

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-118A

PROCEDURAL HISTORY

On September 22, 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 Prosser School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On September 24, 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 October 12, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information.

On October 13, 2020, OSPI received additional information from the Parent. OSPI forwarded that information to the District on the same day.

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

On October 27, 2020, OSPI requested that the District provide additional information, and the District provided the requested information on October 29, 2020. OSPI forwarded the information to the Parent on October 29, 2020.

On October 30, 2020, OSPI received an additional reply from the Parent. OSPI forwarded a copy of this additional reply to the District on November 3, 2020.

On November 9 and 10, 2020, OSPI requested that the District provide additional information, and the District provided the requested information on November 10, 2020. OSPI forwarded a copy of the requested information to the Parent the same day.

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

ISSUES

1. Since September 22, 2019, has the District properly reported the Student's progress on his measurable annual goals to the Parent, in accordance with the Student's individualized education programs (IEPs)?
2. Did the District implement the Student's IEP during the March 2020 through June 2020 school facility closures?

3. Did the District follow proper procedures for responding to the Parent's May 15, 2020 request for a meeting to discuss Student A's transition to middle school?

LEGAL STANDARDS

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 individualized education program (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).

IEP Implementation during School Facility Closures for COVID-19: At the beginning of each school year, each district must have in effect an 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).

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student’s IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

FINDINGS OF FACT

2019-2020 School Year

1. During the 2019-2020 school year, the Student attended a District elementary school, was in the fifth grade, and was eligible for special education services under the category other health impairment.

2. The District's 2019-2020 school year began on August 27, 2019.
3. November 21, 2019 was the end of the first trimester for the 2019-2020 school year.
4. On November 21, 2019, the Student's annual individualized education program (IEP) meeting was held with District elementary staff.¹
5. The Student's November 2019 individualized education program (IEP) and behavioral intervention plan (BIP) were in effect prior to the COVID-19 school facility closures. The Student's IEP included annual goals in the areas of social/behavior, reading, and written language, as well as related service goals in fine motor and communication. The Student's IEP provided the Student with the following specially designed instruction and related services:

November 22, 2019 – June 5, 2020

- Social/behavior: 150 minutes weekly (provided by special education staff in the special education setting)
- Reading: 150 minutes weekly (provided by special education staff in the special education setting)
- Written Language: 120 minutes weekly (provided by general education staff with special education staff support in the special education setting)
- Communication: 30 minutes weekly (provided by the speech language pathologist (SLP) in the special education setting)
- Fine Motor: 30 minutes weekly (provided by the occupational therapist (OT) in the special education setting)

June 6, 2020 – October 21, 2020

- Social/behavior: 200 minutes weekly (provided by special education staff in the special education setting)
- Reading: 200 minutes weekly (provided by special education staff in the special education setting)
- Written Language: 200 minutes weekly (provided by special education staff in the special education setting)
- Communication: 30 minutes weekly (provided by the SLP in the special education setting)
- Fine Motor: 30 minutes weekly (provided by the OT in the special education setting)

The Student's IEP provided the Student with several accommodations and modifications, including:

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| <ul style="list-style-type: none"> ● extra time to complete assignments ● shorten assignments ● streamline ● text to speech ● modified grading ● simplify test wording ● individual/small group instruction ● read class materials orally | <ul style="list-style-type: none"> ● modify/repeat/model directions ● preferential seating, passages/stimuli to be read aloud during testing ● homework (10 minutes per subject overseen by parent, parent will sign off daily on take home agenda) |
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¹ Documentation provided by the District stated the English language arts (ELA) special education resource room teacher at the District middle school also attended this meeting, but the Parent stated in his reply no one from the middle school attended.

The Student's IEP contained the following goals:

