

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-89**

### **PROCEDURAL HISTORY**

On July 20, 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 Richland 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 July 21, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On August 10, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on August 11, 2020. OSPI invited the Parent to reply.

On August 31, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on September 1, 2020.

On September 4, 2020, OSPI requested additional information from the District and the District provided the requested information the same day. OSPI forwarded the information to the Parent on September 4, 2020.

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

### **ISSUES**

1. Since January 2020, did the District follow procedures to provide progress reporting as specified in the Student's individualized education program (IEP)?
2. Did the District implement the Student's IEP during the March 2020 through June 2020 school facility closures, including providing specially designed instruction in written expression?

### **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:** 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). 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).

## **FINDINGS OF FACT**

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

1. During the 2019-2020 school year, the Student attended a District high school and was eligible for special education services under the category multiple disabilities.
2. The District's 2019-2020 school year began on August 27, 2019.
3. On October 25, 2019, the Student's individualized education program (IEP) team met—including the Student and Parents—and amended the Student's January 2019 IEP. The Student's IEP team finalized this IEP in December 2019. The IEP stated the Student would receive quarterly progress reporting and noted the progress reporting (along with State and District tests) would be scanned and sent to the Parents via email and "any work sample or other testing material that is used to determine progress toward [Student's] goals be provided to parents via email (scanned and sent) or electronic submission." The IEP annual goals in math and written expression included more specific information about how progress would be measured, as follows:
  - Math (Constructing math equations): "...Recorded opportunities; Teacher generated problem with parents' concurrence (notified and provided opportunity to see test prior)."
    - Objective (Solving linear equations): "...collected one time per quarter..."
  - Written Expression (3-Paragraph essay): "...reaching a Level 3 on the writing rubric on an independent progress check, one time per quarter, given a choice of three topics, from a current score of 1 on the rubric by 1/27/20."
    - Objective (Complex sentence): "...independent...achieving 4 out of 5 on 3 out of 4 attempts."
    - Objective (Paragraph): "...meets the requirements of a Level 3 on the writing rubric on 3 out of 4 attempts from currently obtaining a Level 1 on the writing rubric."
  - Written Expression (Identify and correct writing conventions): "...Recorded opportunities and work samples."
    - Objective (Capitalization): "...accuracy level of 80% across 4 given trials."
    - Objective (Punctuation): "...accuracy level of 80% across 4 given trials."
    - Objective (Grammar): "...an accuracy level of 80% across 4 given trials."

- Objective (Conventions with Hi-Write paper): "...one time monthly, as measured by an independently produced Correct Word Sequence, from 49 to 55 by 1/27/20."<sup>1</sup>
4. On January 8, 2020, the Parent emailed the case manager and asked if they could get "baseline data to where [the Student] is on his current goals and present levels of performance of 9<sup>th</sup> grade."
  5. On January 15, 2020, the Student's case manager emailed the Parent the Student's second quarter progress report. The case manager also noted in the communication log that she would send "data in an updated progress report" as soon as the Student completed the "I-Ready Reading" assessment. The progress report included the following information:
    - Written expression goal 1 (3 paragraph essay, reaching a level 3 on writing rubric)
      - Fall 2019 Score: organization/purpose – 1; development/elaboration – 1; conventions – 0
      - Winter 2020 Score: organization/purpose – 1; development/elaboration – 1; conventions – 0
    - Written expression goal 2 (identify and correct conventions at an accuracy level of 80%)
      - 1<sup>st</sup> Quarter: 32%
      - 2<sup>nd</sup> Quarter: 21%
    - Math goal (construct math equations at an accuracy level of 90%)
      - 1<sup>st</sup> Quarter: 71%
      - 2<sup>nd</sup> Quarter: 92%
    - Math objective (solve linear equations at an accuracy level of 80%)
      - 1<sup>st</sup> Quarter: 95%
      - 2<sup>nd</sup> Quarter: 95%

The progress report also contained the following additional data:

- "Curriculum-based measure- Written Expression AIMSweb High School Norm – 9<sup>th</sup> grade" – 1<sup>st</sup> and 2<sup>nd</sup> quarter scores and percentiles
  - iReady Reading fall 2019 scores
  - iReady Math fall 2019 scores
  - MAP test fall 2019 and winter 2020 language and writing scores
  - MAP test table of scores from January 2018 through winter 2020 for math, with growth noted, scores in specific instructional areas and a chart of growth over time
  - PSAT scores
  - SBA spring 2019 ELA and math scores
  - Breakdown on math scores, percentage increase or decrease, and progress in different areas of math (e.g., number and operations, algebra, etc.)
6. On January 16, 2020, the case manager emailed the Parent an updated version of the progress report.
  7. In a January 16, 2020 prior written notice, the District indicated the Student's "1<sup>st</sup> quarter writing sample was re-scored and we scored him at a 1, 1, and 0 on the OSPI Narrative Rubric.

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<sup>1</sup> This fact was taken from a previous complaint filed by the Parent regarding the Student's educational program. SECC 19-91 was filed on December 3, 2019, and a decision issued on January 29, 2020.

It reflects on his 2<sup>nd</sup> quarter progress report...Instead of one teacher, three teachers scored [Student's] writing sample from 1<sup>st</sup> and 2<sup>nd</sup> quarter..."

