

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-93

PROCEDURAL HISTORY

On August 12, 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 Fife 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 August 12, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On September 1, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on September 2, 2020. OSPI invited the Parent to reply.

On September 14, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

On September 18, 2020, OSPI requested that the Parent provide additional information, and the Parent provided the requested information that same day. OSPI forwarded the information to the District on September 23, 2020.

On September 18, 2020, OSPI requested that the District provide additional information, and the District provided the requested information on September 23, 2020. OSPI forwarded the information to the Parent on September 23, 2020.

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

ISSUES

1. Did the District implement the Student's individualized education program (IEP) during the March 2020 through June 2020 school facility closures?
2. Did the District properly ensure the Parent's participation in the development and/or revision of the Student's IEP during the March 2020 through June 2020 school facility closures—including providing the Parent with a proper prior written notice, when appropriate?

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). OSPI described the nature of instruction that students were to receive during the COVID-19 as follows: "[School districts] should avoid assuming that continuity of education outside of a typical school building can only occur through online means. Districts will provide instruction using printed online learning materials, phone contact, email, technology-based virtual instruction, or a

combination to meet student needs." *Guidance for Long-term School Closures* (OSPI, 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).

Specialty Designed Instruction: The purpose of the IDEA is to ensure that all students eligible for special education have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1; WAC 392-172A-01005. Special education includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. 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).

Recovery Services: The term "recovery services" may depict a variety of scenarios. It may describe services need to remedy a denial of FAPE by a district (typically referred to during dispute resolution as "compensatory services"), and also to describe additional, supplemental services needed to address gaps in service delivery due to COVID-19 health/safely limitations, of which districts had no control.

The extent of a student's recovery services, if needed, must be an individualized determination made by the IEP team. When determining the extent to which recovery services may be needed, districts should consider multiple factors, including what services were provided during the spring 2020 school facility closures, the degree to which the student was able to participate in those services, any regression in the student's skills, progress or lack of progress made in the general education curriculum and toward meeting the IEP goals, and parent input.

Recovery services can be provided outside of the district's school day or be reflected as increased or supplemental services in the student's IEP. Recovery services are not generally provided in the same amount that was missed (i.e., minute for minute, hour for hour). Districts should be cautious when scheduling recovery services during the student's school day to ensure that this does not lead to a more restrictive placement for the student or contribute to additional general education instruction being missed. If the parents refuse the district's offer of recovery services, OSPI recommends that the IEP team document parent input in the determination of the need for recovery services, the proposed plan to provide the services, and the parent's refusal of the services offered. If the parent refuses the district's offer, the district has met its obligation for the time being by making the recovery services available.

While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services through remote and/or hybrid learning models in fall 2020 in order to assist students in making progress toward their IEP goals and to mitigate the impact of the spring 2020 school facility closures on the student. *Question and Answers: Provision of Services to Students with Disabilities During COVID-19* (OSPI 2020).

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

2019-2020 School Year

1. During the 2019-2020 school year, the Student attended a District elementary school, was in kindergarten, and was eligible for special education services under the category of multiple disabilities.
2. The District's 2019-2020 school year began on September 4, 2019.

3. The Student's September 2019 amended individualized education program (IEP) was in effect prior to the COVID-19 school facility closures.¹ The Student's September 2019 Amended IEP included annual goals in the following areas:

- **Cognitive 1** (ability to verbally name the six basic colors);
- **Cognitive 2** (ability to match lowercase and uppercase letters);
- **Cognitive 3** (ability to count objects to ten);
- **Cognitive 4** (ability to "find her first name in print in the environment");
- **Adaptive 1** (ability to complete a 4-step cubby routine);
- **Adaptive 2** (ability to draw a horizontal, vertical, and diagonal line after modeled by an adult);
- **Adaptive 3** (ability to increase independence in her hand-washing routine);
- **Adaptive 4** (ability to increase independence in unzipping and taking off her coat);
- **Social Emotional 1** (ability to imitate the actions of peers);
- **Social Emotional 2** (ability to "respond to a peer's greeting with eye contact, verbal response, and physical response");
- **Social Emotional 3** (ability to request a turn to play with a desired object);
- **Social Emotional 4** (ability to maintain interactive play with one or more peers for five or more minutes);
- **Speech Language 1** (ability to verbally provide action words that describe an observed activity);
- **Speech Language 2** (ability "to combine vocabulary by formulating verbal requests that contain 2 or more words");
- **Speech Language 3** (ability to increase social communication skills and turn-taking when engaged with peers);
- **Speech Language 4** (ability to respond to a variety of questions during structured opportunities);
- **Speech Language 5** (ability to understand descriptive terms);
- **Speech Language 6** (ability to demonstrate knowledge of spatial terms and directions); and,
- **Speech Language 7** (ability to produce certain age-appropriate speech sounds).

The Student's September 2019 Amended IEP stated the Parent would be informed of the Student's progress on the annual goals in her September 2019 Amended IEP in the following manner: 1) cognitive, adaptive, and social emotional goals: a written progress report and a parent conference once a semester; and 2) speech language goals: a written progress report once a semester.

¹ The Student's annual IEP was created on April 22, 2019. The April 2019 IEP included a dual service matrix—one for the remainder of the 2018-2019 school year and one for the start of the 2019-2020 school year. On June 10, 2019, the Student's IEP team met to further consider the appropriate service matrix for the start of the 2019-2020 school year, and they amended the April 2019 IEP, as appropriate. Then, at the start of the 2019-2020 school year—on September 5, 2019, the IEP team met to amend the minutes in the June 2019 Amended IEP. The District's response included emails wherein, occasionally, certain individuals refer to a new annual IEP having been created for the Student—either on June 10, 2019 or September 5, 2019. But: a) the June 2019 prior written notice speaks to revising the annual IEP created on April 22, 2019; b) the September 2019 prior written notice speaks to revising the June 2019 Amended IEP; and, importantly, c) both the June 2019 Amended IEP and September 2019 Amended IEP have end dates of April 2020. For the foregoing reasons, OSPI determines the IEP created on September 5, 2019 was a revision of the June 10, 2019 IEP, which was itself a revision of the annual IEP created on April 22, 2019; the September 5, 2019 was not a new annual IEP for the Student.

The Student's September 2019 Amended IEP provided the Student with the following specially designed instruction in a *special education setting*:

- **Cognitive:** 370 minutes 1 time a week (to be provided by a special education teacher)
- **Social Emotional/Behavioral:** 240 minutes 1 time a week (to be provided by a special education teacher)
- **Speech Language:** 30 minutes 1 time a week (to be provided by a special education teacher)
- **Adaptive Behavior:** 270 minutes 1 time a week (to be provided by a special education teacher)

The Student's September 2019 Amended IEP provided the Student with the following related services in a *special education setting*:

- **Gross Motor:** 20 minutes 1 time a week (to be provided by a physical therapist)
- **Fine Motor:** 25 minutes 1 time a week (to be provided by a certified occupational therapy assistant)²

The Student's September 2019 Amended IEP provided the Student with the supplementary services in a *general education setting*:

- **Paraeducator Support:** 960 minutes 1 time a week (to be provided by a paraeducator)³

The Student's September 2019 Amended IEP indicated the Student would spend 46% of her time in the *general education setting*.

