

**St. Louis Park Public School District 0283-01**  
**Minnesota State Educational Agency**

21-002C

September 21, 2020

Dear Superintendent Osei and [ ]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [ ] (Complainant) brought on behalf of [ ](Student), a student attending school in St. Louis Park Public School District 0283-01 (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after July 22, 2019, one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issues from MDE's letter dated July 29, 2020. The District provided a written response to the complaint on August 18, 2020. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action.

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on each issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

**Issue 1**

The Complainant alleges that, between March 30, 2020 and the end of the 2019-20 school year, the District failed to provide the Student with special education and related services in conformity with the Student's individualized education program (IEP), resulting in a denial of a free appropriate public education (FAPE).

## Issue 2

The Complainant alleges that, during spring 2020, the District failed to conduct an evaluation of the Student within 30 school days from the date the District received parental permission to conduct the evaluation.

Issues 1 and 2 have been combined for organizational purposes.

### Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended [ ] in the District during the time period covered by this complaint.
2. The Complainant is the Student's parent.
3. A reevaluation of the Student was completed in May 2019, and the evaluation team determined that the Student continued to demonstrate a need for special education and related services [ ].
4. The Student's IEP in effect at the start of the 2019-20 school year was developed at an IEP team meeting on May 15, 2019 (May 2019 IEP).
5. In a phone conference on February 12, 2020, held in response to the Complainant's concerns about the Student's ability to focus on instruction in a large group setting, the Complainant and the Student's IEP manager discussed increasing the Student's special education services.
6. On February 18, 2020, the District provided prior written notice proposing to increase the Student's special education services from 30 minutes per day to 120 minutes per day and to add two snack breaks to the Student's schedule. The Complainant signed in agreement with the proposed change to the Student's IEP on February 18, 2020 (February 2020 IEP).
7. The Student's February 2020 IEP contained annual goals in the areas of self-help/functional skills, communication, motor skills/physical development, and emotional, social, and behavioral development. Staff reported that the Student was able to complete grade-level academic work.
8. The present level information in the Student's February 2020 IEP indicated that the Student currently required adult support at least 60 percent of the time in all goal areas. For example, the Student's annual goal in the area of self-help/function skills stated:

During his school day, [Student] will increase his ability to attend to task and participate in classroom routines and activities from a level of adult support 60 [percent] of the time to a level that allows him to function more independently with adult support 50 [percent] of the time by June 2020.

9. To enable the Student to make progress toward his annual goals, the Student's February 2020 IEP provided for the following special education and related services:

Service Type	Anticipated Frequency	Length of Session	Location
[ ]	3 times per week	30 minutes	Regular Education
[ ]	2 times per week	30 minutes	[Special Education] Resource Room
[ ]	1 time per day	30 minutes	[Special Education] Resource Room
[ ]	1 time per day	60 minutes	Special Education Room
Speech-Language Pathology	2 times per week	30 minutes	Speech Language Pathology Room

10. In addition, the Student's February 2020 IEP also provided for weekly indirect services for occupational therapy, speech-language pathology, and [ ].

11. The Least Restrictive Environment (LRE) Explanation in the Student's February 2020 IEP provided the following information about the Student's special education and related services:

[Student's] primary placement will be in the regular [ ] classroom. In addition, he will receive small group instruction in the resource room to learn and gain academic as well as self-help/functional skills in a quiet environment with less distraction and more direct teaching opportunities ... He will receive some support in the regular education classroom to transfer these skills to this setting. [Student] will also receive small group instruction [ ]. This time will provide a smaller setting to learn and practice skills. He will be pulled out during a time that he will not miss any core instruction.

12. On February 25, 2020, the Student's IEP team met to discuss the development of a reevaluation plan to address the Student's changing needs [ ].

13. On March 2, 2020, the District provided prior written notice proposing a reevaluation, explaining:

The [D]istrict is proposing a comprehensive evaluation for [Student] [ ]. The team wants to complete the evaluation at this time to gather more information on his cognitive profile and adaptive skills. In addition, the disability categories of [ ] will be evaluated to determine if [Student] meets initial Minnesota state criteria for special education services.