8. On January 17, 2020, the District's first semester/second quarter ended.
9. Also, on January 17, 2020, the Parent emailed the case manager and requested the case manager send "ALL work samples associated with the 2<sup>nd</sup> quarter progress report; we have yet to see any of the work samples used to arrive at the conclusions. Ensure to include all grading criteria, rubrics, persons who performed the written sample evaluation, and whatever material documents each of the written essay assessments." (Emphasis in original.) The Parent also requested the case manager provide "all work samples and evaluations for the 1<sup>st</sup> and 2<sup>nd</sup> quarter short-term objectives. These areas were not evaluated and the District provided no information explaining why these were not evaluated per [the Student's] IEP."
10. Also, on January 17, 2020, according to the communication log, the case manager emailed the Parent "updated progress monitoring with 1<sup>st</sup> and 2<sup>nd</sup> quarter scores as well as information about I-Ready trend data."
11. On January 24, 2020, the Parent emailed the District's executive director of special education (executive director) regarding the development of the Student's IEP and progress reporting. The Parent stated they "still [did] not have any of the work samples used to evaluate the 2<sup>nd</sup> quarter progress report? [The Student's] 9<sup>th</sup> grade 1<sup>st</sup> and 2<sup>nd</sup> quarter project reports are only partial and don't address all his goals and objectives? We have asked for this information and none has been received." The Parent requested the work samples again in an email on January 30 and 31, 2020.
12. In January 2020, the Parent and District staff, and District staff internally, exchanged several emails throughout the month about getting the Student's updated scores on the MAPS and I-Ready tests and historical testing data to inform the development of the Student's IEP and discussions of extended school year (ESY) services. The case manager also sent the Parent copies of the Student's winter 2020 MAP data, I-Ready fall 2019 math and reading data, assessment scores, growth and trend data, I-Ready winter 2020 math and reading data, and 2019 PSAT scores.
13. The Student's February 2020 IEP<sup>2</sup> was in effect prior to the COVID-19 school facility closures. The Student's IEP included the following annual goals:
  - Written Expression: "By 01/23/2021, when given a grade level paragraph containing composition errors, [Student] will use a checklist to denote editing errors improving increasing in accuracy from 14% of errors corrected in a 9<sup>th</sup> grade text to 90% of errors corrected in a 9<sup>th</sup> grade text found over 3 consecutive composition samples as measured by curriculum-based assessment. Progress monitoring bi-weekly with work samples." (Progress reporting via Student work sample quarterly);

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<sup>2</sup> Based on the documentation in this complaint, this IEP was developed over the course of several IEP meetings. As the development of this IEP is not at issue in this complaint, not all the procedural information regarding IEP development is included in this decision.

- Written Expression: "By 01/23/2021, when given a topic and text, [Student] will...produce from 2 word associations to 4 word associations that go with that text, and formulate a simple sentence using those word associations improving in accuracy from from [sic] 2 words in three complete sentences in order (topic, four supporting sentences, concluding) in consecutive composition samples. To to [sic] 4 words in 4 sentences independently as measured by 3 consecutive composition samples. Progress monitoring bi-weekly with work samples." (Progress reporting via curriculum based assessment, Student work sample, rubric, "other: 2 rubrics" quarterly);
- Written Expression: "By 01/23/2021, when given a graphic organizer, [Student] will sequence his ideas and sentence independently and appropriately to formulate an introductory and supporting paragraph improving in accuracy from 2 sentences in order to 6 sentences in order (topic, four supporting sentences, concluding) as measured by in 3 consecutive composition samples [sic]." (Progress reporting via Student work sample, rubric, "other: agreed upon graphic organizer" quarterly); and,
- Written Expression: "By 01/23/2021, when given a topic and/or text, [Student] will independently compose a complete paragraph (containing a topic, supporting details, and concluding statement) using dictation software improving in his accuracy from a baseline of no use of dictation to proficient use of dictation as measured by over three opportunities observed. Progress monitored monthly with work sample." (Progress reporting via curriculum based assessment and rubric).

The Student's IEP provided the Student with the following specially designed instruction and related services in the special education setting from February 28 through August 31, 2020:

- Vision: 30 minutes monthly (provided by a teacher of the visually impaired (TVI))
- Written Expression: 53 minutes 5 times per week (provided by special education staff)<sup>3</sup>

The Student's February 2020 IEP provided the Student with an extensive list of accommodations and modifications. The IEP also included the following supports for school personnel: quarterly consultation with an occupational therapist (OT), monthly consultation with a speech language pathologist (SLP), monthly consultation with a TVI, and consultation with the general education math teacher (once a week for 15 minutes to discuss progress).

The IEP included the use of assistive technology, such as an FM system (as directed by the Student's audiologist), speech to text, large screen laptop with enlarged text, Bookshare, learning ally, hi-write paper, slant board, pencil grip, and graph paper.

14. On February 11, 2020, the Student's schedule changed, and he began receiving his specially designed instruction during 6<sup>th</sup> period from the special education teacher and a general education teacher who worked as an instructional coach.

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<sup>3</sup> The Student's February 2020 IEP also included a second service matrix from September 1, 2020 through January 23, 2021, which included specially designed instruction in math in addition to written expression and vision services. The IEP also included two annual goals in math; however, as those will not be addressed until September 2020, per the service matrix, the math goals are not detailed in this decision.

15. On February 18, 2020, the District's assessment coordinator compiled all "state/district testing we have done with [Student] over time" for the Student's IEP team.
16. On March 12, 2020 (according to a later—June 26, 2020—email from the Student's SLP to the Parent and IEP team), the Student completed work samples for progress monitoring. The SLP stated in the email that she "got [the Student's] completed work sample and went to schedule with [case manager] [who] was sick and unable to meet." The SLP stated because school facilities were closed, they were unable to score the Student's work sample and "that sample is still in his file in my office. I don't have access to it at the moment, but know what when we rejoin for school, I will coordinate with [Student's] new case manager to look at scoring."
17. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis. The District's board of directors thus declared an emergency and closed all schools in the District.
18. On March 18, 2020, the Student's special education teacher emailed the executive director, stating she had called the Student's mother the previous day to check on the Student because he had been out sick. According to the email, the Student's mother "asked what she could do to continue with [the Student's] education while we are out" and she "came in and spent an hour with me [special education teacher] and I supplied her with resource [sic] to help [the Student.]"
19. On March 20, 2020, the Student's TVI emailed the Parent and asked if the Parent had "any materials (from teachers) that you need to have enlarged to be able to use during the school closure," and asked the Parent to let her (the TVI) know how she could help support the Student. The TVI also stated she "had a few line guides for [the Student] to choose from-it might be a good time to practice using one during this break."

The Parent responded that they would reach out if they needed anything and that the Student's special education teacher provided them "[specially designed instruction] work for [Student] that we have been working on." The Parent also stated the Student had been working on "Lexia, Reading plus and Learning Ally audio books." The Parent stated the Student was doing 30 minutes of reading a day, but that the Student was "complaining about how hard it is." The TVI responded and recommended breaking the reading into two 15-minute chunks with a "non visually fatiguing task in between."
20. 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.
21. Also, on March 23, 2020, the Parent and the Student's general education math teacher emailed regarding supplemental math work for the Student during the closures.