The Student's September 2019 Amended IEP additionally provided the Student with the following modification: "all grading (progress monitoring) is individualized at the early childhood level."

The Student's September 2019 Amended IEP additionally provided the Student with the following accommodations:

- Frequent breaks;
- Varied activities;
- Giving Student adequate time to respond;
- Seating next to teacher;
- Reduction of environmental distractions;
- Consistent structure;
- Advance notice of changes;
- Hands-on activities;
- Concrete examples;
- Visual aids; and,
- Cooperative learning opportunities.

4. The District's response included a progress report related to the Student's September 2019 Amended IEP goals that is dated January 16, 2020. According to the District's response, the Parent was provided a copy of this progress report on or about the date of the progress report—January 16, 2020.

² The related services of gross motor and fine motor were to be provided concurrently with the specially designed instruction in adaptive behavior.

³ During the course of this investigation, the District clarified: "the dedicated paraeducator support was for inclusion purposes in general education settings."

According to the Student's January 16, 2020 progress report, the Student had made the following progress on the goals in her September 2019 Amended IEP:

- **Cognitive 1** (ability to verbally name the six basic colors): Limited Progress: 0/3 attempts.
- **Cognitive 2** (ability to match lowercase and uppercase letters): Limited Progress: 0/2 attempts.
- **Cognitive 3** (ability to count objects to ten): Limited Progress: 0 /3 attempts.
- **Cognitive 4** (ability to "find her first name in print in the environment"): Limited Progress: 0/4 attempts.
- **Social Emotional 1** (ability to imitate the actions of peers): Limited Progress: 0/4 occasions.
- **Social Emotional 2** (ability to "respond to a peer's greeting with eye contact, verbal response, and physical response): Limited Progress: 0/4 occasions.
- **Social Emotional 3** (ability to request a turn to play with a desired object): Limited Progress: 0/4 occasions.
- **Social Emotional 4** (ability to maintain interactive play with one or more peers for five or more minutes): Limited Progress: 0/4 occasions.

The January 16, 2020 progress report included in the District's response did not include updates on the following goals in the Student's September 2019 Amended IEP: adaptive 1-4; and speech language 1-7.

5. According to emails between the Parent and District staff, an IEP meeting had been scheduled to take place on March 11, 2020 to develop a new annual IEP for the Student. According to the Parent, though, the director and the principal "were called to District meeting at the last minute," and so, instead, a parent-teacher conference—in other words, not an IEP meeting, took place.
6. According to emails included in the District's response, on March 12, 2020, District staff communicated amongst themselves to identify a date which they were each available to meet to finalize the Student's IEP.
7. On March 12, 2020, the life skills teacher emailed the Parent, stating, in part:
You've probably already read the message...about the governor ordering all schools in three counties to be closed indefinitely. We've been told that non-essential staff will not be allowed in the building next week so we'll need to reschedule our meeting to some later date as I don't know how to include all the members of the team on a group call from home. We await further guidance from the office of the superintendent of public instruction regarding IEP due dates. I'm so sorry.
8. 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.
9. According to the District's response:
In the immediate aftermath of the school closures, the life skills teacher⁴ continued to make contact with Parents (as well as his other students' families) between March 16, 2020 through

⁴ According to the District, "the Student's life skills class was a special education classroom in which the Student received the majority of her specially designed instruction in a small group and [in a] 1:1 setting.

March 31, 2020 by email. However, no structured educational services were provided by the District during those weeks to any students within the District.

10. According to the Student's general education kindergarten teacher:
[In] March, I sent home to students a science activity that included seeds, a plastic baggie and cotton balls along with activity worksheets about plants. Students were assigned the task of growing a plant with seeds and wet cotton balls inside the baggie taped to their window. A writing prompt was also included.
11. On March 23, 2020, the Parent emailed the life skills teacher, stating, in part: "I'd prefer [developing a new annual IEP for the Student] back...when school is in session...I'm afraid we will not be able to get a quality meeting done over the phone."
12. 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.
13. On March 24, 2020, the special education director (director) emailed the Parent, asking, in part, whether the Parent would be willing to allow the IEP team to meet via phone or videoconference to develop a new annual IEP for the Student.
14. In the spring of 2020, the Student's general education kindergarten teacher utilized a messaging app in communicating with the Parent. On March 27, 2020, the Parent messaged the general education kindergarten teacher: "We love your videos so much! We have been playing them throughout the day and Student enjoys seeing you!"⁵
15. On March 30, 2020, the life skills teacher emailed the Parent "worksheets for April 16."

In a separate email, dated March 30, 2020, the life skills teacher emailed the Parent a "bundle [with] 60 pages of morning work." The life skills teacher further stated: "feel free to modify the activities to fit your child's needs."

[Prior to the spring 2020 COVID disruption], the general education teacher and special education teacher (life skills) worked together to create a schedule to allow the student to participate with her general education peers and to receive the specially designed instruction to best meet the student's needs and abilities. A para educator from the life skills class accompanied the student in the general education setting...The student split her time between the two classes and instructors in both programs communicated frequently."

⁵ During the course of this investigation, the District provided additional information on the general education teacher's use of videos during the spring 2020 COVID disruption: "The general education teacher uploaded read aloud videos, short films of the general education teacher reading a book, and sent them out to the class. In March they were sent once a week and then they got less frequent."

16. On April 1, 2020, the life skills teacher emailed the Parent some "pre-writing [assignment] ideas."

17. According to the Student's general education kindergarten teacher: "[In] April, I sent home to students a math/fine motor activity that included tweezers and pom-pom balls along with simple addition activity sheets."

18. According to the District's response:

The District began Continuous Learning services across the District on April 1, 2020. The District developed a district-wide Continuous Learning Plan in support of these services.

Under the District's Continuous Learning Plan, the general education and special education staff...collaborated virtually to develop weekly learning experiences to share with families.⁶ The building special education team met weekly to focus on students in the Life Skills Class, including Student, to identify a variety of activities at different levels for cognitive, adaptive and social emotional/behavior engagement at home, to include considerations for speech/language, [occupational therapy] OT and [physical therapy] PT needs and ongoing development...Throughout the continuous learning period, weekly lesson plans were provided by email to the family by both the general education Kindergarten teacher and the life skills teacher...Both teachers also provided materials to the home so Student could engage in various activities.

...

Each weekly plan was the same for all students in the Life Skills class, based on needs identified for all the students in that small program, with a variety of activities intentionally selected to target various skills and levels. Many of the students in the program have similar needs, and similar goal targets due to their age and disability needs.

...

No mechanism was in place [to monitor how many activities and/or assignments included within the weekly lesson plans that students were actually completing].

19. According to the District, beginning on or about April 1, 2020:

The life skills teacher [hosted] weekly afternoon meetings/social time [on zoom]. Students had the opportunity to see and talk with their friends, hear stories, sing songs and review earlier learning. An email was sent to each parent in the class to determine interest and possible best times. The initial meetings were at various times of the week, then settled into a routine. Meetings lasted from 20-30 minutes, depending on student interest. These meetings were optional and not all families chose to participate. When Student participated with mom, she was seated looking at the computer, she did not answer questions or participate actively, but glanced at the screen and seemed happy to see her friends.

