

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-33

PROCEDURAL HISTORY

On March 2, 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 Sumner-Bonney Lake 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 March 4, 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 March 26, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent that same day. OSPI invited the Parent to reply.

On March 30, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the Parent. OSPI received the requested information and the Parent's reply on March 31, 2020. OSPI forwarded this information to the District that same day.

On March 30, 2020, OSPI received additional information from the District. OSPI forwarded that information to the Parent on April 1, 2020.

On April 4, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District that same day. OSPI forwarded this information to the Parent on April 6, 2020.

On April 6, 2020, OSPI's investigator interviewed the Student's special education teacher.

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

ISSUE

1. During the 2019-2020 school year, did the District properly implement the following portions of the Student's June 2019 individualized education program (IEP):
 - a. 30 minutes of specially designed instruction in social skills once a week; and,
 - b. Modification: "Access/use of the following: school counselor or other designated staff member when requested by Student."

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. A school district must ensure it provides all services in a

student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure 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 child with a disability and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education citizen complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed." *In re: Mabton School District*, 2018-SE-0036.

FINDINGS OF FACT

2018-2019 School Year

1. At the start of the 2018-2019 school year, the Student was eligible for special education services under the category of other health impairment, was in the second grade, and attended a District elementary school.
2. On June 14, 2019, the Student's evaluation group completed a reevaluation of the Student.
3. On June 20, 2019, the Student's individualized education program (IEP) team developed a new annual IEP for the Student. The Student's June 2019 IEP provided the Student with the following specially designed instruction in a *special education setting*:
 - **Social Skills**: 30 minutes once a week (to be provided by educational staff/paraeducator)

The June 2019 IEP provided the Student with the following modification each day, in all settings:

- **Access/Use of the following: school counselor or other designated staff member** (when requested by Student)

The June 2019 IEP provided the Student with the following measurable annual goals:

- **Social Skills 1:** By June 25, 2020, when given an emotionally upsetting or frustrating situation, Student will ask for a break improving social emotional skills (emotional regulation) from 86% to 95% as measured by teacher and counselor observation and data.
- **Social Skills 2:** By June 25, 2020, when given a problem scenario Student will be able to determine the size of the problem and choose an appropriate solution improving social skills from less than 50% to 80% or higher on 3 or more opportunities as measured by teacher data and observations.

4. The District's final day of school for the 2018-2019 school year was June 25, 2019.

2019-2020 School Year

5. The District's first day of school was September 3, 2019.
6. At the start of the 2019-2020 school year, the Student continued to be eligible for special education services under the category of health impairment, was in the third grade, and attended a District elementary school. At that time, the Student's June 20, 2019 IEP was in effect.
7. According to the District, from the start of the school year through November 25, 2019, the Student was provided with the specially designed instruction in social skills in her June 2019 IEP.

According to the special education teacher: a) she provided the Student with her specially designed instruction in social skills from the start of the school year through November 25, 2019; b) during that time, the special education teacher worked on 'zones of regulation' exercises with the Student—wherein the Student worked on identifying her emotional state and strategizing on how to return to a more normalized state; and, c) the sessions either consisted of the special education teacher and two students (one of whom was the Student) or just the special education teacher and the Student.

8. As of November 8, 2019, the Student had made the following progress on the measurable annual goals in her June 2019 IEP:
 - **Social Skills 1:** Sufficient progress being made to achieve annual goal within duration of IEP.
 - Student is making growth on this goal with the assistance of the highly capable teacher. She has really been working with Student on using appropriate wording to not make others feel uncomfortable. Student has been working on the concept of using uplifting

words. In the month of September, Student used the calming station¹ in class and did not need to work through any emotional situations. In October, Student needed the assistance of her teacher to work through calming down and the problem solving process. Student has only had one situation in November where she has needed the assistance of her teacher to coach her the problem solving process.

- **Social Skills 2:** Sufficient progress being made to achieve annual goal within duration of IEP.
 - When Student is in a calm state, she can determine the size of the problem and appropriately use Kelso's Choices² to determine a solution. She needs to work on applying problem solving strategies when at a heightened emotional state.