22. On March 25, 2020, the Student's case manager emailed the Parents, stating:
- Just wanted to touch base with you...I touched base with [special education teacher] and she indicated she provided you with some writing work for [Student] to complete over this extended break. Before the break, I spoke with [general education math teacher] about addressing his fraction goal on his IEP. We talked about the intervention that is available on Pearson Math, not available to all kids, but I was able to assign [Student] some lessons from that, in case he didn't get some of the skills sheets before the student break. Anyway, please note these are on here for [Student] to work on. I had to put a due date, but if he needs to have it extended that is no problem at all...I was able to assign him some intervention lessons. Please let me know if you have any questions at all. I am trying to set up some videoconferencing lessons for my math classes and [Student] is welcome to join in, if you would like that.
23. On March 27, 2020, the District's third quarter ended.
24. On March 28, 2020, the District sent out a "staff communication memo," outlining the District's "At-Home Learning Plan."
25. On March 30, 2020, the case manager emailed the Parent, stating, "Just checking in. Is there anything you need for [Student]?"
26. Also, on March 30, 2020, the instructional coach emailed the special education teacher, asking if she had heard from the Student or his Parents. The instructional coach stated she emailed the Student twice and sent "notifications/announcements about course work...I know he at least looked at a couple pages on Canvas last week, but nothing else."

The special education teacher responded and stated she had not heard from the Student either. The special education teacher wrote:

Prior to our total shut down mom came in to see me and I have her a lot of editing work for him. I also gave her a list of 32 writing prompts for ninth graders, hi-write paper etc. I also asked her to have him read history (because he loves history) articles and write [sic] journal entries about what he has read. She told me that as a family they play a lot of games requiring strategy. I asked her to have him write about the strategies he uses to play the games after he has played a game. That was the last I talked with them.

The instructional coach replied that she would add the special education teacher to be a co-teacher on Canvas so that she could see what was being posted for the Student. The instructional coach stated:

I also had a journal assignment, (online discussion format) so we may want to let him know how we want those two pieces to coordinate. Other than that, I have given him a piece of process writing as an assignment, that I was going to start breaking down into weekly 'chunks,' advising [the Student] through announcements what to complete each week.

The special education teacher responded and agreed that they should also keep the Student's case manager in the loop.



27. On March 30, 2020, the instructional coach also emailed the Student's case manager to ask if she had heard from the Student or Parent. The instructional coach reiterated that she had "given him a journal to do as an online discussion, and a piece of process writing for the next 2-3 weeks."

The case manager responded that she had not heard from the Parent and she "did an outreach via google spreadsheet as well as email, but nothing!"

28. Later, on March 30, 2020, the instructional coach emailed the Student and Parent the following:

I wanted to reach out, briefly, just let you all know that I have been and will keep communicating with you/[Student] through Canvas announcements and email.

...

There is an ongoing weekly journal in Discussions (just like we were doing before in-person classes were suspended.)

I also created a writing assignment that builds on the work we were doing that last week together. It is designed to take 2-3 weeks to complete and gives you a chance to practice all the steps of the writing process. It is called *Storytelling with a Purpose*. For this week, your goal would be to do the 3 Pre-writing tasks.

Please do not hesitate to email me if you have questions. I am also keeping regular office hours on Thursday's from 9:00-11:00, if you would like to have a video conference. If that time doesn't work and you would still like to chat 'face to face,' just let me know a better time; and I will try to set something up then. Otherwise, email me anytime!...

29. On March 31, 2020, the OT emailed the Parent to check in and "see if there is anything I can do to help" and encouraged the Parent to reach out if there were any questions related to the Student's fine motor skills at home.

The Parent responded that they were doing well and "trying to keep to a daily routine."

30. On March 31, 2020, the instructional coach emailed the principal, and among other topics, noted that the Student's mother had contacted her and that the Student "is starting to do his work in our Independent Study Course."

31. On April 3, 2020, the Student's general education math teacher emailed the Student and Parents regarding office hours and math topics, stating:

...I would like to touch base with you next week for a couple of office hours...We can continue work [sic] on concepts and practice for your math goal, and/or any topic you would like. There are two options for office hours I would propose: Messages through email or a Canvas discussion, or we can do a Canvas conference. Note—A conference in Canvas does not require video—we could talk live without the need for images. However, I can show you how to do a problem live by sharing my computer screen...Please think about what might work, when you might want to do office hours, and reply when possible.

32. The District was on spring break from April 6 through 10, 2020.

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

34. On April 13, 2020, the case manager emailed the Parent, writing:

Just checking in again. I hope [Student] was able to find the math intervention lessons for him to work on for his fractions. If he has any questions at all, I have Zoom meetings set up on Mondays and Wednesdays at 1:00 p.m. to check in with my math students; however, I would be glad to help him individually as well. Please just let me know. Stay safe!

In the communication log, the Parent noted they thought the general education math teacher was working with the Student on math and stated the math teacher had "mailed out worksheets...and has been consistently assigning [Student] work and meeting with him. It seems to be going very well." The Parent stated they needed "clarification on what [Student] is supposed to be doing for Math."

35. On April 14, 2020, the Student's math teacher emailed the Student and Parents, following up again about holding "live, office-hour type conferences." The math teacher stated he was continuing to post learning activities in Canvas "that check for concept/skill proficiency." The teacher restated options for holding a conference. The math teacher also asked how some of the activities and assignments were going for the Student and stated, "I'm not sure if you saw this, but I leave feedback and comments in both the Desmos activities and Canvas assignments." Finally, the teacher asked if the Student wanted a hard copy packet of the assignments that would parallel what was posted online.

The Parent responded that the Student was interested in doing a live conference, that the Student had reviewed the math teacher's feedback, and that hard copies would be helpful. Ultimately, they scheduled a conference for 1:00 pm on April 16, 2020.

36. On April 21, 2020, the case manager emailed the Student to check in and ask if he needed help in any of his classes.

37. On April 23, 2020, the SLP emailed the case manager regarding drafting continuous learning individual plans (CLIPs) for students on her caseload. For the Student, who received consultation services, she stated she could offer the Student a "once a month check in with me 1:1 for [the Student] to work on self-advocacy if they want. If not, I can just work with you to make materials."

38. On April 26, 2020, the case manager emailed the Parent, stating:

Just checking in again to see how you are all doing. Staying home and staying healthy, I hope. We need to have a phone conference or a video conference to discuss a new form the state and district have asked us to complete, called a CLIP. This form will answer questions on how we can communicate during the coronavirus pandemic and what [Student's] needs are, if you have proper technology and goals to work on while we are under the school closure. Please let me know when you are available to hold this remote conference. Thank you!