14. On March 3, 2020, the District received the Complainant's signed permission to proceed with the reevaluation.

15. In response to the global COVID-19 pandemic, Minnesota public schools were closed March 18-27, 2020 to prepare for distance learning (Closure Period).<sup>1</sup>

16. Minnesota public school buildings and facilities were closed for typical in-school instruction from March 30 to May 4, 2020 (Distance Learning Period) and were ordered to provide continuous education based on the distance learning plans developed during the Closure Period.<sup>2</sup>

17. The District's spring break was March 30-April 3, 2020, and the District's Distance Learning Period began on April 6, 2020.

18. On March 24, 2020, the District provided the following information about its Distance Learning Plan to the Complainant via email:

All students with disabilities will continue to receive specialized instruction and related services through a distance learning model to meet their identified needs.

[District's] distance learning model includes equitable access to specialized instruction and related services for students with disabilities so that they have access to general education standards and continue to demonstrate progress toward the general education standards and IFSP [individualized family service plan]/IEP goals.

During extended school closures, [District] remains responsible for the [FAPE] of its students eligible for special education services who have an [IFSP] or an [IEP]. [District] will continue to meet the requirements of ... the Individuals with Disabilities Education Act (IDEA), Part B and Part C. [District] has considered the following:

How we are communicating with parents and guardians:

- Parents and guardians will be provided communication regarding services and instruction via a variety of electronic platforms. Case managers will continue to be the point of contact for IEP related questions for families, general education teachers, and related service providers.

- During the week of March 23-26, case managers will be working with general education and related service providers in developing distance learning plans for students with special education needs.

- [District] will review the delivery of special education and related services, as well as general education curriculum to ensure that students with disabilities have equal access to distance learning. This includes children from birth through age 21.

...

How we are providing direct instruction:

- Instruction will be provided by special education staff, including related service providers.

...

- [District] will provide direct instruction through a variety of means consistent with the distance learning section of the MDE School Closure Guidance, including but not limited to:

- Paper packets, learning bags or worksheets

- Textbooks

- Virtual check-ins using Google meets or uploaded videos

- Telephone and/or video instruction via a [virtual meeting] platform ... Online resources which may include but are not limited to [eleven named online resources] and other specific online resources to address IEP goals and objectives

- Instruction and materials may include but are not limited to (dependent upon the student's age level): [six named virtual learning applications]

- As [District] moves into a distance personalized-flex learning model, paraprofessionals may provide support as directed by the case manager to support the student in making progress towards IEP goals and objectives. This will not include in-home instruction for the safety of all. It is the case manager's responsibility to make sure that instructional materials are provided that students can access through a distance learning model. Case managers can take into account the student's learning environment at home, allowing for flexibility of when the materials are accessed.

How we are meeting due process guidelines:

- As annual IFSP/IEP dates come due, we will hold IFSP/IEP meetings virtually.

- If an evaluation of a student with a disability requires a face-to-face meeting or observation, the evaluation would need to be delayed until school resumes. Evaluations and reevaluations that do not require face-to-face assessments or observations may take place while schools are closed, if the parent consents.

19. During the Closure Period, the District provided a computer for the Student to use at home, and Staff video-conferenced with him to explain the rules for computer use.

20. A communication log and emails provided by the District show that, between April 6 and 8, 2020 (the first three days of the District's Distance Learning Period), the Student's IEP manager communicated with the Complainant via phone and email about the Student's special education services and speech-language services and gathered information about the Student's initial response to distance learning in order to develop an Individualized Distance Learning Plan (IDLDP) for the Student.

21. Staff reported determining with the Complainant that one-on-one virtual meetings with the Student's

IEP manager/special education teacher, three times per week, along with one speech-language virtual session per week, seemed appropriate to meet the Student's needs and to help him access his general education instruction.

22. The Complainant reported that District Staff informed her what the Student's special education services would be during distance learning but did not recall having input about the Student's IDLP.

23. On April 13, 2020, the District provided the Complainant with a copy of an IDLP for the Student via email (April 2020 IDLP). The Student's April 2020 IDLP stated that the following goals would be addressed during the Distance Learning Period:

- improve language skills and articulation skills
- improve fine motor skills
- Improve coping skills and knowledge of expected behavior.

24. The Student's April 2020 IDLP provided the following overview of the Student's special education and related services during the Distance Learning Period:

- To support Social Emotional learning the case manager will provide virtual meetings three times per week, consultation for modification of assignments, email and/or phone calls, links to [ ] videos and consultation with the general education teacher. The case manager will monitor progress.
- To support [ ] Language the speech language pathologist will provide a video meeting, emails and/or phone calls. The Speech Language Pathologist will monitor progress.
- To support fine motor and sensorimotor, service providers will consult with special education team and may share activities using email.