- Behavioral/Social Goal: By 11/21/2020, when given a task, [Student] will work actively on the assigned tasks, while refraining from off-task behaviors (e.g., distracting others, refusing to work, playing with objects, walking around) improving his ability to remain on task for the duration of the assigned task from less than 60% of the time to 90% or more of the time as measured by student/teacher data/daily behavior sheet.
- Fine Motor Goal: By 10/21/2020, when given a request to write, [Student] will use correct letter formation, size, line placement and spacing, improving legibility of handwriting from accuracy of 72% formation, 86% sizing, 74% line placement, and 90% spacing with copy of 2-3 sentences to 80% accuracy for letter formation and line placement of three sentences as measured by therapy data.
- Communication Goal: By 10/21/2020, when given visual and verbal stimulus for /r/, vocalic "r", and /r/ blends, [Student] will produce /r/ vocalic "r", and /r/ blends, in all positions of words, phrases, and sentences improving articulation from 60% to 90% as measured by speech therapy data.
- Reading Goal: By 11/16/2020, when given a reading selection, [Student] will be able to answer questions about the reading selection improving reading comprehension and fluency from 50% or less accuracy to 90% accuracy or more on grade level as measured by student work samples/chart.
- Written Language Goal: By 11/21/2020, when given a writing prompt, [Student] will write 3 paragraphs using correct punctuation and capitalization improving his writing errors from 50% accuracy or less to 90% accuracy or more on grade level material as measured by work samples/chart.

The Student's IEP stated progress reporting would occur in written format every trimester. The Student's IEP indicated that from November 22, 2019 – June 5, 2020, the Student would spend 72.41% of his time in the general education setting, and from June 6 – October 21, 2020, the Student would spend 85.51% of his time in the general education setting. The Student's IEP also stated the Student has a behavior plan to be used as needed.

The Student's BIP addressed the Student's occasional escalated behaviors within the school setting, such as refusal to participate, arguing with staff, not completing assigned tasks, or displaying signs of frustration.

6. On November 21, 2019, the District reported the progress the Student was making on his November 2019 IEP goals. The progress reporting² noted the following:
 - Behavioral/Social Goal: Emerging skill, Numbered daily take home behavior sheet up to 11/21/19. Beginning 11/22/19 daily agenda will be sent home with parents returning it signed daily.
 - Reading Goal: Emerging skill, 9/16/19 Diagnostic iReady 427
 - Written Language Goal: Emerging skill
7. On December 5, 2019, the Parent emailed the Student's resource room teacher and stated, "I received [Student's] IEP progress report. It is missing page two and it is noted that progress in

² While the November 21, 2019 progress report included all of the Student's goals, there was no information or progress reported for the Student's fine motor or communication goals.

multiple areas will be given by written report. The only additional report I received was an iReady report that was only 2 of 3 pages.” The Parent asked to be sent missing pages from both documents and asked if the Student was receiving specially designed instruction in reading, or receiving reading instruction only through iReady.

8. On December 6, 2019, the resource room teacher responded to the Parent’s email and stated:
The reason why you didn’t get page 2 is because that didn’t pertain to my instruction and since I was mailing it I didn’t want to send info that would add weight. Those responsible for those goals I assume will send you that info. Again the reason page 3 is missing [on iReady report] is because it has no information on it...but the iReady logo. And in reading [Student] does direct instruction in LLI³ as well as i-ready computer and you will see the level he is at in the Comments part of the progress report and at the IEP meeting in November we discussed exactly what the LLI program was and even showed everyone the book he was in. Written language work was shown to you at conference time and comes home to be finished so you can see exactly what that entails. I am scanning the progress report to you and [Student’s mother] with the two missing pages so you can see what I am referring to.

9. On February 28, 2020, OSPI issued Bulletin No. 013-20: Preparation for Possible Novel Coronavirus (COVID-19) Outbreak in Washington State. OSPI urged school districts to “use an equity lens” when considering distance learning. OSPI stated that in the event of extended school closures, the school district remains responsible for the free appropriate public education (FAPE) of its students eligible for special education services with an IEP. OSPI noted that districts will want to plan how they will continue to meet the requirements of the Individuals with Disabilities Education Act (IDEA). And, OSPI asked districts to consider the following during contingency planning, in relevant part:
 - If a school closure causes educational services for all students to cease within the school/district, then the school/district is generally not required to provide services to the affected students eligible for special education services during that same period of time (OSEP Letter to Pergament, December 2013). This general standard is especially true in cases where the school district will still provide the required minimum of school days.
 - Develop a protocol to communicate proactively with parents and guardians regarding their child’s IEP services prior to and during a closure, as well as follow-up communication on next steps once the school reopens.
 - Review how the closure impacted the delivery of special education and related services to students eligible for special education services.
 - Determine if the delay in services created a need for make-up services (if the delay in services resulted in a loss of educational benefit based on the degree of skill loss).
 - Determine if the delay in services created or changed the student’s need for extended school year (ESY) services based on the length of time of the school outage and the resulting impact of the interruption to the student’s services.
 - Any decision to provide make-up services is reviewed by the student’s IEP team on a case-by-case basis. If needed, these make-up services should be documented as part of the student’s

³ *Leveled Literacy Intervention System (LLI)* is an intensive, small-group, supplementary literacy intervention for students who find reading and writing difficult.