39. Also, on April 26, 2020, the Student's mother emailed the SLP (responding to an email from March 12, 2020 about scoring materials for progress monitoring), stating the Student was using "Lexia Power up and reading plus," and listed some of the specific areas the Student was struggling with. The Student's mother stated, "We still don't think he is aware he is hearing some sounds and words wrong! Do you have any other suggestions?"

The SLP responded, stating that anything to "up the access to sound" would be great for the Student (e.g., "insert ear phones") and that continued drilling foundational skills. The SLP also stated, "those word forms are tough I think in reading activities for [Student], however in some samples of writing I was reading from [instructional coach] before this pandemic, he types beautifully in the correct verb tense."

The Parent replied:

[The Student] has always really struggled with tenses (time of day to activities). I hadn't realized he was in [sic] improving on these in his writing. This is really good to know. Maybe we take a look at [the Student] and [the instructional coach's] current work when this is over and make sure he is on track. I think that work and the actual writing is very important. [The Student] seems to be on track and doing great...

40. On April 28, 2020, the instructional coach emailed the Student to touch base regarding "essential learning pieces for our writing course." The instructional coach set up a conference with the Student to "see what help you need to get back on track with your *Story Telling with a Purpose* assignment." The instructional coach also included an outline for the remainder of the course, which included information about grading, listed the "essential learnings" for the course, deadlines, and information about breaking the assignments into chunks (e.g., pre-writing, start draft, finalize draft, etc.).
41. Also, on April 28, 2020, the Parent emailed the executive director and stated the Student was "Still connecting with [general education math teacher] and [instructional coach]." The executive director responded and asked if the Student was connecting with other teachers, to which the Parent replied that he was not sure, but would ask the Student about his other teachers.
42. On April 29, 2020, the case manager emailed the Parent, stating:
- So I saw that [Student] turned in the latest work. Awesome! I have really missed having him and other students in class...Please feel free to contact me if [Student] needs any extra explanation or modification to any of the assignments...I was just so excited to see him turn these assignments in. I gave him some feedback on each as to how to add a little more to earn full credit. Hope everyone is well in your family.
43. On May 3, 2020, the case manager emailed the Parent to check on the Student, ask how technology and distance learning was working, and again stated she wanted to schedule a meeting that week to create the continuous learning form. The Parent noted in the communication log that afternoons would work best for a meeting. The Parent also noted, "Sorry we thought the log was suspended as of the last IEP meeting so we haven't been checking. We have been using email and canvas." The case manager replied in the

communication log, "If email works best and Canvas, we can amend it on the IEP. Do you want to phone conference with just me or the team?"

44. Documentation of canvas notifications indicated the Student was working on his writing assignments for his independent study course and communicating with the instructional coach on May 4 and 6, 2020.
45. On May 6, 2020, the TVI emailed the Parent to check in and see if the Student needed anything related to his vision and to support his access to educational materials. The Parent responded, stating they were "managing" and that the "Lexia program is going well."
46. On May 10, 2020, the Student's mother emailed the case manager, executive director, and principal in response to the earlier emails about scheduling a meeting to develop the Student's CLIP. The Student's mother asked for assistance getting the Student's assignments for his health/nutrition class, about MAPs testing, and about ESY services. The Student's mother also stated she wanted to have an IEP meeting "for next year to discuss schedule, accommodations, etc." and requested the school nurse come because the Student "is very high risk for covid."
47. Documentation of canvas notifications indicated the Student was working on his writing assignments for his independent study course and communicating with the instructional coach on May 11, 2020, and communicating with his science teacher on May 12, 2020.
48. On May 15, 2020, the case manager emailed the Student's teachers and let them know she was calling the Student's mother that day to discuss the CLIP. The case manager asked if there were concerns, information, or assignments they wanted her to share.

The Student's social studies teacher responded the Student had "recently been doing the work" and the science teacher responded the Student "has turned in a few assignments and took a quiz. He tried to get on a zoom meeting but had technical difficulties." The Student's math teacher responded with the following:

For [Student]"

- 1) Keep doing what he is doing. He watches my videos, reads notes, and tries every assignment. As of today (Friday), he has done a majority of assignments. I would simply suggest he double check Canvas for any that he hasn't submitted yet.
- 2) He does a great job asking questions during out Thursday office hour each week.
- 3) Devote time to work on his IEP Math goal, and be sure to ask questions about this.

I like interacting with him during the office hour. He has chosen to talk only through the chat box, which I told him is fine, as long as he can convey his questions. He is on track to pass Algebra 1. There will be an end-of-semester video/portfolio wrap-up activity...for 4<sup>th</sup> quarter...

49. On May 15, 2020, based on documentation in the complaint, the case manager and the Student's mother discussed the plan to create the Student's CLIP and the need to have a meeting to discuss further.

50. On May 20, 2020, the Student messaged the instructional coach on Canvas to let her know he would not be in class that day and that he “added the details we talked about to the story so I hope you can take a look at it.”
51. On May 21, 2020, the Parent emailed the case manager, and asked, in part, when the Student would be tested on his IEP goals, stating, “He can perform the tests if given the material online. For example, no reason why he cannot receive a prompt and then write an essay, scan it, and someone grade it against the agreed upon rubric.”
52. Documentation of canvas notifications indicated the Student was working on his writing assignments from his independent study course and communicating with the instructional coach, and communicating with his math teacher on May 31, 2020.
53. On June 2, 2020, the instructional coach emailed the case manager regarding the Student’s progress in advance of the IEP meeting, noting:  
Without being with [Student] to talk through his ideas and provide direct instruction, he really isn’t progressing. We have a weekly conference, but he prefers to listen and write in the chat, so it isn’t a very dynamic exchange. When he does write, it is very good in terms of description, detail, mechanics, and originality. It is just trying to get the production and organization going that is problematic. We will try to do a process/information piece these last two weeks, but it most likely will not be finished by the end of semester.
- A few days later, June 5, 2020, the instructional coach added that the Student “got all over his process writing piece, and it looks like we will finish that one and hopefully revise the Narrative. We did not get to Argumentative writing though...[the Student] just continues to impress me!”
54. Also, on June 2, 2020, the case manager emailed the Parent the following: “Will you please ask [Student] to do this writing prompt so that we can see where he is at this point? [sic] Attached is a graphic organizer, conventions checklist and writing prompt...”
55. Documentation of canvas notifications indicated the Student was working on his writing assignments from his independent study course and communicating with the instructional coach on June 4, 2020.
56. On June 5, 2020, the Student’s IEP team—including the Parents—met virtually and created the Student’s CLIP, which included the following information:
- Online platforms: “Canvas, Pearson”
  - Communication preference: Email
  - Supports for staff: “None”
  - Supports for family: “Continuous communication”
  - Services: Specially designed instruction in writing and math, 30 minutes per day, 5 days a week for each subject via “Canvas” (initiation date: “6/8/20”)

The meeting notes attached to the CLIP stated the Student would “continue working on his goals for the rest of the year,” but did not note which accommodations and modifications would be used.