⁶ According to the District, the Parent was not involved in, or consulted with, the creation of the weekly lesson plans created and provided to the Student as part of the District's Continuous Learning efforts. However, the District did state: "When a weekly plan was sent, Parent would reply to ask clarifying questions, and discuss developmental adjustments to some tasks (i.e. the writing goal should be scaffolded down to making intentional marks on the paper). Many activities were suggested based on general education curriculum and activities, with alternatives to scaffold down. Parent highly valued access to general education, so offerings similar to kindergarten activities were included."

The Student's general education classroom [initially] also had weekly zoom meetings which the Student attended regularly. After March, the general education teacher held zoom meetings every other week. The student attended all but two of the zoom sessions.

The Student missed a couple of live meetings in each setting but parent let the teachers know ahead of time if the Student wouldn't be able to attend.⁷

20. The District's response included numerous weekly lesson plans. The weekly lesson plan for Wednesday, April 1, 2020 through Friday, April 3, 2020, is representative of each such weekly lesson plan.

The weekly lesson plan for April 1 through 3, 2020 consists of a chart, outlining daily activities for the Student to complete in each of the following areas: cognitive; fine motor/gross motor; speech and language; adaptive; and social/emotional/behavior. Some of the activities listed in the weekly lesson plan are as follows:

- **Cognitive:**
 - Practice saying the alphabet letter names;
 - Read a favorite book with an adult or older sibling; and,
 - Find 10 small toys and 10 big toys and sort them by color.
- **Fine Motor/Gross Motor:**
 - Draw a picture of 5 items related to the spring season;
 - Use a cookie sheet; and,
 - Practice writing your name 5 times.
- **Speech and Language:**
 - Verbally describe household items; and,
 - Play a simple game with an interactive toy with someone else and take turns.
- **Adaptive:**
 - Practice washing your hands 5 different times;
 - Practice saying your whole name; and,
 - Practice saying how old you are.
- **Social/Emotional/Behavior:**
 - Practice saying 'hello' several different ways;
 - Practice '5 finger breathing'; and,
 - Practice meditation.

The weekly lesson plan for April 1 through 3, 2020 also included a list of online resources to help the Student complete the listed activities. It also includes the following statement: "Questions? Email your teacher and he/she will be happy to chat with you!"⁸

⁷ During the course of this investigation, OSPI's investigator asked the District to provide as much detail as possible in regards to the Zoom meetings offered to the Student during the spring 2020 COVID disruption. The above information is what the District provided. Upon knowledge and belief, and based on emails provided to OSPI during the course of this investigation, the life skills teacher and the general education teacher each hosted 1 Zoom class each week.

⁸ There were 11 weeks of school from April 1, 2020 through the end of the 2019-2020 school year (June 19, 2020). The District's response contains 10 weeks of weekly lesson plans; the District's response does not appear to contain a weekly lesson plan for the week of June 1 through June 5, 2020. The District's response

21. The District was on spring break from April 6, 2020 through April 10, 2020.
22. According to communications exchanged between the Parent and the general education kindergarten teacher on the messaging app, on April 10, 2020, the general education kindergarten teacher read a story to the Student on Zoom.
23. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
24. Also, on April 6, 2020, OSPI issued guidance on Continuous Learning 2020, which included recommended guidelines for maximum student commitment each day, as follows: Grades K-1: 45 minutes.
25. The District's response included a lesson plan for the week of April 13 through 17, 2020.
26. On April 17, 2020, the speech language pathologist emailed the Parent, stating, in part:
We will continue to send out communication activities each week to students who receive speech-language services as part of our continuous learning model. The activities chosen are designed to be implemented with simple items around the home so that families do not have the extra burden of needing to procure materials or supplies. Please do not feel pressure to complete the activities if you have other pressing matters that need attention in your household. These activities are not meant to be an additional stressor, but rather a tool and a source of support.

Preschool and Life Skills students will find these communication activities on the weekly activity grid sent out by their teachers. Kindergarten students who receive speech services will receive an email from me each Monday with communication activities in an attached document. Please feel free to reach out and let me know how the activities are going, how your children are doing, and if you have any questions. I can send activities every other week or monthly if once a week is too overwhelming, just let me know.
27. The District's response included a lesson plan for the week of April 20 through 24, 2020.
28. On April 22, 2020, the life skills teacher emailed the Parent some tips and suggestions on how to complete a reading assignment that week that involved the "Edmark reading program."

In a separate email, dated April 22, 2020, the life skills teacher emailed the Parent "a link to a math site that has free activities."
29. The District's response included a lesson plan for the week of April 26 through May 1, 2020.
30. According to emails, dated April 29, 2020, on that date, the Student participated in a Zoom meeting with the life skills teacher.

included emails, showing weekly lesson plans were emailed to the Parent on 9 of the 11 weeks; the District's response does not appear to include emails to the Parent that attached that week's lesson plan, for the weeks of May 18 through May 22, 2020 and June 15 through June 19, 2020.

31. According to the Student's general education kindergarten teacher: "[In] May, I sent home writing prompts that included a worksheet on writing about your favorite food. Student sent me back the writing prompt about a banana with an adorable photo of her holding a banana."
32. The District's response included a lesson plan for the week of May 4 through 8, 2020.
33. According to emails, it appears the life skills teacher had a Zoom meeting with the Student on Wednesday, May 5, 2020.
34. The District's response included a lesson plan for the week of May 11 through 15, 2020.
35. According to emails, the life skills teacher hosted an "optional class meeting" on May 12, 2020.⁹
36. The District's response included a lesson plan for the week of May 18 through 22, 2020.
37. According to emails, the life skills teacher hosted a Zoom meeting on May 19, 2020.
38. According to communications exchanged between the Parent and the general education kindergarten teacher on the messaging app, the Student was unable to attend the general education kindergarten teacher's weekly Zoom session on Thursday, May 21, 2020, because the Student had a private occupational therapy appointment¹⁰ scheduled for the same time.
39. On May 25, 2020, the life skills teacher emailed the Parent and the District members of the Student's IEP team, asking if they were available to meet remotely to develop a new annual IEP for the Student sometime during the weeks of either June 9-12 or June 15-19, 2020.
40. The District's response included a lesson plan for the week of May 26 through 29, 2020.
41. According to the Student's general education kindergarten teacher:
[In] June, students came to school with their families to do a drive by pick up of their end of the year scrapbooks and miscellaneous assignments and possessions left in the classroom at the time of the campus dismissal. I was pleased to see Student pick up her belongings along with the entire class.

⁹ The District's response included a Continuous Learning document with the Student's name on it, which contained a communication log completed by the life skills teacher. While it is not certain, it appears the Student logged into the May 12, 2020 Zoom meeting hosted by the life skills teacher.

¹⁰ According to the Parent: "On May 21st, 2020, [Student] had a private occupational therapy evaluation [at a private practitioner]...[Student's] first occupational therapy appointment [in which she received services] was on June 1st. Appointments there are for 50 minutes and she went approximately every two weeks until August 3rd. At the first appointment, we worked on Student using her pincer grasp to grab fruit snacks with attached chopsticks and a small pair of tongs. She also did a variety of small puzzles. We discussed with her occupational therapist increasing her chores at home and settled on having Student unload the clothes dryer into a laundry basket and then push the basket into the living room in addition to her other chores."