25. The Student's April 2020 IDLP stated that it would be implemented on school days designated as distance learning days beginning April 6, 2020.

26. The District did not provide prior written notice with the April 2020 IDLP.

27. Staff reported that the virtual meetings were scheduled for 30 minutes, three times per week, but the Student's engagement varied and he was often [ ] in and out of the room, so Staff spent time discussing with the Complainant ways to support the Student. Staff reported providing social stories and other resources in response to concerns raised by the Complainant in these meetings.

28. The District reported that the Student attended nine of 18 scheduled virtual meetings with his IEP manager. Staff reported checking in with the Complainant via email when the Student missed a virtual meeting, and the Complainant often replying that the Student was having a difficult week. [ ].

29. The District reported that the Student's speech-language pathologist also attempted to set up virtual one-on-one speech sessions with the Student but struggled to do so first because of the provider's mistyping of the Complainant's email address and later because of the Student's limited ability to attend to a virtual lesson. Staff reported that although the speech-language provider initially intended to schedule a weekly virtual session with the Student, Staff decided that the provider should instead attend one of the Student's already-scheduled virtual meetings with the Student's IEP manager in order to provide articulation practice with the Student.

30. Notes provided by the District's speech-language pathologist showed four speech sessions were scheduled but missed due to information being sent to the wrong email address between April 10 and May 14, 2020. After invitations were sent to the Complainant's correct email address, the Student attended one of three scheduled sessions, with the provider noting the following about that session:

"[IEP manager] and I met with [Student] and [Complainant]. He had a difficult time attending and was in

frequent movement."

31. The Complainant also recalled that the Student was not able to engage with the provider via a screen. The Complainant reported that the Student had very little interest in engaging with on-screen learning during the distance learning period and the Complainant did not want to promote screen time.

32. Notes provided by the District's occupational therapist indicated that the occupational therapist continued to consult with the Student's special education team once or twice per week. In addition, the occupational therapist emailed the Complainant and the Student's IEP manager calendars of daily fine motor activity ideas [ ]. The occupational therapist also emailed the Complainant approximately every other week with video demonstrations of various activities that she thought the Student would enjoy.

33. On April 9, 2020, the Complainant emailed the Student's general education teacher and IEP manager the following message:

[Student] is really struggling with the long distance learning. He does okay on most of the short computer assignments with some help from me. However he is really struggling with the writing part. He is refusing to let me use a highlighter and gets upset when I write out a model sentence for him. [ ] Do [e]ither of you have suggestions that can help me help him? [ ] I was thinking of just ordering more work books for him to work on. He also is refusing to sit and listen to [educational assistant] reading the chapter book. It is just too long for him to sit still.

34. That same day, the Student's IEP manager and occupational therapist responded to the Complainant with suggestions about adapting activities, using video demonstrations of letter writing, beginning activities with a movement break, and trying fine motor activities other than writing. The Student's general education teacher also emailed the Complainant encouraging the Student to focus on shorter lessons and providing some [ ] worksheets for the Complainant to print at home.

35. On April 13, 2020, the Student's IEP manager notified the Complainant via email that the Student's reevaluation would be completed when "students and staff are able to attend school again," stating,

Once school resumes, the face to face testing will be completed within the remaining 30 school day evaluation timeline. A meeting will then be scheduled with the evaluation team and you to report the evaluation findings and to make an eligibility determination.

36. Staff reported that, during the distance learning period, the Student and his classmates were provided with daily access to the general education curriculum through asynchronous learning activities posted on an online application. Staff reported posting four or five learning activities each day, including daily core reading and math activities and extra activities for students and families who wanted to do more.

37. Staff also reported sending home the following materials with the Student on March 16, 2020: "[L]eveled readers at [Student's] instructional level, fine motor activities/supplies including a workbook, a writing journal, [ ] his math workbook #2, [ ] and Boardmaker learning icons."

38. The District's records indicated that the Student participated in approximately 80 learning activities through the online application. The Complainant reported that the Student required hands-on assistance to complete those activities, and the Complainant mostly utilized the physical supplies, including the Student's math workbook, reading books, and [ ] worksheets with the Student.

39. The Student's general education teacher also reported videoconferencing with the Student individually, once per week, throughout the distance learning period. Staff noted that the Student's general education class began meeting for a daily video meeting partway through the distance learning period but when the Complainant expressed that a class video meeting would be overwhelming to the Student, the Student's teacher continued making weekly video calls to the Student.