The meeting notes from the meeting indicated the Student's general education math teacher had been interacting with the Student during "weekly office hours for an hour" and that the Student was using both the written and video notes posted by the math teacher. The Student's mother reported the Student was "very happy right now about math." The notes also included a statement from the Parent, indicating that during the facility closures, the Student "connected really quickly in math but he has mainly only had math and writing and only recently more from other teachers." The notes also indicated that the Student had been keeping up with science work.

57. Documentation of canvas notifications indicated the Student was working on his writing assignments from his independent study course and communicating with the instructional coach on June 9, 2020.

58. On June 12, 2020, the Student messaged his general education math teacher on Canvas about missing class the previous day. The Student stated he was out of town and that "when I get back I will work on #6 goal for IEP and send the work to you."

The Student messaged the instructional coach to let her know he submitted a paper, and that he "looked at the old paper we started and added some details for the story." The Student apologized for missing class and stated he was out of town.

59. On June 17, 2020, the Parents emailed the case manager and SLP the Student's "progress check for June." The Parents stated, "we are still waiting on the last one that [special education teacher] completed. Please send us a copy of both of these when they are done. Thank you!"

60. On June 18 and 19, 2020, the District's assessment coordinator emailed the Parents copies of the Student's MAPs test progress report and student profile report, which included testing done during the spring 2020 testing window.

61. Also, on June 19, 2019, the instructional coach emailed the Student's case manager regarding progress reporting. The instructional coach attached the Student's "'Repaired' draft of his informational write" and stated:

That means he has not done the final draft revisions that are annotated and that we were hoping to get to. So those may be a place for the ESY/CLIP teacher to begin. I can share this work with his teacher, if she would like. There were a few punctuation issues, but the main revision would be indicating paragraph breaks. The logic is there including most transitions, just not the actual indicators. Overall his organization, development, voice, addressing of audience needs, and sense of purpose were very well done.

62. On June 26, 2020, the SLP emailed the Parents the Student's progress reporting on his February 2020 annual IEP goals. The progress reporting noted the following:

- Math: Sufficient Progress – "The nature of remote learning was more difficult for all students. Supporting [Student] in his learning was more challenging because we weren't in person, as I am sure was the case for all of his classes. Yet, as I mentioned in the meeting, I believe [Student] have good overall effort this past spring. The virtual office hours we were able to do seemed helpful to him. He worked hard to learn new material, while working on Goal 1 alongside class

work. As I mentioned, we worked on improving [Student's] understanding and skills related to Goal 1 as he learned the regular material this spring. On several occasions, [Student] and I discussed problems for Goal 1 during our Canvas voice office hour conferences in May. [Student] showed improved learning on the concepts and skills. I assessed his levels of understanding during the office hour discussions, and on May 28, he was responding with 60% accuracy. I gave him an additional set of practice problems to work on in late May/early June (Practice #6). [Student] mentioned he and his family were out of town at some point in early June, and I did not receive practice sheet #6 from him. I see the fact that [Student] improved to 60% as a positive sign. Moving forward, I have no doubt he can master the concepts and skills at at [sic] least 80% accuracy. I think reaching 80% will be more challenging during remote learning than if in a normal in-person setting, but he has the capacity. Next year, I am happy to share the Goal 1 practice documents I have been using with his new teacher."

- Math: Sufficient Progress – "Goal 2 was embedded in Chapter 6 earlier this spring. I don't currently have access to [Student's] papers, but I remember that [Student] didn't do as well on rational exponents early in the chapter. But, after doing extra practice, getting additional help, and re-taking the test (late February/early March), I do remember that he mastered the problems with rational exponents at a rate higher than 80% for this goal. We should test [Student] again in the fall, upon returning to school, to see if he maintained his skills. If he does and the data shows he mastered his goal, then the team can consider a different goal if they desire."
- Written Expression (Editing): Insufficient Progress – "There was no evidence that [Student] used a checklist to denote editing errors. (See additional notes as attachments.) [Special education teacher] provided the family with a book to work on editing during the COVID-19 pandemic and school closure, but there was no evidence of work completion during the timeframe of March 13-June 15. IEP start date was February 28 and [Student] was in class 7 out of 10 days before the school closure. During that time, he had worked on the editing daily with [special education teacher], again for those 7 days. When [special education teacher] met with [Parent], explained what she was doing with the editing and at that time [special education teacher] provided the editing book with answer key to help guide [Student] at home for distance learning. She also gave her a list of 9<sup>th</sup> grade writing prompts for [Student] to work at home."
- Written Expression (Sentence composition): Emerging Skill – "See additional notes and rubrics as attachments."
- Written Expression (Paragraphs): Insufficient Progress – "[Student] only wrote one paragraph for his writing assignment. [Special education teacher] gave [Student] graphic organizers, hi-write paper, and other materials on Canvas for him to work on during the COVID-19 pandemic. [Instructional coach] also provided entire units for [Student] to complete on Canvas during the COVID-19 pandemic. [Instructional coach] was a 1:1 teacher for [Student] who provided that 1 on 1 learning. See additional notes and rubrics as attachments."
- Written Expression: Emerging Skill – "See additional notes and rubrics as attachments."

Included with the progress report, in the District's response, were rubrics, score sheets, and writing samples, dated June 12, 2020, for the Student's written expression goals.