42. On June 1, 2020, the life skills teacher emailed the Parent "lesson plans for the week."¹¹
43. On June 2, 2020, the Parent responded to the life skills teacher's email of May 25, 2020, stating that June 15 or 16, 2020 would work best for her for the Student's IEP team to meet to develop a new IEP for the Student.
44. According to emails, the life skills teacher hosted an "optional class meeting" on June 2, 2020. Based on the communication log included with the Student's continuous learning document, it appears the Student logged into the meeting.
45. On June 8, 2020, the life skills teacher emailed the Parent "lesson plans for the week."
46. According to emails, the life skills teacher hosted an "optional class meeting" on June 9, 2020. Based on the communication log included with the Student's continuous learning document, it appears the Student logged into the meeting .
47. On June 10, 2020, the life skills teacher emailed the Parent and the District members of the Student's IEP team, inviting them to attend an IEP meeting for the Student on June 16, 2020 at 12:00 pm to develop a new annual IEP for the Student.
48. On June 11, 2020, the Parent emailed the director, stating: "I am requesting compensatory education for the special education services and related services not provided to Student [during the spring 2020 COVID disruption]."

On June 12, 2020, the director responded, stating, in part:

I would like to respectfully request that you allow us time to discuss the scope of the needs and potentially lost services together, but to not have that as part of our annual IEP meeting next week.

We will all be learning how to conduct this type of analysis, and understand the definitions of Compensatory Education or compensatory services due to COVID closure, which we believe may be two separate things.

As we move forward to plan for school to resume in the fall, this kind of service is an important part of the greater discussion in [the District]. We need to hear from families and students, so your request is very timely.

I will definitely keep your request in mind in the coming weeks as we develop plans, and may reach out to you during the summer to create an opportunity to hear your concerns directly with the IEP members.

¹¹ While the District's response included the email wherein the Parent was provided with a weekly lesson plan for June 1 through 5, 2020, the District's response did not include a copy of the actual lesson plan for this week.

We will be seeking guidance from the state about how to go about discussing any needed additional learning opportunities identified, methods to gather that Information/data, and how to define or outline such services as part of an IEP, if appropriate.

What we do know is that each student's situation is unique, so this will require individualized attention and consideration.

As we receive guidance on how to conduct this type of analysis, I will be happy to share that guidance with you, so we can learn together.

...

When we do meet later to discuss this matter (in person, I hope...but perhaps by zoom), it will help me to know the specific concerns you have, and your hopes for what services or activities you believe may be appropriate.

Again, thank you for reaching out to make your request known. I'll be in touch, likely in late July or August.

49. In a separate email on June 11, 2020, the Parent emailed the director, stating, in part: I am writing to request an Independent Educational Evaluation [because] it is our belief that our daughter has not had an appropriate [educational] program [during the spring 2020 COVID disruption and] therefore has not had access to a free appropriate public education (FAPE).

50. The Student's IEP team developed a new annual IEP for the Student on June 16, 2020. The Student's June 16, 2020 IEP included annual goals in the following areas:

- **Adaptive 1** (ability to complete a 4-step cubby routine);
- **Adaptive 2** (ability to draw a horizontal, vertical, and diagonal line after modeled by an adult);
- **Adaptive 3** (ability to follow a hand washing routine with picture support and only one prompt);
- **Adaptive 4** (ability to demonstrate understanding of a picture schedule);
- **Cognitive 1** (ability to verbally name the six basic colors);
- **Cognitive 2** (ability to name 26 letters without a visible reward);
- **Cognitive 3** (ability to match the written names of her classmates to their pictures);
- **Cognitive 4** (ability to match 10 sight words without being told each word);
- **Cognitive 5** (ability to find her printed name somewhere in her environment);
- **Cognitive 6** (ability to count objects to 10 using 1:1 correspondence);
- **Social/Emotional/Behavior 1** (ability to respond to a verbal greeting from a peer or adult by making eye contact);
- **Social/Emotional/Behavior 2** (ability to imitate the actions of peers);
- **Social/Emotional/Behavior 3** (ability to use words to request a desired toy);
- **Speech Language 1** (ability to follow a variety of directions including 1-step, 2-step, paper and pencil, and physical directions);
- **Speech Language 2** (ability to understand descriptive terms);
- **Speech Language 3** (ability to "combine words into novel utterances by verbally labeling pictures or answering questions using 2+ words/semantic relations); and,
- **Speech Language 4** (ability to "use a communication modality (e.g., sign, verbal, augmented communication device) to consistently respond to greetings, leave-takings, and simple direct questions").

The Student's June 2020 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- **Cognitive:** 100 minutes 5 times a week (to be provided by a special education teacher)
- **Social Emotional/Behavioral:** 92 minutes 5 times a week (to be provided by a special education teacher)
- **Speech Language:** 30 minutes 1 time a week (to be provided by a speech language pathologist)
- **Adaptive Behavior:** 71 minutes 5 times a week (to be provided by a special education teacher)

The Student's June 2020 IEP provided the Student with the following related services in a *special education setting*:

- **Gross Motor:** 20 minutes 1 time a week (to be provided by a physical therapist)
- **Fine Motor:** 25 minutes 1 time a week (to be provided by a certified occupational therapy assistant)

The Student's June 2020 IEP provided the Student with the following supplementary services in a *general education setting*:

- **Paraeducator Support:** 300 minutes 5 time a week (to be provided by a special education assistant)

The Student's June 2020 IEP indicated the Student would spend 18% of her time in the *general education setting*.

51. The District's response included a prior written notice, dated June 16, 2020. It read, in part:

Description of the Proposed or Refused Action:

We propose to implement an annual IEP for Student, based on the discussion during our meeting 6/16/2020.

The Reason We Are Proposing or Refusing to Take Action is:

Her IEP is due in early fall. This is a good time to make adjustments to the previous annual IEP. It was hoped that the IEP could be done in March at conference time, but due to the pandemic and emergency meetings for LEA representatives, not [enough] IEP team members could attend.

Any Other Factors that are Relevant to the Action:

A draft of the IEP was provided to the family in March, and again in June. Prior to the meeting Parent provided a separate document of parental input as an email attachment. This input has been uploaded into our software system as part of this IEP. This input was considered and discussed as part of the IEP meeting, with some adjustments having been made in the draft prior to our meeting.

This IEP meeting was conducted by zoom, due to the closure of school buildings during the COVID-19 pandemic.

During the meeting Parent reminded the team that she has made a request for an IEE at district expense. This issue will be addressed in a separate written notice by the Executive Director of Student Services.

Student's parents invited their private [board certified behavior analyst] BCBA, and a parent advocate to join this meeting. Only the BCBA...was able to attend by zoom.

The team also discussed which level of general education class Student will join. All agree grade 1 with closer aged peers is preferred to Kindergarten. This will allow the possibility of age peers and friendships to develop and continue as Student moves through school, even though she is one grade older.

The principal attended and participated the first hour of the meeting, and was excused by the parents due to another previous commitment.

The team continued to discuss specific goals and strategies.