IEP, either with a Prior Written Notice following an IEP meeting and/or through the IEP amendment process.

10. March 4, 2020 was the end of the second trimester for the 2019-2020 school year.
11. On March 5, 2020, the District reported the progress the Student was making on his November 2019 IEP goals. The progress reporting⁴ noted the following:
 - Behavioral/Social Goal: Emerging skill
 - Reading Goal: Emerging skill, 1/23/20 Diagnostic iReady 443 2/28/20 LLI Red 14 L
 - Written Language Goal: Emerging skill
12. 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 (on March 13, 2020, this was extended to all schools in Washington).

That same day, the District issued an update to District families, in response to the Governor's proclamation, affirming the closure of District schools.
13. 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.
14. On March 30, 2020, the District issued an IEP amendment without reconvening the IEP team to amend the Student's November 21, 2019 IEP. The IEP amendment revised the "frequency, location, and/or duration of special education services provided." The description of the proposed revisions stated, "Due to COVID-19 and the resulting [closures] of schools in the state, the direct provision of specially designed instruction will formally resume when school is in session. Until school is back in session, student[s] will be provided modifications and accommodations during alternative delivery of instruction that is being provided under OSPI and the Governor's guidelines." The IEP amendment was signed by the Student's resource room teacher. The amendment was not signed by either the Parent or the Student's mother to indicate participation in the decision making.
15. Also, on March 30, 2020, the District issued a prior written notice (PWN), proposing to change the Student's educational placement. The description of the proposed action stated, "Online schooling or paper packets will provide students with modifications and accommodations to supplement schooling at home during this time until schools are reopened." The reason for proposing the action stated, "Due to COVID-19 resulting in the closure of all schools in the state." The PWN stated packets would be created for students that did not have access to online learning and stated the action would be initiated on March 30, 2020.⁵

⁴ While the March 5, 2020 Progress Report included all of the Student's goals, there was no information or progress reported for the Student's fine motor or communication goals.

⁵ It is unclear based on the documentation provided by the Parent and District how many and how frequently the District provided the Student with packets. However, the District stated in its response to this

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

The District issued an update to District families, stating two possible scenarios: a return to school this spring, as well as a closure throughout the summer.

17. The District was on spring break from April 6 to 10, 2020.
18. On May 15, 2020, the Parent emailed the special education director, copied the District superintendent, and stated, "How soon will we be able to meet (virtually) and discuss [...] [Student's] transition to middle school?"

That same day, the special education director responded, copying the superintendent, Student's mother, and principal, and stated, "building to building transition meetings occur in house. After that occurs and once [Student's] schedule is set, a transition meeting is set up with the receiving building/staff and the family. I have contacted [board certified behavior analyst (BCBA)] for a time 2-3 weeks out. The building staff has very limited time next week."⁶

19. June 5, 2020 was the end of the third trimester and the last day of school for the 2019-2020 school year.
20. On June 12, 2020, the District issued a letter to parents/guardians and students, addressing the pandemic and closure of the school for the remainder of the school year. The letter stated, "Due to the COVID-19 mandatory school closure, it was not possible to gather data to inform growth on objective progress. Let us reassure you we are doing our best to create a learning opportunity for the 2020-2021 school year whether it is online or in person."
21. On June 12, 2020, the District reported the progress the Student was making on his November 2019 IEP goals. The progress reporting noted the following for all five goals: "Due to COVID, insufficient data available to measure progress."

2020-2021 School Year

22. During the 2020-2021 school year, the Student attended a District middle school, was in the sixth grade, and was eligible for special education services under the category other health impairment.
23. The District's 2020-2021 school year began on September 8, 2020, in a virtual learning model, due to the pandemic.

complaint that although packets were sent home for students to complete, due to exposure concerns, they were neither gathered or returned for grading.

⁶ Based on documentation provided by the District, it does not appear the District issued a prior written notice related to this May 15, 2020 request.