In the SLP's June 26, 2020 email to the Parent and IEP team with the progress report, the email contained additional progress information, as follows:

[Student] has made considerable progress from his last recorded progress monitoring (date: 1/31/2020 and 2/3/2020 as seen on [the present levels of performance]). It is to be noted that [Student] has an additional progress monitoring attempt (dated 3/12) that is

inaccessible due to the COVID-19 Pandemic. [Student] has increased his overall conventions corrections 10% from last monitoring (14% to 24%) making steady progress. He is still struggling with advanced comma placement and homophones/verb tense. See attached key for comparison to sample. It is to be commended (and awarded in points) that [Student] denoted a comma for a very tricky semi-colon (highlighted) it is to be noted I gave him the point as it technically is grammatically correct but is less correct that [sic] a semi colon...WELL DONE [Student!] [Student] continues to only independently produce one paragraph during progress monitoring. He has increased his ability to make word associations in that introductory paragraph from 2 to 4 associations. [Student] omitted a topic sentence (statement of the main idea), however his sentences were engaging and on prompt. [Student] had excellent content in his writing, and his conclusion showed comprehension of the prompt. He did not go back and add a topic sentence (statement of the main idea) however his ideas showed understanding of the prompt in their sequence and topic relation. [Student's] ideas are becoming better sequenced and aligning with the prompt more congruously. See scores on Rubric above. In regards [sic] to assistive technology, the above score is to be observed with caution as the scorer was unaware of the level and use of the tech. The scorer has only observed [the Student] using Dragon Speak twice, both in 1:1 situations and not without prompt. He used it with intermediate independence (the SLP requested he demonstrate use, he then independently used it) and can use it both WORD and Google Docs. Student still prefers to type instead of use Dragon Speak but is seemingly increasing his proficiency (given that the above typed sample was dictated independently).

63. On July 20, 2020, OSPI received the Parent's complaint and opened this investigation. The Parent, in his complaint, stated the Student was not provided specially designed instruction in written expression during the COVID-19 school facility closures. The Parent's complaint also stated the District failed to report the Student's progress in accordance with the Student's IEP since January 2020.
64. The District, in its response to the complaint, acknowledged that the Student's IEP was not fully implemented and stated, "while the Student's instructional staff attempted to provide the Student with resources, the services provided were less than dictated by the Student's IEP." As a remedy, the District proposed providing training for the special education staff working with the Student during the 2020-2021 school year on "how to progress monitor the Student as detailed in the Student's IEP, including while the District is providing distance learning," and offered 18 hours of recovery services "in the form of weekly after school tutoring in the service area of written expression to address the Student's IEP goals."
65. On August 31, 2020, OSPI received the Parent's reply to the District's response to this complaint. The Parent noted he had "reservations about the effectiveness of corrective actions regarding progress reporting considering how we got to this point. Progress reporting issues have been central to three of our complaints for this student. Despite repeated corrective actions the District has not consistently produce [sic] timely and accurate progress reports."



## CONCLUSIONS

**Issue One: Progress Reporting** – The Parent alleged the District failed to report the Student’s progress in accordance with the Student’s individualized education program (IEP) since January 2020. 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. The purpose of progress reporting is to ensure that, through whatever method chosen, 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 required quarterly progress reporting.

### Second Quarter Progress Report: January 2020

The Student’s October 2019 IEP required progress reporting (along with State and District testing) to be scanned and sent to the Parents via email along with “any work sample or other testing material that is used to determine progress toward [Student’s] goals.” Each IEP goal also included additional information about the way progress monitoring would be conducted and how the progress monitoring opportunities would be scored.

On January 15, 2020, the District provided the Parent with the Student’s second quarter progress reporting. The progress report included first and second quarter scores on the Student’s essay for the 3-paragraph written expression goal (organization/purpose – 1; development/elaboration – 1; conventions – 0), scores for the conventions written expression goal (32% and 21%), scores for the math equations goal (71% and 92%), and scores for the linear equations math objective (95% and 95%). The progress report also contained scores and information from various other curriculum-based measures, District standardized testing, and State standardized testing. The progress reporting was updated on January 16 and 17, 2020, although the updated version was not provided to OSPI in the course of this investigation; however, a January 16, 2020 prior written notice indicated the Student’s “1<sup>st</sup> quarter writing sample was re-scored and we scored him at a 1, 1, and 0...Instead of one teacher, three teachers scored [Student’s] writing sample from 1<sup>st</sup> and 2<sup>nd</sup> quarter...”

While the progress reporting largely mirrored the specifications in the IEP regarding how progress would be scored, the IEP also stated that the Parents would be provided the work samples and the testing materials that were used to determine progress. There is no indication the Parents were provided the work samples and testing materials, even after the Parents emailed the case manager on January 17, 2020, requesting work samples, and the District’s executive director of special education (executive director) on January 24, 30, and 31, 2020, requesting the work samples and stating the progress reporting was incomplete as it did not address all of the Student’s goals and objectives.<sup>4</sup>

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<sup>4</sup> Regarding the written expression objectives, there is no requirement districts provide progress reporting for each objective—progress reporting is required on a student’s progress toward the *annual goal*. However,

Overall, while the progress report appeared to have been scored correctly, the Parents were not provided work samples and testing materials, despite this being specifically included in the IEP. Thus, OSPI finds the District in violation for the insufficient January 2020 progress report.

#### Third Quarter Progress Report: March 2020

On March 13, 2020, the District closed school facilities following the Governor's proclamation closing schools due to the COVID-19 pandemic and resulting public health crisis. On March 27, 2020, the District's third quarter ended. Prior to the end of the quarter, the documentation indicates the District conducted some progress monitoring (e.g., on March 12, 2020, the Student completed work samples for progress monitoring); however, the documentation indicates that because the school facilities were closed, staff were unable to access or score the Student's work samples. While acknowledging the uncertainty of the school closures and pandemic at that point, the District still had an obligation to provide special education services, of which progress monitoring and reporting is an important part. Because the District provided no third quarter progress reporting, OSPI finds the District in violation.

#### Fourth Quarter Progress Report: June 2020

The Student's February 2020 IEP included annual goals in written expression and math (although the Student's IEP service matrix indicated that specially designed instruction in math would not be provided until fall 2020). Progress reporting was required quarterly, and the goals included additional information about how progress was to be monitored and reported.

As progress monitoring and progress reporting is part of IEP implementation, OSPI expected that districts would continue monitoring and reporting progress to the extent possible during the school facility closures due to COVID-19. OSPI did not expect this would necessarily include progress on every IEP goal (as the District may not have worked on every goal, given the understanding that IEPs were not necessarily implemented as written), or that it would necessarily look the same as pre-closure progress reporting. However, if a district provided special education services, OSPI expected districts to be able to report some information about a student's progress during continuous learning.