40. According to attendance records provided by the District, the Student was counted as in attendance at school (meaning the Student interacted with a teacher or completed a virtual learning activity) on all days during the District's Distance Learning Period, with the exception of five absences between May 18, 2020

and the end of the 2019-20 school year on June 4, 2020.

41. On April 24, 2020, the Distance Learning Period was extended to the end of the 2019-20 school year, and school districts were ordered to use May 1 and 4, 2020 as staff planning days.<sup>3</sup>

42. Based on the Complainant's written consent to complete the reevaluation received on March 3, 2020, the 30-school-day evaluation timeline for the Student's reevaluation lapsed on May 6, 2020, 4 with nine school days elapsing prior to the March 18-27, 2020 Closure Period.

43. On May 13, 2020, the Student's IEP team, including the Complainant, met virtually to review and revise the Student's February 2020 IEP for an annual IEP team meeting. Staff and the Complainant reported that distance learning was not discussed at this meeting, as the focus was on the Student's special education and related services during fall 2020.

44. On May 27, 2020, the District provided prior written notice proposing a revised IEP that maintained the special education and related services from the Student's February 2020 IEP. The Complainant did not object to the May 27, 2020 proposed IEP, and it went into effect after 14 calendar days.

45. On August 10, 2020, the District announced that all District students would begin the 2020-21 school year on September 8, 2020 in a distance learning instructional model, and the Student's grade level would transition to a hybrid learning instructional model on September 28, 2020.

46. Staff confirmed that the Student's reevaluation will resume when in-person instruction begins during the hybrid learning instructional model.

### **Conclusions**

1. School districts must make available to each eligible student a FAPE, consisting of special education and related services that are provided in conformity with the Student's IEP pursuant to 34 C.F.R. §§ 300.17 and 300.101.

2. On March 12, 2020, the Office of Special Education and Rehabilitation Services (OSERS) at the United States (U.S.) Department of Education released initial guidance concerning special education services during the COVID-19 pandemic:<sup>5</sup>

If a [District] closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then [a District] would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the [District] must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) ... The [U.S. Department of Education] understands there may be exceptional circumstances that could affect how a particular services is provided. In addition, an IEP Team ... would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.

3. The OSERS provided further guidance addressing the risk of COVID-19:<sup>6</sup>

School districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, OCR [Office for Civil Rights] and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.

[The U.S. Department of Education] understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might

choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.

It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency. As mentioned above, 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. Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services - or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.

4. Federal regulations at 34 C.F.R. § 300.503(a) provide in relevant part:

Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--

- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE [free appropriate public education] to the child; or
- (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

5. Minnesota Statute § 125A.091, subd. 3a, also provides:

In addition to federal law requirements, a prior written notice shall:

- (1) inform the parent that except for the initial placement of a child in special education, the school district will proceed with its proposal for the child's placement or for providing special education services unless the child's parent notifies the district of an objection within 14 days of when the district sends the prior written notice to the parent; and
- (2) state that a parent who objects to a proposal or refusal in the prior written notice may:
  - (i) request a conciliation conference under subdivision 7 or another alternative dispute resolution procedure under subdivision 8 or 9; or
  - (ii) identify the specific part of the proposal or refusal the parent objects to and request a meeting with appropriate members of the individualized education program team.

6. Regarding prior written notice, Minnesota Rule 3525.3600 also provides in relevant part:

When a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a pupil, or the provision of FAPE to the pupil, the district must serve prior written notice on the parent. The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made.

7. In April 2020, the District changed the provision of FAPE to the Student when it developed an April 2020 IDLP that modified the amount and frequency of special education and related services that would be provided to the Student during the District's Distance Learning Period. The District did not serve prior



written notice of this change on the Complainant or otherwise inform the Complainant of her opportunity to object to the Student's April 2020 IDLP and request alternative dispute resolution, in violation of 34 C.F.R. § 300.503(a), Minnesota Statutes § 125A.091, subd. 3a, and Minnesota Rule 3525.3600.

8. Here, the record, including notes from the related service provider and emails to the Complainant, supports a conclusion that, during the District's Distance Learning Period between April 6, 2020 and the end of the 2019-20 school year, the Student received indirect occupational therapy services in accordance with his February 2020 IEP and April 2020 IDLP.