24. On September 16, 2020, OSPI received the Parent's complaint and subsequently opened this investigation.
25. On October 10, 2020, the middle school English language arts (ELA) teacher emailed the special education director and stated that she met with the Parent over the summer, at which time he mentioned he would be setting a meeting after school started regarding Student's IEP and changing his goals. She stated at the meeting with the Parent that she would be the Student's ELA teacher, but did not know who his other teachers would be.
26. On October 20, 2020, the Student's middle school IEP team met for the Student's annual IEP meeting, but the meeting ended prematurely after the Parent refused consent for the District to record the meeting.
27. On October 23, 2020, the Student's IEP team reconvened for the Student's annual IEP meeting. The meeting was recorded by District staff. In the District's response, the District stated the IEP was not completed because the Parent was only focused on how the goals would be measured.
28. On October 27, 2020, the Student's IEP team reconvened again. In the District's response, the District stated the IEP was not completed because the Parent threatened to bring charges against the District staff member attempting to record the IEP meeting.
29. On October 29, 2020, the Student's IEP team reconvened again and the IEP meeting was scripted rather than recorded. The team was able to complete the IEP, but not the behavioral intervention plan (BIP).⁷ The Parent requested a hard copy of the IEP to review prior to agreeing to the IEP and stated he was willing to meet on November 3, 2020, to work on the behavior plan.

CONCLUSIONS

Issue 1 – Progress Reporting: The Parent alleged in his complaint that the District failed to properly report the Student's progress on his measurable annual goals to the Parent. The Parent alleged he never received copies of the progress reporting.

Individualized education programs (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, and progress reporting must be provided as specified in the IEP. 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. Here, the Student's IEP indicated his progress reporting would occur in written format every trimester.

⁷ In his reply to the District's response, the Parent disputed that the Student's IEP was completed on October 29, 2020, and stated rubrics or data sheets referenced in the IEP were not attached and were not complete as of the date of the Parent's reply.

While it appears the progress reporting form was generated every trimester, there is no communication log to verify if and when reports were sent to the Parents. Although the school did not keep a communication log, in its response to this complaint, the District stated school policy is to send a copy of progress reporting in the mail and a copy home in the students' backpacks.

However, even if the Parent had received copies of the Student's progress reporting, the information the District provided was insufficient to constitute progress reporting, as required under the IDEA. As noted above, the Student's November 2019 IEP stated progress reporting would be issued every trimester. The District issued progress reports on November 19, 2019, March 5, 2020, and June 12, 2020. While the November 21, 2019 progress report included all of the Student's goals, there was no information or progress reported for the Student's fine motor or communication goals. Additionally, and likely because it had only been one day since the IEP was drafted, the Student's progress in his behavioral/social, reading, and written language goals all stated emerging skills. However, the Student's behavior goal progress did not address his behavior goal, but rather referenced the agenda listed in the Student's accommodations. Additionally, the information provided on the Student's November progress reporting for reading did not reflect the Student's reading goal regarding improving reading comprehension and fluency from 50% or less accuracy, to 90% accuracy or more on grade level as measured by student work samples/chart; rather, it referenced a diagnostic iReady score, dated September 16, 2019, and provided no additional information. This is insufficient under the IDEA.

Similar to the November progress report, the District again failed to report on the Student's progress in fine motor and communication goals in his March 2020 progress reporting. Like November, the reporting was incomplete and did not include progress information related to the Student's goals. For example, the report stated "emerging skill" for behavior and written language. Without data or narrative information, simply stating emerging skill, does not provide information on the Student's progress at remaining on task (behavior/social goal) or write three paragraphs (written language goal). For the reading goal, the report referenced a diagnostic iReady score and a "leveled literacy intervention" score. While diagnostic scores are helpful, without further explanation, these scores do not actually indicate the progress the Student is making on reading comprehension and fluency goal. So, this too was insufficient under the IDEA.

On March 23, 2020, OSPI communicated the expectation that districts would begin—if they were not already—providing educational services to all students by March 30, 2020 ("continuous learning"); and, as instruction was being provided to all students, districts must have a plan for how students eligible for special education services would receive a free appropriate public education (FAPE), which consists generally of specially designed instruction and related services. 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. However, OSPI still expected individualized progress reporting to occur in some format as there was an expectation to provide special education services to students with IEPs.