9. According to the District, from November 26, 2019 through February 18, 2020, the Student was not provided with the specially designed instruction in social skills in her June 2019 IEP. According to the District, this was because:

[On or about November 25, 2019], the special education teacher and the Student's father³ had an informal conversation when he stopped in to say hello during conferences. They discussed how well the Student was doing and decided to do a 'trial of less support' to see how the Student would continue to do (phasing out supports).

According to the Parent, though, the District's recollection of November 25, 2019 is incorrect: I attended [the November 25, 2019] conference and the special education teacher was not at our conference for Student, nor did we see her as we left the building. When the director call me [later]⁴ she stated that the special education teacher [had run] into Student's father when he was volunteering at the school and this was when they discussed Student's plan. Student's father states he did not have a conversation about changing her services or verbally ok any changes to her plan; he states he just agreed Student was doing well.

According to the District, it did not issue the Parent a prior written notice when it stopped providing the Student with specially designed instruction in social skills on November 26, 2019.

10. The District was on break November 27, 2019 through November 29, 2019, and December 23, 2019 through January 3, 2020.

11. According to the Parent, on or about February 9, 2020, she had a conversation with the Student:

I...asked Student if she had asked to speak to the counselor when she was having difficulties with peers and the [physical education] PE teacher. Student stated she didn't know who the

¹ According to the District, "a calming station is in every classroom at the Student's school. There are coloring sheets, putty, etc., and students set a timer and then come back to class when the timer goes off. This is always self-selected by the student. It is a Tier-1 support for social emotional for all students."

² According to the District, Kelso's Choices is "a conflict management program for elementary-aged students used by counselors."

³ The Parent who filed this complaint is the Student's mother.

⁴ The Parent here refers to a March 24, 2020 call.

counselor was. When I asked her [to] talk to the teacher and ask to see the counselor, she said [she] was afraid her teacher would not let her go.

12. On February 9, 2020, the highly capable teacher emailed the Parent and the Student's father, stating, in part:

I wanted to let you know that, overall, Student has been doing so well this year with managing her emotions...However, I feel like Student has taken a big step backwards in the last two weeks. I am not sure if she has been overly tired, etc but I would like to see Student get back on track...Student is in danger of losing the 'Great Behavior Party' on Friday if she continues to be unkind and disrespectful to teachers [and other students]. I don't want this to happen, but she hasn't been showing great behavior the last 2 weeks.

Later that day, the Parent responded, stating, in part:

This is very concerning to me. I know Student has some difficulties with social interactions but she is one of the most empathetic, sensitive, and caring people I know. She has been feeling badly lately about school, she feels that you do not believe her, that she is treated unfairly, that kids pick on her, and that she has difficulty in PE when the teacher is loud and she feels he treats her unfairly. What Student wants more than anything is to feel listened to and that she has a voice...I mentioned to her that these would be good things to talk to her school counselor about and she told me she didn't even know who the counselor was...I'd like to see the notes and progress from her IEP on her social skills goals. I think we need to schedule an IEP meeting ASAP to discuss what additional supports and strategies she is obviously needing to support her social skills development and interactions.

13. On February 24, 2020, the special education teacher emailed the paraeducator and the highly capable teacher, stating, in part: "Student is going to have social skills group on Thursday from 9:00 a.m. to 9:30 a.m. The paraeducator will begin working on lessons around friendship and then moving to work through frustrations."
14. According to the District, "The Student's specially designed instruction in social skills was reinstated February 27, 2020 after Student's mother (Parent) received an email about Student's behavior."

The Parent stated:

I do not believe [Student began to again be provided with specially designed instruction in social skills on February 27, 2020]. I know I asked Student each week if she had gotten pull-out with the highly capable teacher and it was weeks before she said she had. I believe she had one session before school [was] shut down.

15. According to the District, on February 27, 2020, the Student was provided with 30 minutes of specially designed instruction in social skills.
16. The Parent filed her special education citizen complaint with OSPI on March 2, 2020.
17. According to the District, on March 5, 2020, the Student was provided with 30 minutes of specially designed instruction in social skills.