The director was excused at 2:25. The team continued its discussion about specific goals and strategies. Parents also consented to excuse her.

The meeting ended at 3:15.

Description of any Other Options Considered and Rejected:

Student's parents requested that her placement for 2020-21 be fully in general education except for OT, PT, and Speech. This is declined. The District recommends that she receive her specially designed instruction toward her IEP goals primarily in the special education setting.

Student's parents also requested that 1:1 paraeducator support be provided in the general education settings and that a BCBA or [registered behavior technician] RBT be provided in that role to start, and offer training or consultation to the para staff regarding behavioral strategies to comply with working toward goals. The understanding would be that the RBT or BCBA would fade and be replaced by district paraeducators. This is declined in part. Staff (usually a para, 1:1) from the Life Skills Class will continue to accompany Student during her IEP experiences, but it is not necessary for an RBT/BCBA to perform this function.

The Reason(s) We Rejected those Options was:

During the current school year, it was difficult for Student to engage with her IEP early academic (cognitive domain) instruction parallel to the learning activities provided to her kindergarten peers, even with 1:1 para providing instruction, frequent prompting and redirection. She was much more engaged and able to make progress toward those goals during instruction and activities in the smaller setting of the life skills classroom. She is not currently able to follow or engage with the instruction being offered by the kindergarten teacher. We recommend that her general education experiences be focused more on times when she can practice her adaptive, communication and social/emotional skills, as well as fine/gross motor skills through classroom activities with supports as appropriate.

Student has had paraeducator support during all her general education experiences this school year, usually 1:1 as she is the only student from the Life skills class participating at that time.

The District has a staff member who is a licensed BCBA. The team can benefit from consultation between the Life Skills paraeducators and a BCBA. The District's BCBA and parent's private BCBA can share ideas and strategies with a release in place. During our

discussion, parents clarified that the goal would be to train staff, and to ultimately reduce reliance on paras 1:1 over time.

A description of each evaluation, procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows (If initial evaluation or reevaluation, include the areas being assessed and the purpose):

Classroom data, parent and BCBA input. Detailed discussion during the IEP team meeting.

52. The District's response did not include a separate progress report dated June 16, 2020. But the Student's June 2020 IEP did include present levels of academic and functional performance that related to the Student's goals in her September 2019 Amended IEP. For example:

- **Adaptive 1** (ability to complete a 4-step cubby routine):
 - Student is not yet independent in following a four step cubbie routine at the beginning or end of the day (0% independence). Without prompts at each step, Student will sometimes put her coat in a cubbie not her own and drop her backpack on the floor. However, in the smaller classroom setting, Student walks in and puts her coat and backpack in her basket with 80% accuracy.
- **Adaptive 2** (ability to draw a horizontal, vertical, and diagonal line after modeled by an adult):
 - Student briefly scribbles intentionally on her work but is not yet able to imitate a horizontal, vertical or diagonal line modeled by an adult. (0%)
- **Adaptive 3** (ability to increase independence in her hand-washing routine):
 - Student does not yet independently follow a hand washing routine (0%) but requires prompts at each step.
- **Adaptive 4** (ability to increase independence in unzipping and taking off her coat):
 - Student now unsnaps her coat, in fact she dislikes having it snapped (her coat does not have a zipper) and undoes her coat even when outside.
- **Cognitive 1** (ability to verbally name the six basic colors):
 - If told the names of four colors, Student has repeated three of four correctly.
- **Cognitive 2** (ability to match lowercase and uppercase letters):
 - Student can match upper to lower case letters...If given a worksheet with four upper case letters each followed by a field of three lower case letters, not told the names of the lower case letters, not having a reward in her line of sight, and asked to choose from the three the correct match, her accuracy varies from 0/4 to 3/4 correct matches.
- **Cognitive 3** (ability to count objects to ten);
 - Student is not yet identifying numbers, counting objects with 1:1 correspondence or counting aloud (0%).
- **Cognitive 4** (ability to "find her first name in print in the environment");
 - Student does not yet identify her name, even when paired with a picture of herself, in the classroom environment or in a list of names (0%).
- **Social Emotional 1** (ability to imitate the actions of peers):
 - Student does not yet imitate the actions of peers around her (0 of 5 occasions)
- **Social Emotional 2** (ability to "respond to a peer's greeting with eye contact, verbal response, and physical response):
 - Student is now responding to another saying her name by making eye contact 2 of 5 opportunities but she does not respond with a wave or high five. Student's success increases if the other is holding something of great interest to her.
- **Social Emotional 3** (ability to request a turn to play with a desired object):

- Student has a favorite inside toy which she seeks out during choice time...Student...does not yet use words ("turn please") to request a toy or object. (0 of 5 occasions).
- **Social Emotional 4** (ability to maintain interactive play with one or more peers for five or more minutes):
 - Student plays alongside peers in the general education setting but is not interested in interacting with them, even when others try to include her in play, she says "no" or walks away. In the special education classroom, Student enjoys playing with the other children and has two favorite friends who she not only allows to play with her but she also seeks them out and has initiated play frequently, smiling and enjoying herself as they hold hands, run together and play on recess equipment. Student maintains play with one special friend for 5 - 10 minutes.
- **Speech Language 1** (ability to verbally provide action words that describe an observed activity):
 - MET as written. Student can consistently label 10 early developing verbs with 80% accuracy. She is more successful in labeling verbs that are acted out or in a short video rather than shown to her in pictures. When verbs are depicted in a static medium, she sometimes struggles to identify the action taking place. She can reliably label "sleep, jump, eat, kick, go, stop, give, run, wash, dance, turn."
- **Speech Language 2** (ability "to combine vocabulary by formulating verbal requests that contain 2 or more words"):
 - MET in therapy with modeling, verbal cues, and visual supports (e.g. sentence strip). Student most often combines a verb with a noun in requesting opportunities, where she is immediately and tangibly reinforced. She does benefit from visual supports in the form of a sentence strip or requesting mat with pictures, and sometimes verbal and gestural cueing such as "use your words," or "tell me, I want __ ." She most often requests food items or highly preferred games (bubbles, puppy). She will sometimes, in the context of motivating activities, combine a verb with a noun if it is modeled for her and she is cued to do so such as "blow bubble" or "puppy go" if the activity or toy is paused and not resumed until she produces an utterance.
- **Speech Language 3** (ability to increase social communication skills and turn-taking when engaged with peers):
 - MIXED. Student is able to take 3 turns with a peer with modeling, verbal cueing, and at times hand-overhand support, especially as a way to teach the activity. She will take turns rolling a large colored dice, passing a musical potato (hot potato game), and pushing a button to get bubbles in therapy. Student does need highly structured activities with cueing and modeling to take turns, and often needs tangible reinforcement such as a food item as well. She is beginning to initiate and sustain peer interactions in her special education classroom, but is not yet sustaining these interactions for at least 3 turns.
- **Speech Language 4** (ability to respond to a variety of questions during structured opportunities):
 - Student can respond to concrete and direct questions such as "what is it?" "what is she doing?" in response to pictures and objects with 70% accuracy that relate to early developing nouns and verbs. She does best with food, animals, toys, and common items such as book, chair, paper. She can respond to "what are they doing?" questions that relate to the verbs she is consistently labeling, but sometimes does not understand what action is taking place if only provided with a picture without the action being acted out. Verbs she is consistently able to identify and label are listed above.