On June 26, 2020, the District provided the Parents with the Student's fourth quarter progress report. The progress report noted the Student made sufficient progress on his math goals and insufficient progress or emerging skill on his written expression goals. For the math goals, the Student's general education math teacher provided a narrative, documenting challenges during remote learning, general impressions of the Student's effort, information from their office hours, and noted:

He worked hard to learn new material, while working on Goal 1 alongside class work...we worked on improving [Student's] understanding and skills related to Goal 1 as he learned the regular material this spring. On several occasions, [Student] and I discussed problems

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as this concern has been raised in previous complaints, it likely would be beneficial for the IEP team to clarify expectations around progress reporting and objectives, if objectives are included in future IEPs.

for Goal 1 during our Canvas voice office hour conferences in May. [Student] showed improved learning on the concepts and skills. I assessed his levels of understanding during the office hour discussions, and on May 28, he was responding with 60% accuracy...I see the fact that [Student] improved to 60% as a positive sign...I think reaching 80% will be more challenging during remote learning than if in a normal in-person setting, but he has the capacity...Goal 2 was embedded in Chapter 6 earlier this spring. I don't currently have access to [Student's] papers, but I remember that [Student] didn't do as well on rational exponents early in the chapter. But, after doing extra practice, getting additional help, and re-taking the test (late February/early March), I do remember that he mastered the problems with rational exponents at a rate higher than 80% for this goal.

Regarding the written expression goals, the progress report included narrative information for the editing and paragraphs goals, and attached scored work samples, rubrics, and notes for all the written expression goals. The progress report noted:

There was no evidence that [Student] used a checklist to denote editing errors...[Special education teacher] provided the family with a book to work on editing during the COVID-19 pandemic and school closure, but there was no evidence of work completion during the timeframe of March 13-June 15...before the school closure...he had worked on the editing daily with [special education teacher]...[Student] only wrote paragraph for his writing assignment. [Special education teacher] gave [Student] graphic organizers, hi-write paper, and other materials on Canvas for him to work on during the COVID-19 pandemic...

The email sent with the progress report also contained additional information about the Student's progress, including in part:

[Student] has made considerable progress from his last recorded progress monitoring...[Student] has increased his overall conventions corrections 10% from last monitoring (14% to 24%) making steady progress...[Student] continues to only independently produce one paragraph during progress monitoring. He has increased his ability to make word associations in that introductory paragraph from 2 to 4 associations. [Student] omitted a topic sentence...however his sentences were engaging and on prompt. [Student] had excellent content in his writing, and his conclusion showed comprehension of the prompt...In regards [sic] to assistive technology, the...scorer has only observed [the Student] using Dragon Speak twice, both in 1:1 situations and not without prompt. He used it with intermediate independence (the SLP requested he demonstrate use, he then independently used it)...Student still prefers to type instead of use Dragon Speak but is seemingly increasing his proficiency...

Thus, while the progress monitoring in June 2020 may not have mirrored the requirements of the IEP exactly, given the circumstances of the pandemic and remote learning environment, OSPI finds the progress report sufficient. The progress report addressed all the goals, provided sufficient information about the Student's progress given the circumstances, and included work samples and testing materials. Thus, OSPI finds no violation related to the June 2020 progress reporting.

#### Impact on a Free Appropriate Public Education (FAPE) and Remedy

Special education case law provides a two-part framework for analyzing a district's procedural and substantive compliance with the IDEA:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress...

*Bd. Of Educ. Of Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 206-07 (1982) (footnotes omitted). Further, the Ninth Circuit Court explains why the procedural elements of compliance are important and when procedural violations can amount to a denial of a FAPE:

Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.

*Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9<sup>th</sup> Cir. 2001). Progress reporting is an essential part of this, as the purpose of progress reporting is to ensure that, through whatever method chosen, 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. Without sufficient progress reporting, a parent's ability to participate in the IEP process can be severely hampered.

Here, the District committed procedural violations by not providing the January 2020 progress report in the manner outlined in the IEP and by failing to provide a progress report in March 2020. However, based on the documentation provided in the complaint investigation, there was no substantive denial of FAPE. Despite the flawed progress reporting, the District provided the Parents with ongoing information about the Student's progress throughout the year. For example, the Student's IEP team met several times January through March 2020 and in June 2020, and at all of these meetings, the meeting notes indicate progress was a main topic of discussion and documentation indicates the case manager gathered information from the Student's teachers about his progress in all classes to share with the IEP team. Further, in addition to the progress reporting, the District provided the Parents with updated scores, growth, and trend data on District and State standardized testing. Additionally, until the school facility closures, the Student's teachers and IEP team used a Google document communication log, which contained informal information about progress in addition to assignments, updates about classes, and other notes. Based on all the documentation, it is unclear how the Parents' ability to participate in the IEP process were hindered and OSPI finds no denial of FAPE.

Regardless of the substantive impact, the District did commit a procedural violation. The District, in its response to the complaint, proposed providing training for the special education staff working with the Student during the 2020-2021 school year on "how to progress monitor the Student as detailed in the Student's IEP, including while the District is providing distance learning." OSPI shares the Parent's concern as the Parent noted in his reply to the District's response, that he had "reservations about the effectiveness of corrective actions regarding progress reporting considering how we got to this point. Progress reporting issues have been central to three of our complaints for this student..."

Thus, the District will be required to develop a detailed progress monitoring and reporting plan for the Student for the 2020-2021 school year. This plan will include what steps need to be completed to progress monitor and report each goal based on the Student's current IEP, a timeline for completing each step, specific staff who will be responsible for each step, and what attachments (e.g., work samples, testing materials, etc.) need to be attached to each report. The Parents will have an opportunity to review the plan to ensure their understanding and the District's understanding of progress reporting aligns and OSPI will review and approve or modify the plan.

**Issue Two: IEP Implementation** – The Parent alleged the District failed to provide the Student any specially designed instruction in written expression during the spring 2020 COVID-19 school facility 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 February 2020 IEP was in place prior to the school facility closures. The IEP included goals in written expression and required the Student receive the following specially designed instruction and related services, in the special education setting from February 28 through August 31, 2020:

- Written Expression: 53 minutes 5 times per week (provided by special education staff)<sup>5</sup>
- Vision (related service): 30 minutes monthly (provided by a teacher of the visually impaired (TVI))

The Student's February 2020 IEP provided the Student with an extensive list of accommodations and modifications, and included the following supports for school personnel: quarterly consultation with an occupational therapist (OT), monthly consultation with a speech language pathologist (SLP), monthly consultation with a TVI, and consultation with the general education math teacher (once a week for 15 minutes to discuss progress).