18. As of March 6, 2020, the Student had made the following progress on the measurable annual goals in her June 2019 IEP:

- **Social Skills 1:** Sufficient progress being made to achieve annual goal within duration of IEP.
 - Student continues to make great growth on this goal. Student does not need to use the calming station in small group. Her group consists of her and one other student. The highly capable teacher reports that in the general education setting, Student had a few weeks where she struggled in class. The highly capable teacher stated, 'Student had a 2 week period between the end of January and the beginning of February where she really struggled with managing her emotions. I re-introduced Student to our counselor and made sure she knew where the counselor's office was since we had just moved into our new building.⁵ I worked with Student when she was calm to get to the source of her frustration and her strong feelings. We were able to problem solve. Student has had some stellar weeks 95% and some weeks that were below 85%. An average would be between 85% and 90%.
- **Social Skills 2:** Mastered annual goal.
 - Student is also making progress on this goal. Again, when she is in small group, and given a scenario she can determine the size of the problem and an appropriate solution. This goal she has mastered. What we need to continue to work on is having her use strategies and solutions when she is at a heightened emotional state.

19. According to the District, on March 12, 2020, the Student was provided with 30 minutes of specially designed instruction in social skills.

20. The District's response included a prior written notice, dated March 12, 2020.⁶ It read, in part: Student began the year receiving social skill instruction on Tuesdays from 11:45 am to 12:15 pm.⁷

Student did not receive her specially designed instruction [in social skills] from November 26, 2019 to February 18, 2020. This resulted in 330 minutes missed or eleven sessions. Services resumed on February 27, from 9:00 am to 9:30 am.

Provided that students are back in school on April 27, 2020 [from state-wide] social distancing [measures], Student will receive social skills instruction three times a week. By providing services on Tuesdays, Thursdays, and Fridays [from 9:00 am to 9:30 am], minutes [would] be made up by June 4, 2020.⁸ However, tri-weekly services will continue until the end of the school year.

⁵ According to the District, the Student's elementary school moved into a new building in January 2020.

⁶ According to the Parent, she was first provided with a copy of this prior written notice—via email—on March 20, 2020.

⁷ According to the District: a) this is when the Student received specially designed instruction in social skills from the start of the school year through November 25, 2019; and b) the specially designed instruction in social skills was provided during the Student's lunch as it was "a lunch social skills group."

⁸ According to the District: "All students in the Student's classroom have response to intervention at this time on those days. This would be an appropriate time to make up social skills. There is no new instruction

According to the special education teacher, when the Student begin to be provided with specially designed instruction again on February 27, 2020: a) the paraeducator was the individual who provided this service; b) the special education teacher wrote the lesson plans for the paraeducator—and she wrote the lesson plans for the respective, upcoming 2-3 week period; and, c) in the spring of 2020—before the District closed due to COVID, the Student worked on identifying “more complex emotions and perspective taking.”

21. On March 12, 2020, the counselor emailed the District special education director (director), stating, in part:

At beginning of the year, I met with [the Student’s] class to introduce myself. I told the class that my role is to help them solve problems and hold them how they could access. The teacher also asked me to come in on another occasion to remind students that they have access to me.

On February 6, 2020, I invited Student to lunch. Student elected to bring a friend and they both had lunch in my office.

Today, March 12, 2020, I invited Student to my office again for lunch. I told her that I want to make sure that students know who I am and what I do because sometimes students get me confused with our principal. Student told me that I am the counselor and that I help. She wanted to invite another friend to lunch so after a few minutes of conversation I had her go get her friend.

Today March 12, 2020 I also sent an email to Student’s classroom teacher and specialist teachers reminding them that per her individualized education program she has access the counselor when requested. I asked them to let me know if student request to see me, or if she is having difficulties.

22. In a separate email, dated March 12, 2020, the school counselor emailed the PE teacher, the music teacher, the STEM teacher, and the highly capable teacher, stating: “This is just a reminder that per Student’s IEP, she has access to the school counselor if she requests. If Student asks to see me, or if you notice that she is having difficulties, please let me know.”

23. In a separate email on March 12, 2020, the special education teacher emailed the director, stating, in part:

I had an informal conversation with Student’s dad when he stopped in to say hi in October or November and discussed how well the Student was doing. We discussed doing a trial of less support to see how the student would do.

I checked in with Student each morning at bus arrival and each afternoon at bus departure to review the day.⁹

at this time. [Response to intervention time] is not core instruction and therefore this would be an appropriate time in the Student’s schedule.”