In the June 2020 progress report, the District reported the Student's progress data for all of his IEP goals was unavailable due to COVID-19 school facility closure. OSPI finds the District's failure

to provide detailed and appropriate progress reporting that reflected the Student's progress for all his goals and failure to track the Student's progress at all during COVID-19 closures amounts to noncompliance under the requirements set forth in the IDEA.

The District will be required to develop, and present, a training on progress reporting requirements and best practices for detailed, thorough progress reporting. Furthermore, the District will be required to provide OSPI with a copy of the Student's next two regularly-scheduled progress reports.

Issue 2 – IEP Implementation: The Parent alleged the Student was not provided services outlined in the Student's IEP between March and June 2020, during the COVID-19 school closures. Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs could not be implemented as written as school facilities closed and districts transitioned to distance learning. Here, the Student's November 2019 IEP was in place prior to the school facility closures and the IEP required the Student receive the following specially designed instruction and related services:

- Social/behavior: 150 minutes weekly (provided by special education staff in the special education setting)
- Reading: 150 minutes weekly (provided by special education staff in the special education setting)
- Written Language: 120 minutes weekly, (provided by general education staff with special education staff support in the special education setting)
- Communication: 30 minutes weekly (provided by speech language pathologist (SLP) in the special education setting)
- Fine Motor: 30 minutes weekly (provided by occupational therapist (OT) in the special education setting)

After the District closed school facilities on March 13, 2020, the Student's IEP was not implemented as written, which during this time does not represent a violation of the IDEA by itself. However, that does not end the analysis as the District still had an obligation to provide students with IEPs with special education services (i.e., specially designed instruction) beginning March 30, 2020.

Here, there is no evidence an individualized plan was made for this Student. Instead, documentation provided by the District shows that on March 30, 2020, the District unilaterally amended the Student's IEP without reconvening the IEP team and without obtaining either information from the Parents or involvement of the Parents. The IEP amendment stated, "Due to COVID-19 and the resulting [closures] of schools in the state, the direct provision of specially designed instruction will formally resume when school is in session. Until school is back in session, student[s] will be provided modifications and accommodations during alternative delivery of instruction that is being provided under OSPI and the Governor's guidelines." The IEP amendment was only signed by the Student's resource room teacher. There was no documentation of the actual "alternative delivery of instruction" to the Student. Further, the IEP amendment did not clarify what the actual plan was to provide the Student individualized special education services during the COVID-19 closure, nor was it permissible to cease the provision of specially designed instruction.

Further, the District stated in its response to this complaint that although packets were sent home for students to complete, due to exposure concerns, they were not gathered and returned for grading. As a result, based on the documentation provided in response to this complaint, staff had no performance data to inform IEP progress. Although there was an understanding that IEPs would not be implemented as written during spring 2020 and special education services may look different than those provided in a traditional school setting, there is no waiver of the IDEA or a district's obligation to offer a FAPE, which includes the provision of specially designed instruction and related services. A district should continue providing special education services, individualized to a student's needs. Here, the District provided no evidence that it offered the Student the opportunity to receive special education services in a virtual special education setting when it sent home weekly packets with no additional support in place—the District did not provide copies of the packets sent or emails with packets attached, confirming they were sent to the Parent—and then did not collect or grade the packets. As such, OSPI finds the District failed to provide the Student special education services between March and June 2020. This is a violation.

The Student's IEP team will meet and develop a plan for recovery services for this Student to mitigate the impact of the school facility closures and failure to provide sufficient special education services in spring 2020.⁸

Issue 3 – IEP Meeting Request: The Parent alleged the District failed to follow proper procedures for responding to his May 15, 2020 request for an IEP meeting with a middle school representative in attendance to address the Student's upcoming transition into middle school. In his complaint, the Parent provided a copy of his May 15, 2020 email to the special education director, requesting a meeting to discuss the Student's transition into middle school. While the Parent's email did not explicitly request an IEP meeting, it is clear the special education director understood the Parent's email to be an IEP meeting request because she responded that a transition meeting would be set up with the receiving building/staff and the family once the Student's schedule is set and that she had contacted the board certified behavior analyst (BCBA) for a time 2-3 weeks out. The implication of the emails is that the Student's team would discuss the Student's special education services in middle school once the schedule had been determined. Further, over the summer, the Parent met the Student's middle school English language arts (ELA) teacher, and the Parent again mentioned he would like an IEP meeting to discuss the Student's IEP and changing the Student's goals. The ELA teacher emailed the special education director regarding this meeting on October 10, 2020.