After the District closed school facilities on March 13, 2020, the Student's IEP was not implemented as written, which during this time alone does not represent a violation of the IDEA. However, that does not end the analysis as the District still had an obligation to provide students with special education services during the school facility closures. On March 23, 2020, OSPI communicated the expectation that districts would begin 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 FAPE, which consists generally of specially designed instruction and related services.

The District made efforts to provide the Student special education services during the school facility closures. For example, on or around March 17, 2020, the special education teacher met with the Student's mother and provided her with editing work for the Student, writing prompts, hi-write paper, and encouraged the Student to read and write journal entries about what he read.

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<sup>5</sup> The Student's February 2020 IEP also included a second service matrix from September 1, 2020 through January 23, 2021, which included specially designed instruction in math, in addition to written expression and vision services.

Around March 20, 2020, the Parent indicated the Student was working on the specially designed instruction work provided by the special education teacher.

However, following this initial provision of materials, it is less clear that there was a plan to implement the Student's IEP during the school facility closures. The Student's case manager checked in with the Student several times via email and the Google document communication log, but the emails from the case manager essentially just stated the case manager was checking in, offering to provide the Student assistance if he needed help in any class, and offering to have the Student join her math class for math intervention (even though the Student was supposed to receive instruction in written expression, not math). The case manager's emails did not indicate the case manager was offering the Student a way to access or providing the Student specially designed instruction in written expression. Further, the communications put the burden on the Parents to request assistance instead of offering access to instruction or providing instruction. The Student's TVI, OT, and SLP also checked in with the Student, offering assistance and providing suggestions (e.g., the TVI suggested breaking reading into chunks with a non-visually taxing activity in between, the SLP discussed strategies with the Parents).

It was not until June 5, 2020 that a "continuous learning individual plan (CLIP)" for the Student was created, which stated the Student would be provided specially designed instruction in writing and math, 30 minutes per day, 5 days a week for each subject via "Canvas" (initiation date: "6/8/20") and that the Student would continue working on his goals for the rest of the year. However, even after June 8, 2020, there is no documentation that the District provided 30 minutes a day, 5 days a week of specially designed instruction in writing or math, or who was supposed to provide this instruction.<sup>6</sup>

The Student did receive instruction from the instructional coach in the form of assignments on Canvas, which the Student worked on and the instructional coach provided written feedback. The documentation in the complaint indicates the Student and instructional coach communicated via Canvas. However, it is not clear from the documentation that the instructional coach was implementing the Student's IEP or providing specially designed instruction, nor exactly how much instruction was provided. The assignments the Student worked on with the instructional coach do appear to be related to the Student's written expression IEP goals (editing, sentence construction, paragraph writing). Yet the Student's IEP stated he was to receive specially designed instruction from special education staff. Prior to the school facility closures, the Student received his specially designed instruction during 6<sup>th</sup> period from the special education teacher, supported by a general education teacher (instructional coach). It does not appear the special education teacher provided the Student any instruction during the school facility closures, apart from the materials provided in March 2020.

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<sup>6</sup> OSPI does note that despite the Student's spring 2020 IEP service matrix not including specially designed instruction in math, the Student's general education math teacher was in contact with the Student, provided supplemental math work for the Student, held weekly math conferences with the Student beginning in mid-April 2020, and documented instances they worked on the Student's IEP goals.

Thus, while the instructional coach may have provided some amount of instruction in written expression, the District did not provide specially designed instruction in written expression to the extent possible during the school facility closures, nor was there a clear plan for how the Student's IEP would be implemented as of March 30, 2020, when continuous learning began. OSPI finds a violation. The District acknowledged the violation, stating: "the services provided were less than dictated by the Student's IEP." As a remedy, the District proposed 18 hours of recovery services "in the form of weekly after school tutoring in the service area of written expression to address the Student's IEP goals." OSPI accepts this proposed corrective action.

### **CORRECTIVE ACTIONS**

By or before **October 2, 2020, October 16, 2020, and January 8, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Recovery Services**

By or before **October 2, 2020**, the District will coordinate with the Parents to develop a schedule for the 18 hours of recovery services in written expression. Services will occur in a one-on-one setting—either in-person or virtual instruction—and instruction will occur outside of the District's school day and may be accessed over District breaks. Services will be provided by a certificated special education teacher. The District will provide OSPI with documentation of the schedule for services by or before **October 2, 2020**.

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 **December 31, 2020**.

By or before **January 8, 2021**, the District must provide OSPI with documentation that it has completed recovery services for the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled 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 the Parents for the cost of providing transportation for these services. If the District reimburses the Parents for transportation, the District must reimburse the Parents for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation related to transportation or reimbursement by **January 8, 2021**.

##### **Progress Monitoring/Reporting Plan**

By **October 2, 2020**, the District will develop a draft detailed progress monitoring and reporting plan for the Student for the 2020-2021 school year. All District staff responsible for components

of the plan will be familiar with the plan and trained on how to monitor the Student's progress. This plan will include the following for each goal in the Student's current IEP:

- What steps need to be completed to progress monitor and report each goal;
- A timeline for completing each step, each quarter;
- The estimated date the Parents will be provided the progress report each quarter—e.g., the date the quarter ends, within a week of the end of the quarter, etc.;
- The specific staff who will be responsible for each step and how and when those staff will be trained in how to monitor and report the Student's progress;
- What attachments (e.g., work samples, testing materials, etc.) need to be attached to each report;
- And any other relevant information in order to ensure the Student's progress reports are timely, accurate, and complete.

By **October 2, 2020**, the District will provide the Parents with a copy of the draft plan for comment. The Parents will need to provide any comments within a week, by October 9, 2020, to ensure the plan can be finalized, training occur, and progress monitoring and reporting carried out for the first quarter of the 2020-2021 school year.

By **October 16, 2020**, the District will provide OSPI with the following documentation: 1) District's 2020-2021 school year calendar; 2) The draft progress monitoring/reporting plan; 3) Any comments from the Parents on the draft plan; and, 4) Any other relevant materials.

By October 23, 2020, OSPI will review and approve or modify the plan. Additionally, at that time, OSPI will set further deadlines for review of documentation, as follows and as necessary:

- Any necessary documentation related to training staff on the Student's progress reporting plan.
- The District will provide OSPI with a copy of the Student's quarterly reporting at the same time the progress report is provided to the Parents each quarter.
- The District will provide OSPI with an amended progress reporting plan *if* the Student's IEP is amended during the school year, such that the goals are amended, or anything changes related to progress monitoring and reporting.

**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 September, 2020

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
Olympia, WA 98504-7200



**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)