9. However, between April 6, 2020 until the end of the 2019-20 school year, based on the limitations required by the Distance Learning Period, including the closure of Minnesota public school buildings and facilities for typical in-school instruction,<sup>7</sup> and due to the Student's disability-related needs, his difficulty engaging with virtual services, the provider's miscommunication about speech-language services, and other challenges, the District did not provide special education and related services in conformity with the Student's February 2020 IEP and April 2020 IDLP. Specifically, the Student did not receive all of the special education services and speech language services required by Student's February 2020 IEP and April 2020 IDLP during the Distance Learning Period, in violation of 34 C.F.R. § 300.17.

10. Regarding the timeline for an evaluation, Minnesota Rule 3525.2550, subp. 2, provides:

The team shall conduct an evaluation for special education purposes within a reasonable time not to exceed 30 school days from the date the district receives parental permission to conduct the evaluation or the expiration of the 14-calendar day parental response time in cases other than initial evaluation, unless a conciliation conference or hearing is requested.

11. Federal regulations at 34 C.F.R. § 300.11(c)(1) define "school day" as follows:

"School day means any day, including a partial day that children are in attendance at school for instructional purposes."

12. Accordingly, the 30-school-day evaluation timeline for the Student's reevaluation included the days during the District's Distance Learning Period when students were in attendance and receiving instruction through a distance learning instructional model.

13. However, due to the limitations required by the Distance Learning Period, including the closure of Minnesota public school buildings and facilities for in-person evaluation procedures and assessments, the District was not able to complete the Student's reevaluation within the evaluation timeline, in violation of Minnesota Rule 3525.2550, subp. 2.

### **Decision**

1. The District violated 34 C.F.R. § 300.503(a), Minnesota Statute § 125A.091, subd. 3a, and Minnesota Rule 3525.3600 when it did not serve prior written notice of its change in the provision of FAPE to the Student in April 2020 and therefore did not inform the Complainant of her opportunity to object to the Student's April 2020 IDLP and request alternative dispute resolution.

2. The District violated 34 C.F.R. § 300.17 when it did not provide special education and related services as written in the Student's February 2020 IEP and April 2020 IDLP, from April 6, 2020 through the end of the 2019-20 school year.

3. The District violated Minnesota Rule 3525.2550, subp. 2, when, due to limitations required by the Distance Learning Period, it did not complete the Student's reevaluation within the evaluation timeline.

### **Corrective Action**

Corrective action appears at the end of this decision.

The Complainant alleges that, during the 2019-20 school year, the District failed to appropriately determine, using the required sources of information and considering all relevant factors, whether the Student required extended school year (ESY) services during summer 2020.

### **Findings of Fact**

1. The Complainant reported that she was unfamiliar with the concept of ESY services or special education services provided during breaks in instruction and did not recall any discussion about the Student receiving special education services during summer 2020. The Complainant expressed concerns about the Student's regression during the District's Distance Learning Period (described in Issues 1 and 2 as the period between April 6, 2020 and the end of the 2019-20 school year when District schools were in session but school buildings were closed for typical in-school instruction).

2. The District reported that its practice is to discuss a student's eligibility for ESY services throughout the school year and to continually monitor for regression or other reasons a student might need ESY services. Staff reported that Staff did not observe regression when the Student returned to school after winter break or after weekends, and the Student continued to build on previously-learned skills. Staff reported that while the Student does struggle with fine motor skills, the Student showed improvement in fine motor skills during the 2019-20 school year. Staff noted that the Student did not meet the criteria for general education summer school during summer 2020.

3. The District provided meeting notes from a January 28, 2020 meeting with the Student's IEP manager, general education teacher, and the Complainant that stated, "Student is progressing in all academic areas [and has] made big improvements with fine motor," along with details about the Student's reading and writing skills, ability to follow directions and attend to a task, and ability to engage in group activities. The meeting notes did not mention discussion related to ESY services during summer 2020.

4. Regarding ESY services, the Student's February 2020 IEP stated:

"The student is not eligible for extended school year ... At this time, there is no regression, unique needs or inadequate self[-]sufficiency skills."

5. Staff recalled briefly mentioning that the Student was not eligible for ESY services at the Student's May 13, 2020 annual IEP team meeting but did not recall an in-depth discussion.

6. The Student's May 2020 IEP again stated that the Student "is not eligible for extended school year [services] ... At this time, there is no regression, unique needs or inadequate self[-]sufficiency skills."