⁹ The Parent denied the accuracy of this statement: “Student states the special education teacher would say ‘hi’ as Student entered the School. There was no check-in/check-out system.” The District stated: “This [check-in] routine started when the teacher stopped doing the social skills with the Student, as teacher was

On February 10, 2020, I got an email from the teacher letting me know that the Student was struggling with some behaviors in class and if I would do a check in with the Student. Student and I had a conversation about her feelings during a morning check-in.

...

I called Parent as soon as I got to school on March 12, 2020. We had a lengthy conversation about progress and when I sent the progress note home. [During our conversation], Parent decided that she did not need an IEP meeting.¹⁰ Parent emailed back, thanking me for the call...Parent asked for copies of Student's IEP and progress note. [I sent these to the parent that same day.]

Parent emailed and asked for a copy of Student's evaluation on March 13, 2020. I sent Parent a copy on March 14, 2020. Last contact with Parent was an email on March 14, 2020 thanking me for my call. Part of what I told Parent was we were going to start a journal so Student could record feeling while in class. I gave the Student the journal on March 20, 2020 due to Presidents Day weekend.

I created a new social group on Thursday morning, sent an email to the Student's teacher and paraeducator letting them know the skill focus: 'Student is going to begin working on lessons around friendship and then moving working through frustrations.' As these were the behaviors that were most recent. Student began [this] group on February 27 2020.¹¹

24. Beginning March 16, 2020, the District buildings were closed in response to the novel coronavirus outbreak.
25. According to the District, it first began providing "supplemental learning" reviews to certain students on March 23, 2019.
26. According to the District, beginning April 13, 2020:
The District will begin planning and implementing specially designed instruction under our new and continuous learning plan...Since [the] governor has extended the social distancing...the District wanted to move past supplemental learning (review) to new and continuous learning for all students in our District (which will include specially designed instruction) for special education students. However, per the recent OSPI [guidance on] this issue, the IEP services would not be exactly the same as if we were in the building on a full

phasing out the extra supports because Student was doing well and so she wanted to check-in with Student daily to see how she was doing."

¹⁰ Parent denied this: "I never said that I no longer wanted an IEP meeting. The special education teacher said she would speak with the highly capable teacher and I assumed after that she would get back to me to schedule the IEP [meeting]."

¹¹ According to the District: the Student's IEP was never changed to reflect the Student's participation in this group; the Parent was never consulted about the addition of this group; and, "the social group is time to implement the specially designed instruction on Student's IEP. It is either done 1:1 with special education staff or with special education staff and two students together depending on the social goal[s] [of the participating students]."

day. Going to specially designed instruction is quite the feat and our staff and District are getting started on what that looks like.

27. The District's final day of school in the 2019-2020 school year will be June 19, 2020.

28. After conducting its own investigation of the Parent's allegations¹², the District:

Denies that [it] did not implement the 'access/use of the following: school counselor or other designated staff member when requested by the Student.' Student had met with the special education teacher and the school counselor [during the relevant time period]. The school counselor came into the classroom twice to remind [the students] that she was available and how to access her. The special education teacher checked in with the Student each morning and each afternoon to review the day¹³...On February 6, 2020, the counselor invited Student to lunch and Student brought her friend and they are lunch together in the counselor's office.

29. In its response, the District proposed to make up the specially designed instruction in social skills that the Student missed from November 26, 2019 through February 18, 2020, either: a) by adding additional time to the Student's existing schedule; b) offering compensatory education during the summer; or, c) "in the form of a social day camp from an outside agency during a break from school."

The District further stated, "After speaking with Parent, we decided that we may want to hold an IEP meeting after we receive guidance from OSPI, to determine the best course of action to support the Student, given the COVID-19 [closure] and current social distancing requirements."

30. As part of this investigation, OSPI's investigator asked both the Parent and the District, in part: "Are you aware of any instances in which the Student asked for the counselor but was not allowed to see the counselor?" The Parent responded with:

I do not believe Student asked to see the counselor because 1; she did not know this was acceptable at her new school, and 2; she did not know who the counselor was to ask to see her. The counselor and her teacher did not let Student know it was specifically an option for her to request to see the counselor when having difficulties or needing extra support. Student did not know the counselors name. Student's counselor at her previous school had established a relationship her. Student knew she could ask to see her, felt safe speaking with her, and the counselor established a relationship of trust and respect. Additionally, Student stated to she did not think [the highly capable teacher] would let her go if she had asked to speak to the counselor.