- **Speech Language 5** (ability to understand descriptive terms):
 - NOT YET MET. This goal is a little more challenging for Student. Descriptive terms are more abstract than nouns or verbs, and Student is a concrete communicator. She will identify "big" and "little" but is inconsistent in labeling other descriptive terms at this time. She is also having difficulty consistently labeling colors in her classroom. We will continue to work on this.
- **Speech Language 6** (ability to demonstrate knowledge of spatial terms and directions):
 - She is able to follow simple directions that use direct concrete grammar and refer to in/out and on/off with 80% accuracy. These are the most frequent and earliest developing spatial terms. She has not yet mastered other spatial terms, and sometimes it seems that she is teasing when following directions with spatial terms because she will at times throw the item on the floor rather than follow the direction and laugh.
- **Speech Language 7** (ability to produce certain age-appropriate speech sounds):
 - Student does best with bilabial sounds. These sounds are created by pressing your lips together. They are among the earliest developing sounds, are easy to visualize, and are a little simpler motorically to produce. Sounds in this class include /b/ l/ p/ m/ and she can produce them in isolation and CV, VG, CVC, and CVCV combinations with 90% accuracy. She has more difficulty with alveolar sounds (t/d), where the tongue tip needs to be placed just behind the teeth, but can imitate these sounds with 70% accuracy with repeated modeling. Fricative sounds are more difficult for Student, such as /s/ 'sh' 'v' and affricate sounds such as 'ch' and 'j' possibly because the motor movement necessary is more complex and the placement of the articulators are not as easy to visualize. She is not yet producing /r/, one of the most challenging phonemes to produce. She also has some tongue protrusion on these sounds which complicates her ability to produce them accurately.

53. The District's response included a lesson plan for the week of June 15 through 19, 2020.

54. June 19, 2020 was the last day of the 2019-2020 school year for the District.

55. According to the Student's general education kindergarten teacher, from March 16 (when regular, in-person instruction first ended) through June 19, 2020 (the last day of school):

I did 3 supplemental mailings in large...envelopes during distance learning in the spring of 2020 for my students. I did one standard size card mailing in April as a check-in on my students.

...

Parents were [also] given work templates for lessons and activities that included both online and nontechnology practice activities to do with their children that my entire grade level team worked on together each week.

...

Students zoomed with me and watched my youtube read aloud videos. One week in May Student could not make the zoom appointment time and her mother and I rescheduled so I could zoom with her and her mother alone - and I read to Student the book I had read to the entire class.

56. On June 23, 2020, the director responded to the Parent's second email of June 11, 2020, asking if the Parent was saying she disagreed with the March 25, 2019 evaluation of the Student.

On June 25, 2020, the Parent responded, stating she did, in fact have problems with the March 25, 2019 evaluation of the Student and that was why she was requesting an IEE.

57. On June 25, 2020, the director responded to the Parent's earlier request for an IEE. In this email, the director: a) stated the District disagreed that its evaluation of March 25, 2019 was faulty; and b) provided the Parent with the following:
- A relevant prior written notice;
 - A copy of WAC 392-172A-05005 regarding IEEs;
 - A copy of the District's procedure for IEE requests; and,
 - A list of potential IEE providers for the Parent.

The prior written notice read, in part:

Description of the Proposed or Refused Action:

The District agrees to the parents' request for an [IEE] at District expense for Student.

The Reason We Are Proposing or Refusing to Take Action is:

On 6/12/2020 the Executive Director of Student Services received an email request from the parents of Student seeking an [IEE] at District expense, stating disagreement with the current IEP in place at the time of the request. Since that time, the IEP team convened, and a new annual IEP has been developed.

The most recent Evaluation conducted by the district was 3/25/2019. Explicit disagreement with the current evaluation was not stated in the original request.

On 6/25/2020 the District received a follow up email clarification from the parents, stating their disagreement with the Evaluation of 3/25/19, as her educational and social emotional and behavioral programming are based on this evaluation. They additionally restated a specific desire to have non-[District] employees conduct an evaluation.

Any Other Factors that are Relevant to the Action:

The District asked for clarification of the original request by email on 6/23/2020, because it was based on disagreement with the IEP, not explicitly disagreement with the evaluation, as required by state regulations. A copy of WAC 392-172A-05005 specific to IEEs was attached for review. A second copy is included as an attachment to this notice.

Parents also requested a copy of the District's policy/procedure regarding [IEEs] at District expense. A copy of Procedure 2161 P, page 9 is also being provided with this notice. You may go to the [District's] website to review the entire policy & procedure for special education under the District, School Board tab, if you wish.

The District has a list of IEE providers that are in our region which may be considered. This is being provided to you as a courtesy, and following the above mentioned WAC. You are not required to select an evaluator from this list.

Please be sure your chosen provider meets the criteria to provide this service, as stated in the WAC and [District] procedure 2161P.

When you have selected an evaluator, please have them complete releases to exchange information, so we can coordinate billing details and provide records they may wish to review. Be advised payment will not be made until the evaluation is complete and a copy

of the final report has been provided to the District. Be sure to let them know you have received approval from [District] to receive an IEE at District expense, and to contact my office to coordinate details.

This Notice and related documents are being provided to you electronically, as attachments. You may link to the Notice of Procedural Safeguards by using the link at the bottom of this notice.

Hard copies of these documents will also be provided to you, for your recordkeeping.

58. On June 27, 2020, the Parent selected a provider from the list of IEE providers the District gave her on June 25, 2020.

59. According to the Student's physical therapist (PT):

During the COVID-19 pandemic school closure [in the spring of 2020], gross motor services for Student were implemented as part of the collaborative continuous learning plan distributed every week between April 1, 2020 through June 19, 2020. Asynchronous¹² gross motor activities were developed and presented weekly through the continuous learning plan to students that did not require direct therapy intervention. The activities were tailored toward Student and her peers with a similar gross motor skill set and included various applications, websites and skill instruction to promote physical activity.¹³

60. On August 12, 2020, OSPI received the Parent's complaint and opened this investigation.

61. On September 14, 2020, OSPI received the Parent's reply to the District's response. In relation to her allegation that the Student's September 2019 Amended IEP was not implemented during the spring 2020 COVID disruption, the Parent's reply stated, in part:

The District began implementing remote learning for Student through its Continuous Learning Plan on April 1, 2020 and Student's April 22, 2019 IEP remained in effect. The District claims that Student's 910 minutes per week of SDI in cognitive, adaptive behavior, social emotional/behavioral, and speech/language were satisfied by emailed activities and materials, and weekly zoom meetings, known as remote learning. The District also claims that the new IEP, developed on June 16, 2020, which provided 1390 minutes of SDI were also satisfied by remote learning. The District also states that "school districts were not obligated to provide special education services exactly as stated in the Student's IEP during remote learning".