⁸ Recovery services are intended to mitigate the impact of the spring 2020 COVID-19 school facility closures and to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services during the spring 2020 COVID-19 school closures. While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services in fall 2020 and recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during the spring 2020 school building closures on the student's overall progress and engagement, including progress toward their IEP goals.

Whether due to COVID-19 or not, the District provided no evidence that the elementary school IEP team made an effort to schedule a transition meeting with the middle school prior to the first day of school on September 8, 2020 (by which time the Student's middle school schedule would have been determined). Further, despite the Parent's request, an IEP meeting did not occur until the Student's annual IEP meeting in late October 2020, almost two months after he began attending middle school.

If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. Here, the District did not schedule the IEP meeting and failed to issue a prior written notice, explaining why the meeting was refused. OSPI also finds it unreasonable that the District did not schedule an IEP meeting until almost two months into the 2020-2021 school year, despite the Parent's multiple requests for a meeting. OSPI has determined that the District failed to follow proper procedures for responding to the Parent's May 15, 2020 IEP meeting request. As part of the corrective actions for this decision, the District will be required to provide certain staff with training on how to properly respond to a parent's request for an IEP meeting.

CORRECTIVE ACTIONS

By or before **December 9, 2020, December 18, 2020, and March 24, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **December 15, 2020**, the Student's IEP team will meet to discuss the following:

1. The Student's progress and the impact of the spring 2020 school facility closures. Specifically, the Student's IEP team will develop a plan for recovery services to mitigate the impact of the school facility closures in spring 2020 and failure to provide individualized special education services.
2. Where the Student currently stands on the goals in the Student's November 2019 IEP. For example, has the Student's ability in the November 2020 goal areas regressed, stayed the same, or progressed?

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

By December 30, 2020, OSPI will review the data used by the IEP team to determine the Student's need for additional services, as well as any plan proposing additional services (including amount,

when services will be provided, and timeline for delivering services), and will either amend or approve.

Provide OSPI with a copy of the Student's next two progress reports

By or before **December 18, 2020** and **March 24, 2021**, the District will provide OSPI with a copy of the Student's first and second trimester progress reports, respectively.

OSPI will review these two progress reports for compliance with the IDEA, and determination of whether additional correctional actions are warranted.

DISTRICT SPECIFIC:

Training

The following District staff will receive training: special education administrators, principals, assistant principals, and special education certified staff, including educational staff associates (ESAs).

By **December 9, 2020**, the District will develop a detailed, District-wide training on the following two topics:

1. How the District will gather and report progress on IEP goals for all students with IEPs during the 2020-2021 school year; and,
2. Proper procedures for responding to a parent's request for an IEP meeting.

The training will include examples. The training will not be presented by someone who is (or was) an employee of the District during the timeline of this complaint. The individual that presents the training will be required to consult with ESD 123 staff in the creation of the training materials. The District will provide the trainer with a copy of this decision, SECC 20-118A.

By or before **December 9, 2020**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By **December 9, 2020**, the District will submit a draft of the training materials to OSPI for review. The training materials will include examples. OSPI will approve the materials or provide comments by December 11, 2020, and additional dates for review, if needed.

By **December 18, 2020**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet; and, 2) a roster of who should have attended so OSPI can verify that staff participated.

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

RECOMMENDATIONS

After reviewing all of the documentation provided in regard to this complaint, it is clear that the trust relationship between the Parent and the District has endured some damage. School closures as a result of COVID-19 only further complicated matters, but the communication between the parties was challenging prior to school closures, which is evident from a previous special education complaint (SECC 19-86). Further, the fact that the Student's IEP team has met more than three times and the Student's IEP is still incomplete shows that it may be efficacious if a neutral, third party was present at future IEP meetings to facilitate.

Further, it is not clear whether the District fully understands the differing requirements under the IDEA for when parental consent versus parental participation is required. A parent is not required to consent to each annual IEP. However, the District is required to offer a student a free appropriate public education (FAPE) and implement student IEPs, ensuring there is no gap in services, even if an IEP takes multiple meetings to finalize. OSPI recommends the District review guidance regarding parent consent versus participation. OSPI also recommends that the Student's IEP team engage a facilitator for the next IEP meeting, to help support the IEP team by using an agenda and "parking lot" to facilitate the IEP meeting and working to support communication between all parties in the best interest of the Student.

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.)