the remainder of the Student's goals, the progress report stated: "6/19/20 Due to the state-wide COVID-19 school closure, and resulting remote learning, the team was not able to obtain measurable data on this goal. Progress will be updated when schools re-open and the team is able to collect current performance data." This confirms the Parent's allegation that no progress monitoring was completed during spring 2020. The District acknowledged it did not obtain measurable data for the third trimester. Thus, OSPI finds a violation.

The District stated it would convene an IEP meeting to discuss the Student's "progress, update his progress report, and determine if any recovery services are needed" and the District has recently completed a reevaluation of the Student. The IEP team is scheduled to meet on November 10, 2020. Based on the evaluation and draft IEP, the Student's IEP team has current information on the Student's progress—including information provided by the Parent and about the Student's progress in spring 2020—has updated the Student's present levels, and notably indicated the Student has shown some regression in the area of communication. While the District failed to provide sufficient progress reporting at the end of the 2019-2020 school year, it has since updated the Student's present levels and progress information. Thus, no further Student specific corrective actions are required regarding progress reporting. Additionally, pursuant to a different complaint, the District was required to and has provided training to all special education staff on progress reporting, including its implementation during remote learning. That corrective action addresses the violations found here and no further District level corrective actions are required.

#### Other Concerns Regarding Progress Data

Additionally, the Parent expressed concern that the Student's IEP team agreed on March 11, 2020, to hold monthly meetings to review data, and that these monthly meetings have not occurred. It does not appear the Student's IEP was amended to include these monthly meetings as a part of progress reporting. However, the prior written notice from the March 11, 2020 does indicate the agreement to meet monthly. In retrospect, these monthly meetings would have been an ideal opportunity for the Parent to share information about the Student and his progress during remote learning in spring 2020 with the District. As the Student's IEP team will be required to meet (see discussion below), the IEP team will discuss whether monthly meetings are still needed, amend the IEP if necessary, and begin to schedule these meetings moving forward.

Finally, the Parent included in her reply and as evidenced by documentation provided in the complaint that she has requested the progress data that informs the progress reports several times. The Student's IEP indicated that progress reporting was required to be provided by a written progress report; however, the IEP itself does not require the District to provide all associated data with each progress report. Thus, a failure to provide these data is not an IEP implementation violation. OSPI does recommend the District review its obligations under WAC 392-172A-05190, to provide student educational records "promptly and before any meeting regarding an

[IEP]...relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student...[and], in no case, more than forty-five calendar days after the request has been made.”

**Issue Two: Speech Services** – The Parent alleged the District failed to provide the Student speech services during the spring of 2020.

Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs could not be implemented as written as school facilities closed and districts transitioned to distance learning. Here, the Student’s May 2019 IEP included, in relevant part, that the Student would receive 90 minutes per month of communication instruction provided by a speech language pathologist (SLP).

After the District closed school facilities on March 11, 2020, the Student’s IEP was not implemented as written, which during this time does not alone represent a violation of the IDEA. However, that does not end the analysis as—despite the incorrect statement in a District email that specially designed instruction was not required—the District still had an obligation to provide students with special education services (i.e., specially designed instruction and related services) during the school facility closures. Further, on March 23, 2020, OSPI communicated the expectation that districts would begin—if they were not already—providing educational services to all students by March 30, 2020 (“continuous learning”); and, as instruction was being provided to all students, districts must have a plan for how students eligible for special education services would receive a free appropriate public education (FAPE).

Here, the Student was provided minimal communication support during the closures and was not provided communication services as stated in his continuous learning plan (CLP). The Student’s CLP stated the Student was provided with weekly emails with suggested speech activities, as follows:

- “SLP – Send Speech and Language activities weekly through SPED teacher.”
- “SLP – Email parents list of general Communication activities for student.”
- “SLP – consult with case manager and team.”
- “SLP – available to provide specific information with parent if interested.”

However, the documentation provided in the complaint supports that only the following was provided and was generally provided only after the Parent had reached out and requested resources and support for speech:

- March 16, 2020: In response to a request from the Parent, the SLP emailed that the Student could “find word lists online with pictures” and that “playing go fish or memory are great for articulation.”
- April 10, 2020: The case manager provided the Parent general speech materials; however, these activities were not individualized to the Student’s goals nor was instruction provided to the Parent in how to use these materials to target the Student’s goals.
- April 27, 2020: The substitute SLP, in response to the Parent’s further requests for supports, stated she could not provide direct therapy for speech but did provide resources, word lists, and activities specifically related to the Student’s goals and advised the Parent to work on “sounds for maybe 15 minutes twice a week” with the Student.

- May 29, 2020: The Student's SLP emailed the Parent and provided suggestions for the Student to practice speech sounds (e.g., "Have [Student] find his sounds in a book and say those sentences using his best speech sounds...Draw pictures of words with his sounds to play matching or go fish...Find the lyrics to his favorite song and practice his speech sounds") and provided a website to find word lists and articulation resources.
- June 5 and 12, 2020: The District's documentation included notes in the CLP communication log that indicate communication activities were emailed; however, the District's response did not actually include these emails.

The District stated the Student was provided asynchronous speech resources, although it acknowledged the Student was not provided direct, synchronous speech instruction during spring 2020.

While OSPI understands the Student's speech services did not look the same during remote learning as they did prior to the school facility closures, the speech services provided during the spring of 2020 were insufficient as the services provided did not align with the Student's CLP. The CLP stated the Student would receive weekly speech and language activities. However, the Parent stated she did not receive weekly emails with speech activities, nor does the documentation provided in this complaint include evidence of weekly communications related to speech. Further, the Parent emphasized that, contrary to what the CLP stated, she asked for additional support and guidance regarding speech services several times throughout the closure and receive very few responses. As described above, the documentation indicates the District provided individualized speech activities on only three dates: March 16, April 27, and May 29, 2020. Thus, OSPI finds a violation.

Given that the Student's IEP has already documented the Student experienced regression in the area of communication, the Student's IEP team will be required to meet to determine what recovery services the Student requires to mitigate the impact of the insufficient provision of speech services in spring 2020.

### **CORRECTIVE ACTION**

By or before **December 11, 2020**, the District will provide documentation to OSPI that it has completed the following corrective action.

#### **STUDENT SPECIFIC:**

By or before **December 4, 2020**, the Student's IEP team will meet and discuss the Student's need for recovery services in speech, given the documented regression in the area of communication. The IEP team will also address the agreement made in March 2020, to meet monthly to discuss the Student's progress data. The IEP team will determine if monthly meetings are still needed, amend the IEP if necessary, and begin to schedule these meetings moving forward.

OSPI recommends the Student's IEP team also continue to discuss the Student's ability to and challenges engaging in synchronous online instruction to ensure the Student's educational program meets his needs and provides him a free appropriate public education.

By **December 11, 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) IEP or amended IEP, if applicable; 4) Plan for recovery services; 5) Prior written notice; and, 6) Any other relevant documentation.

By December 18, 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.

*OSPI notes the documentation indicates the Student's IEP team is scheduled to meet on or around November 10, 2020. If these topics were addressed at that meeting, the District may provide documentation from that meeting to meet the requirements of the corrective actions instead of scheduling an additional IEP meeting. OSPI will still review the proposal for recovery services.*

**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 November, 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.)