¹² According to the director, her "investigation for the [District's] response occurred on March 10, 2020 and March 12, 2020. On March 10, 2020, I spoke on the phone with the special education teacher regarding amending IEPs. On March 12, 2020, I went out to [Student's] elementary school and spoke with the principal, the school counselor, and the special education teacher to inquire about the issues for [special education citizen complaint] 20-33."

¹³ The District described this check-in as follows: "Twice daily at the bus, am and pm, how was your day, emotional gauge check-in [etc]."

The District responded with: "I am not aware of any instances in which a student was asked and denied to see the counselor."

The District further stated:

It seems by [what the] Parent [has submitted to OSPI] during the course of this investigation, that the IEP should be amended to state: 'Staff will ask Student if she wants to see a counselor if staff perceives Student is upset.' Perhaps this would be a more appropriate accommodation for the Student, than having the Student [make the] request.

31. During the course of this investigation, the Parent provided the following statement to OSPI:

I am not sure when [social skills] services ended or began again [for Student]. I was never given any notification of either. I do know that Student received one session of specially designed instruction after...February 9, 2020 before school shut down...because I asked Student each week.

32. During the course of this investigation, the District provided OSPI with several examples of lesson plans for the Student from before November 26, 2019 and after February 27, 2020. (The District explained that, "due to school being closed because of COVID-19 and staff not allowed in buildings...the teacher does not have Student work samples at home.") The lesson plans included, in part: exercises aimed at identifying emotions; a social skills video; the teacher modeling (and explaining) proper behavior to students; and written worksheets students could use to help process their emotions.

CONCLUSIONS

IEP Implementation – The Parent alleged the District did not properly implement the following portions of the Student's June 2019 individualized education program (IEP) during the 2019-2020 school year: a) 30 minutes of specially designed instruction in social skills once a week; and b) modification: "Access/use of the following: school counselor or other designated staff member when requested by Student."

A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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 student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

Specially Designed Instruction in Social Skills

The record shows the following: a) from September 3, 2019 through the week ending November 22, 2019, the Student received 30 minutes of specially designed instruction in social skills each week; b) from the week of November 25, 2019 through the week of February 17, 2020, the Student

did not receive specially designed instruction in social skills each week¹⁴; and, c) from the week of February 24, 2020 through the week ending March 13, 2020, the Student received 30 minutes of specially designed instruction in social skills each week.

This means that from the start of the 2019-2020 school year, through the week ending March 13, 2020, the Student received: fifteen 30-minute sessions of specially designed instruction in social skills (or 450 minutes). However, this same time period represents approximately 21 weeks of instruction. Therefore, during this time period, the Student should have received 630 minutes of specially designed instruction in social skills. As a result, the Student was not provided with approximately 180 minutes (or 3 hours) of specially designed instruction in social skills that was required by her June 2019 IEP. This represents a material departure from the June 2019 IEP and thus, it is a violation of the IDEA. Compensatory education, therefore, is potentially warranted.

Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. In determining the potential impact of missed IEP services, and whether compensatory education is warranted, it is important to look at an additional factor: whether a student made progress on her measurable annual goals.

Here, the Student made sufficient progress on the annual goals in her June 2019 IEP and ultimately mastered one goal. The documentation noted:

Social Skills 1

- November 8, 2019: Student is making growth on this goal... [Teacher] has really been working with Student on using appropriate wording to not make others feel uncomfortable. Student has been working on the concept of using uplifting words. In the month of September, Student used the calming station in class and did not need to work through any emotional situations. In October, Student needed the assistance of her teacher to work through calming down and the problem solving process. Student has only had one situation in November where she has needed the assistance of her teacher to coach her the problem solving process.
- March 6, 2020: Student continues to make great growth on this goal. Student does not need to use the calming station in small group. Her group consists of her and one other student...Student had a 2 week period between the end of January and the beginning of February where she really struggled with managing her emotions. I re-introduced Student to our counselor and made sure she knew where the counselor's office was since we had just moved into our new building. I worked with Student when she was calm to get to the source of her frustration and her strong feelings. We were able to problem solve. Student has had some stellar weeks 95% and some weeks that were below 85%. An average would be between 85% and 90%.