However, no services were provided to Student during this time as detailed in the following:

1. Student is limited verbally, does not read, write, has a short attention span, and requires touch and manipulatives to direct and re-direct her learning. She does not understand

12 "Asynchronous learning does not require real-time interaction; instead, content is available online for students to access when it best suits their schedules, and assignments are completed to deadlines." <https://thebestschools.org/magazine/synchronous-vs-asynchronous-education/>

13 During the course of this investigation, the District clarified: the PT did not have "direct contact with the student was made during the COVID closure, in person or by video. The PT did contribute to the weekly Continuous Learning plan schedule of suggested activities under gross/fine motor with this Student's skill development level in mind."

- that people in zoom virtual meetings online, or on the phone are “live” and therefore does not respond to it as such. It was not clear in the District’s response as to whether these meetings were to provide direct instruction or peer support but due to her lack of understanding, these provided neither. For Student, this mode of educational support and delivery (zoom virtual, online, or telephone) are not appropriate and they provided no benefit.
2. The weekly lesson plans provided to parent by email were not individualized for Student. There were sent to all the parents in her class. Emails to the parent stated things like “attached are possible activities this week. Feel free to use these suggestions as you see fit” or “feel free to modify the activities to fit your child’s needs”. This indicates that it is up to the parent to have the expertise to modify the work and the training to implement, of which I have neither. For Student, this mode of educational support and delivery (general email packets) are not appropriate and they provided no benefit.
 3. In the Adaptive Daily Checklist provided in the Weekly Lesson plan were hygiene tasks that are already done daily at home (i.e., brush my teeth, get dressed, clean my face). None of these tasks are part of her IEP Adaptive Goals and should not be included as SDI minutes.
 4. Progress on Student’s IEP goals were not directly addressed in any of Weekly Plan emails or zoom meetings. Her progress on these goals were not tracked or documented.
 5. Paraeducator minutes were not provided.

In summary...due to her significant and complex needs, the educational opportunities offered to Student were inappropriate, ineffective, and provided no benefit.

In relation to her allegation that she was denied proper participation in the development and/or revision of the Student’s IEP during the March 2020 through June 2020 school facility closures, the Parent stated as follows:

Prior to the IEP meeting on June 16, 2020, I send director an email requesting Compensatory Services for Student, due to the Special Education Services and Related Services not provided to her since March 13, 2020 as set out on her IEP dated 6/10/19. Director specifically requested that we not discuss that issue as part of Student’s annual IEP meeting and instead, she would address the matter of lost services, additional learning opportunities, methods to gather that data, and to define that in the IEP separately, perhaps in late July or August, but prior to the start of the new school year.

During the IEP meeting on June 16, 2020, I asked if we were to proceed as if school would operate as usual on September 9, 2020 and I was told “yes” so we discussed appropriate goals and services with that consideration in mind.

I mentioned Student’s regression over the months since the school closure on March 13, 2020, but in good faith of director’s email, I did not bring up the issue of Compensatory Services or anything related to that matter.

In summary, I was denied proper participation in the development and/or revision of Student’s IEP because my request to discuss lost services and progress from March 13, 2020 and Compensatory Services in the IEP meeting was denied.

2020-2021 School Year

62. According to the District, it has begun the 2020-2021 school year in a fully remote setting, meaning no regular, in-person instruction is taking place. Furthermore:

The Student's IEP team has not yet met to discuss recovery services for this student.

We are waiting to hold such meetings until we have returned to in-person services and have the opportunity to gather data on where students are relative to their academic and functional performance before the school building closures.

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged the District did not implement the Student's September 2019 amended individualized education program (IEP) that was in effect during the COVID-19 closure.

During the COVID-19 closure, school districts were responsible for providing a free appropriate public education (FAPE) to students with IEPs. FAPE includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability. Due to the exceptional nature of the COVID-19 closure, though, districts were not expected to deliver IEP services exactly as stated in students' IEPs.

OSPI described the nature of instruction that students were to receive during the COVID-19 closure as follows: "[School districts] should avoid assuming that continuity of education outside of a typical school building can only occur through online means. Districts will provide instruction using printed online learning materials, phone contact, email, technology-based virtual instruction, or a combination to meet student needs."

All schools were expected to have begun providing educational services for all students by March 30, 2020, which OSPI termed "Continuous Learning 2020." And OSPI's guidance stated districts were to provide students with IEPs student-specific continuous learning opportunities beginning March 30, 2020. Thus, beginning March 30, 2020, the District should have begun providing the Student with opportunities to access individualized instruction.

Here, the District did not implement the Student's September 2019 amended IEP following the closure of schools in mid-March 2020. The Student was provided with some services between March 16 and 29, 2020. For example, the general education teacher provided the Student with a science packet and a writing prompt. The Student also accessed an unknown number of pre-recorded videos wherein the general education teacher read a book and/or passage.

Beginning April 1, 2020, the District provided the Student with what it termed "Continuous Learning services." Principally, these services consisted of weekly lesson plans with assignments for the Student to complete at home and periodic Zoom sessions with both the life skills teacher and the general education teacher.

In her reply, the Parent stated: "the weekly lesson plans...were not individualized for Student. [The same weekly lesson plans] were sent to all the parents in Student's class." In actuality, based on this investigation, the foregoing services appear to have been specific to the Student. For example, while it is true that each student in the Student's life skills class received the same "Continuous Learning services," this was, as explained by the District, because "many of the students in the [life skills] program have similar needs, and similar goal targets due to their age and disability needs." The District further stated that, in the weeks before April 1, 2020:

The building special education team met weekly to focus on [developing Continuous Learning services for] students in the life skills class, including Student, to identify a variety of activities at different levels for cognitive, adaptive, and social emotional/behavior engagement at home, to include considerations for speech/language, occupational therapy and physical therapy needs.

In conclusion then, in accordance with OSPI's guidance, the Continuous Learning services provided to the Student appear to have been specific to the Student.

Here, the record shows the District materially implemented its Continuous Learning plan for the Student from March 30 through June 19, 2020 (the last day of the 2019-2020 school year). For example, during this roughly twelve-week period, the Student was provided with the following:

- At least 10 weeks of weekly lesson plans, with said lesson plans including assignments for the Student to complete at home. Typically, these weekly lesson plans included activities in the following areas: cognitive; fine motor; gross motor; speech and language; adaptive; and social/emotional/behavior.¹⁴
- At least two zoom meetings with the life skills teacher.
- At least four zoom meetings with the entirety of the life skills class and the life skills teacher.¹⁵
- On April 10, 2020, the general education teacher read a story to the Student via zoom.¹⁶

¹⁴ The District did not have a mechanism to track how many assignments in each weekly lesson plan the Student completed. In her reply, the Parent states the weekly lesson plans to be completed at home were an inappropriate "mode of educational support and delivery" for the Student and that "they provided no benefit."

¹⁵ It is possible the Student attended more Zoom meetings of the life skills class. In its response, the District stated: the life skills teacher held such meetings irregularly at the start of the spring 2020 COVID disruption; then these meetings became regularly scheduled and took place once a week in the afternoon for 20 to 30 minutes; and that attendance was optional for students. But the record, as provided to OSPI, only supports a finding that the Student attended four Zoom meetings with the life skills class.