7. The Student's May 2020 IEP described the Student's present levels and current educational needs in the areas of academic performance, communication, self-help/functional skills, and social, emotional, and behavioral development but did not indicate that the Student's IEP team, including the Complainant, discussed the Student's need for ESY services during summer 2020.

8. Likewise, the District's May 27, 2020 prior written notice proposing the Student's May 2020 IEP did not indicate that the Student's IEP team, including the Complainant, discussed the Student's need for ESY services during summer 2020 as part of its annual review of the Student's IEP.

### **Conclusions**

1. Regarding ESY services, federal regulations at 34 C.F.R. § 300.106(a) provide:

(1) Each public agency must ensure that [ESY] services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) [ESY] services must be provided only if a child's IEP [t]eam determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

- (3) In implementing the requirements of this section, a public agency may not--
- (4) Limit extended school year services to particular categories of disability; or
- (5) Unilaterally limit the type, amount, or duration of those services.

2. In addition, Minnesota Rule 3525.0755 provides in relevant part:

Subpart 1. Scope. School districts are required to provide extended school year (ESY) services to a pupil if the IEP team determines the services are necessary during a break in instruction in order to provide a free appropriate public education.

...

Subp. 3. Determination of ESY entitlement. At least annually, the IEP team must determine a pupil is in need of ESY services if the pupil meets the conditions of item A, B, or C.

A. there will be significant regression of a skill or acquired knowledge from the pupil's level of performance on an annual goal that requires more than the length of the break in instruction to recoup unless the IEP team determines a shorter time for recoupment is more appropriate;

B. services are necessary for the pupil to attain and maintain self-sufficiency because of the critical nature of the skill addressed by an annual goal, the pupil's age and level of development, and the timeliness for teaching the skill; or

C. the IEP team otherwise determines, given the pupil's unique needs, that ESY services are necessary to ensure the pupil receives a free appropriate public education.

Subp. 4. Sources of information for IEP team determination. The IEP team must decide the basis for determining whether a pupil is eligible for ESY services using information including:

A. prior observation of the pupil's regression and recoupment over the summer;

B. observation of the pupil's tendency to regress over extended breaks in instruction during the school year; and

C. experience with other pupils with similar instructional needs.

Subp. 5. Other factors to be considered. In making its determination of ESY needs under subpart 3, item A, B, or C, the IEP team must consider the following factors, where relevant:

A. the pupil's progress and maintenance of skills during the regular school year;

B. the pupil's degree of impairment;

C. the pupil's rate of progress;

D. the pupil's behavioral or physical problems;

E. the availability of alternative resources;

F. the pupil's ability and need to interact with nondisabled peers;

G. the areas of the pupil's curriculum which need continuous attention; or

H. the pupil's vocational needs.

3. Here, while District Staff may have collected and considered some of the sources of information and

factors in Minnesota Rule 3525.0755, subp. 4-5, when considering the Student's need for ESY services during summer 2020, the District did not ensure that those sources of information and relevant factors were discussed at the May 2020 annual IEP team meeting and that the determination of the Student's entitlement to ESY services under Minnesota Rule 3525.0755, subp. 3, was made by the Student's IEP team, including the Complainant, in violation of 34 C.F.R. § 300.106(a) and Minnesota Rule 3525.0755.

### **Decision**

The District violated 34 C.F.R. § 300.106(a) and Minnesota Rule 3525.0755 because it did not ensure that the required sources of information and relevant factors were discussed at the Student's May 2020 annual IEP team meeting and that the determination of the Student's entitlement to ESY services during summer 2020 was made by the Student's IEP team.

### **Corrective Action**

1. Here, due to the global COVID-19 pandemic and resulting closures of Minnesota schools and subsequent Distance Learning Period, there was a delay in providing special education and related services to the Student and in completing the Student's reevaluation. Accordingly, once the District begins providing services in a hybrid learning instructional model for the Student's grade level on September 28, 2020, the District must complete its reevaluation of the Student and provide a copy of the evaluation report to the Complainant by October 30, 2020. (If the District's instructional model for the Student's grade level moves to distance learning before completion of the Student's reevaluation, the District may contact MDE's Corrective Action Specialist, [ ] for an adjustment of the corrective action deadlines.)