¹⁴ In its response, the District acknowledged that it erred in not providing the Student with her specially designed instruction in social skills during this time period. In its response, the District acknowledged that a cessation in a student's IEP services may only occur after proper procedures have been followed—namely, convening a properly-constituted IEP meeting, inviting the parent to the IEP meeting, ensuring the parent's participation in the meeting, basing decision on sufficient, relevant data, and issuing the parent a prior written notice after the meeting but before any decisions are implemented.

Social Skills 2

- November 8, 2019: When Student is in a calm state, she can determine the size of the problem and appropriately use Kelso's Choices to determine a solution. She needs to work on applying problem solving strategies when at a heightened emotional state.
- March 6, 2020: Student is also making progress on this goal. Again, when she is in small group, and given a scenario she can determine the size of the problem and an appropriate solution. This goal she has mastered. What we need to continue to work on is having her use strategies and solutions when she is at a heightened emotional state.

The foregoing data does show that the Student was able to make progress on both of her goals in the area of social skills and mastered one goal—despite the District's failure to provide her with specially designed instruction in social skills from the week of November 25, 2019 through the week of February 17, 2020.

However, the foregoing data still shows the Student's progress on these goals may have been negatively impacted by this implementation failure. For example: a) the Student underwent a regression in the area of emotional regulation during "a 2 week period between the end of January and the beginning of February;" b) in relation to **social skills 1**, as of March 6, 2020, the Student still had some weeks where she demonstrated emotional regulation below the baseline in her June 2019 IEP—85%; and, c) in relation to **social skills 1**, as of March 6, 2020, the Student's average emotional regulation performance had not increased that much beyond the June 2019 baseline of 85%—the progress report note says, "an average would be between 85% and 90%." Therefore, compensatory education is warranted.

Here, the District has offered to provide the Student with minute-for-minute compensatory education—in other words, the District has offered to provide the Student with all of the specially designed instruction that she should have received under the June 2019 IEP. OSPI finds this to be an appropriate corrective action. Therefore, as compensatory education, the District will provide the Student with 3 hours of specially designed instruction in social skills. The compensatory education will be in a 1:1 or small group setting, and it will take place outside of the regular school day.

As this was an isolated incident, and was also identified by the district during the investigation, no staff training is ordered.

Modification: 'Access to Counselor or Designated Staff Member'

In regard to whether the District properly implemented this modification during the 2019-2020 school year, the record does show that, as of February 9, 2020, the Student did not know who the school counselor was. While this is problematic, it is counter-balanced by the following: a) at the beginning of the school year, the counselor introduced herself to the Student's classroom, wherein she stated she was a resource for all students; b) the District is unaware of any situation in which the Student actually asked for the counselor; c) the Student did meet with the counselor on at least two occasions; and, d) the District has already taken remedial action: namely, the counselor emailed the Student's classroom teacher and specialists, "reminding them that, per [the Student's]

IEP, she has access to [me], the counselor, when requested.” Therefore, OSPI does not find that the District materially failed to implement this modification.

Regardless, during the course of this investigation, the District noted:

It seems by [what the] Parent [has submitted to OSPI] during the course of this investigation, that the IEP should be amended to state: ‘Staff will ask Student if she wants to see a counselor if staff perceives Student is upset.’ Perhaps this would be a more appropriate accommodation for the Student, than having the Student [make the] request.

As there has not been a violation, OSPI will not require the District to convene an IEP meeting to determine whether this modification needs to be altered. However, OSPI does encourage the District to take this action.

CORRECTIVE ACTIONS

By or before **May 15, 2020** and **October 2, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **May 1, 2020**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 3 hours of specially designed instruction in social skills.

The District will provide OSPI with documentation of the schedule for services by or before **May 15, 2020**.

The compensatory education will occur in a small group or 1:1 setting and be provided by a certificated special education teacher. If appropriate for the Student, the 3 hours of specially designed instruction in social skills may be provided either telephonically or via a virtual meeting space. The instruction will occur outside of the District’s continuous learning school day and may occur on weekends or during District breaks. If the District’s provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours’ notice of the absence, the District does not need to reschedule. *The services must be completed no later than October 2, 2020, including those needing to be rescheduled.*

No later than **October 2, 2020**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District’s privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **October 2, 2020**.

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.

RECOMMENDATIONS

OSPI recommends the District convene an IEP meeting to discuss whether the Student's modification of 'access to school counselor or District staff member' needs to be altered.

Dated this ____ day of April, 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.)