¹⁶ It is possible the Student attended Zoom meetings with her general education class. In its response, the District states the Student's general education teacher had weekly class meetings via zoom at the start of the spring 2020 COVID disruption, but then these meetings took place every other week. But the record, as provided to OSPI, does not contain definitive proof the Student attended any such meetings. In her reply, the Parent states the Zoom meetings were an inappropriate "mode of educational support and delivery" for the Student and that "they provided no benefit."

In conclusion, OSPI finds the District materially implemented its Continuous Learning plan for the Student from March 30 through June 19, 2020.

Finally, districts must provide parents with progress reporting on the student's measurable annual goals. The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals.

Here, the Student's September 2019 Amended IEP stated the Parent would be informed of the Student's progress on the annual goals in the following manner: 1) cognitive, adaptive, and social emotional goals: a written progress report and a parent conference once a semester; and 2) speech language goals: a written progress report once a semester.

A parent-teacher conference took place on March 11, 2020. From the information provided to OSPI during the course of this investigation, it is not clear to what extent, if at all, the Student's progress on the cognitive, adaptive, and social emotional goals in her September 2019 amended IEP were discussed at this meeting. Furthermore, the District's response did not include a progress report dated near the end of the spring 2020 semester. This represents a failure to implement the Student's September 2019 amended IEP. However, for the following reason, it does not represent a material failure to implement the Student's September 2019 amended IEP because the Student's June 2020 IEP did include present levels of academic and functional performance that related to the Student's goals in her September 2019 Amended IEP, and the Parent was provided with a copy of the Student's June 2020 IEP.¹⁷ Therefore, no corrective actions are warranted as the Parent was provided progress information through the June 2020 IEP, despite not receiving progress reports specified in the previous IEP.

Issue Two: Parent Participation – The Parent alleged she was denied participation in the June 16, 2020 IEP meeting, in that the Student's IEP team did not discuss whether the Student required "compensatory education" because of the spring 2020 COVID disruption—despite the Parent's request, prior to the June 16, 2020 IEP meeting, that the IEP team discuss that issue.¹⁸

¹⁷ OSPI notes the following: it appears the Student mastered the following goals in the September 2019 amended IEP: adaptive 4; speech language 1 – 2. It appears the Student made some progress on the following goals in the September 2019 amended IEP: cognitive 1 – 2; social-emotional 2; social-emotional 4; and speech language 3 – 7. It appears the Student made little-to-no progress on the following goals in the September 2019 amended IEP: adaptive 1 – 3; cognitive 3 – 4; social emotional 1; and social emotional 3.

¹⁸ The Parent's complaint also read, in part: "Failed to provide the prior written notice correctly in order for me to fully participate in decisions made for my child." From the Parent's complaint and reply, it was not clear in what context she was alleging a prior written notice should have been issued to her but was not. Upon review of all the information provided to OSPI during the course of this investigation, it is believed the Parent's allegation was: the District did not provide her with a prior written notice documenting its decision to not discuss the issue of "compensatory" education at the June 16, 2020 IEP meeting. Regardless,

In its guidance, OSPI has utilized the term “recovery services” in regard to whether students with IEPs require additional services to account for any IEP implementation failures during the spring 2020 COVID disruption:

The term ‘recovery services’ may depict a variety of scenarios. It may describe services need to remedy a denial of FAPE by a district (typically referred to during dispute resolution as ‘compensatory services’), and also to describe additional, supplemental services needed to address gaps in service delivery due to COVID-19 health/safely limitations, of which districts had no control.

The extent of a student’s recovery services, if needed, must be an individualized determination made by the IEP team. When determining the extent to which recovery services may be needed, districts should consider multiple factors, including what services were provided during the spring 2020 school facility closures, the degree to which the student was able to participate in those services, any regression in the student’s skills, progress or lack of progress made in the general education curriculum and toward meeting the IEP goals, and parent input.

While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services through remote and/or hybrid learning models in fall 2020 in order to assist students in making progress toward their IEP goals and to mitigate the impact of the spring 2020 school facility closures on the student.

Here, on June 11, 2020, the Parent emailed the director, stating: “I am requesting compensatory education for the special education services and related services not provided to Student [during the spring 2020 COVID disruption].” From her email, it is clear the Parent was requesting additional services for the Student due to the fact that the Student’s September 2019 amended IEP was not fully implemented during the spring 2020 COVID closure. Accordingly, despite the fact that the Parent used the term “compensatory education,” she was referring to what OSPI has termed “recovery services.”

On June 12, 2020, the director responded to the Parent’s email, stating, in part: that the director wanted to keep the June 16, 2020 IEP meeting devoted solely to the creation of a new annual IEP for the Student—and not discuss whether the Student required “compensatory education”; that forthcoming guidance from OSPI would help clarify how to calculate what “compensatory education” was owed to students with IEPs due to the spring 2020 COVID disruption; the fact that additional data and information on the Student might need to be gathered prior to discussing the issue of “compensatory education”; and that the District would meet to discuss the Parent’s request, likely in either late July or August. Under OSPI’s guidance, the director’s decision to postpone the discussion as to whether the Student required recovery services was permissible.

For example, in terms of timeliness, OSPI has made two observations: i) a full and fair discussion of the issue of recovery services may not be able to be had until in-person school operations

OSPI notes the following: the District provided the Parent with timely, and legally sufficient prior written notices under WAC 392-172A-05010, on both June 16, 2020 (which related to the Student’s June 16, 2020 IEP meeting) and June 25, 2020 (which related to the Parent’s request for an independent educational evaluation).

resumed; but ii) a student's IEP team could choose to discuss the issue of recovery services prior to the resumption of regular, in-person services, if it has the data to do so. Here, as of June 2020, the District was not providing regular, in-person educational services. Therefore, the director's June 12, 2020 decision to postpone the discussion of whether the Student required recovery services was permissible under OSPI's guidance.¹⁹

It is clear, however, that in so deciding, the director made a decision related to the provision of FAPE to the Student. Therefore, a prior written notice was required to be provided to the Parent. And the question becomes whether the director's email of June 12, 2020 contained all of the required elements of a prior written notice under WAC 392-172-05010.

A prior written notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal.

Here, it is clear the director's email of June 12, 2020 contained all of the required elements except the following: a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards, and if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and, sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice. The director's email of June 12, 2020 did clearly state what decision was being made, why it was being made, and what information was relevant to the decision. Therefore, there has been a minor failure to follow the IDEA in this regard and no corrective actions are required. The District is therefore reminded that:

Prior written notices must be provided to parents anytime the District proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. And prior written notices must contain, in part: a statement that the parents

¹⁹ According to the District, it has begun the 2020-2021 school year in a fully remote setting, meaning no regular, in-person instruction is taking place. The District further stated, "The Student's IEP team has not yet met to discuss recovery services for this student. We are waiting to hold such meetings until we have returned to in-person services and have the opportunity to gather data on where students are relative to their academic and functional performance before the school building closures." OSPI notes: under current guidance, this would be a permissible approach for the Student's IEP team to take. However, nothing prevents the Student's IEP team from discussing recovery services prior to the resumption of regular, in-person schooling. As the Parent has indicated a desire to move forward with the discussion, OSPI recommends that the IEP team meet, review Student progress on IEP goals, and make a decision.

of a student eligible or referred for special education have protection under the procedural safeguards, and if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and, sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ___ day of October, 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.)