2. By October 30, 2020, the District must also convene a meeting of the Student's IEP team to review the Student's progress and the impact of the Minnesota school facility closures and the results of the Student's reevaluation. The Student's IEP team will then make an individualized determination as to the needed compensatory services due to the missed special education and related services, including developmental delay special education services and speech-language related services, during the District's Distance Learning Period of April 6, 2020 through the end of the 2019-20 school year. Any compensatory services should be documented in the Student's IEP and described as compensatory services owed for services missed during the time period of April 6, 2020 through the end of the 2019-20 school year, along with the frequency, location and duration of the services as outlined in 34 C.F.R. § 300.320(a)(7).

3. Unless the District has already done so, by October 30, 2020, the Student's IEP team must also convene an IEP meeting to review and revise the Student's April 2020 IDLP or develop a new individualized contingency learning plan, with parental input, to plan for potential future periods of distance learning. Following the IEP team meeting, the District must provide the Complainant with a proposed IDLP or individualized contingency learning plan, along with prior written notice informing the Complainant of her right to object to the proposal and request alternative dispute resolution. If the Student's IEP team has already reviewed and revised the Student's April 2020 IDLP with parental input, the District may submit the prior written notice proposing those revisions as documentation of completion of this corrective action item.

4. By October 30, 2020, the Student's IEP team, which includes the parent, must also, using the present levels information in the Student's May 2020 IEP along with other sources of information and relevant factors as described by Minnesota Rule 3525.0755, determine whether the Student was in need of special education and related services during summer 2020, and if so, propose compensatory education to make up for the failure to provide ESY services during that break in instruction. To provide documentation of its completion of this corrective action, the District must document its determination regarding ESY services in a separate prior written notice provided to the Complainant and copied to MDE's Corrective Action Specialist [ ]

5. If the District and the Complainants are unable to reach an agreement on compensatory services/education by November 6, 2020, both parties may submit a proposal to MDE's corrective action specialist [ ] and MDE will make a final determination.

6. By November 30, 2020, relevant District Special Education Staff shall meet to review the District's processes and procedures for ensuring that IEP teams, including parents, discuss and determine whether students need ESY services during breaks in instruction and shall update relevant Staff of any changes, to ensure compliance with the 34 C.F.R. § 300.106 and Minnesota Rule 3525.0755. The District shall submit its relevant processes or protocols to MDE for review by emailing corrective action specialist [ ]

The authority to review complaints is given in the federal regulations to IDEA, 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist [ ].

<sup>1</sup>Governor Walz closed all Minnesota schools during this time to prepare for distance learning as a result of the COVID-19 global pandemic. Minn. Exec. Order No. 20-02 (March 15, 2020), also available at: [https://mn.gov/governor/assets/EO%2020-02%20Final\\_tcm1055-423084.pdf](https://mn.gov/governor/assets/EO%2020-02%20Final_tcm1055-423084.pdf).

<sup>2</sup>Minn. Exec. Order No. 20-19 (March 25, 2020), also available at: [https://mn.gov/governor/assets/2a.%20EO%2020-19%20FINAL%20SIGNED%20Filed\\_tcm1055-425019.pdf](https://mn.gov/governor/assets/2a.%20EO%2020-19%20FINAL%20SIGNED%20Filed_tcm1055-425019.pdf).

<sup>3</sup>Minn. Exec. Order No. 20-41 (April 24, 2020), also available at: [https://mn.gov/governor/assets/EO%2020-41%20Final\\_tcm1055-430418.pdf](https://mn.gov/governor/assets/EO%2020-41%20Final_tcm1055-430418.pdf).

<sup>4</sup>This 30-school-day evaluation timeline does not include March 6, 2020 (no school); the school closure period between March 18 and 27, 2020; the District's spring break from March 30-April 3, 2020; or the required Staff Planning Days on May 1 and 4, 2020.

<sup>5</sup>Questions and Answers: Providing Services to Children with Disabilities During the Coronavirus Outbreak (March 12, 2020), also available at <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>.

<sup>6</sup>Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (March 21, 2020), also available at <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>.

<sup>7</sup>During the Distance Learning Period, Governor Walz stated in Executive Order 20-19, "public school buildings and facilities must be closed for typical in-school instruction." Minn. Exec. Order No. 20-19 (March 25, 2020), also available at [https://mn.gov/governor/assets/2a.%20EO%2020-19%20FINAL%20SIGNED%20Filed\\_tcm1055-425019.pdf](https://mn.gov/governor/assets/2a.%20EO%2020-19%20FINAL%20SIGNED%20Filed_tcm1055-425019.pdf).

## Regulations Cited

34 CFR 300.503(a)