

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-71**

### **PROCEDURAL HISTORY**

On June 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 Bellevue 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 June 17, 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 July 8, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On July 20, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on July 28, 2020.

On July 24, 2020, OSPI requested clarifying information from the District. On July 28, 2020, OSPI received the requested information from the District and forwarded it to the Parent that same day.

On July 29, 2020, OSPI requested clarifying information from the Parent. On July 30, 2020, OSPI received the requested information from the Parent and forwarded it to the District that same day.

On July 29, 2020, OSPI requested clarifying information from the District. On July 30, 2020, OSPI received the requested information from the District and forwarded it to the Parent that same day.

On July 30, 2020, OSPI's investigator conducted a phone interview of the special education teacher.

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

### **ISSUE**

1. Did the District implement the Student's individualized education program (IEP) during the March 2020 through June 2020 school facility closures?

### **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).

**Parent Participation in IEP Development:** The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the specially designed instruction their child requires. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

**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).

## FINDINGS OF FACT

1. During the 2019-2020 school year, the Student attended a District high school, was in the ninth grade, and was eligible for special education services under the category autism.
2. The District's 2019-2020 school year began on September 4, 2019.
3. The Student's February 2020 individualized education program (IEP) was in effect prior to the COVID-19 school facility closures. The Student's February 2020 IEP included the following goals: speech language pathology; adaptive 1; adaptive 2; social-emotional; behavior; reading; math 1; math 2; writing 1; and writing 2.

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

- **Social-Emotional:** 240 minutes a week (to be provided by a paraeducator)
- **Adaptive:** 240 minutes a week (to be provided by a paraeducator)
- **Behavior:** 240 minutes a week (to be provided by a paraeducator)<sup>1</sup>
- **Math:** 240 minutes a week (to be provided by a paraeducator)
- **Reading:** 240 minutes a week (to be provided by a paraeducator)
- **Social-Emotional:** 240 minutes a week (to be provided by a paraeducator)
- **Writing:** 240 minutes a week (to be provided by a paraeducator)
- **Adaptive:** 240 minutes a week (to be provided by a paraeducator)
- **Behavior:** 240 minutes a week (to be provided by a paraeducator)

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

- **Speech language pathology:** 30 minutes a week (to be provided by a speech language pathologist)

The Student's February 2020 IEP additionally provided the Student with numerous accommodations: extra processing time to respond; testing over multiple days; use of fidgets; augmentative communication; break tasks into manageable parts; first-then statements; manipulative materials; monitor sensory needs; predictable daily routine; read-aloud-English; reinforcement schedule; reminders to go to bathroom; scribe; health plan; self-monitoring system; breaks during tests; and use of timer to help with transitions.

The Student's February 2020 IEP also included the following two supports for school personnel: training to family and paraeducators on augmentative communication supports on iPad; and "occupational therapist to be available with the educational team for collaborating with staff members to plan implementation of accommodations and strategies."

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<sup>1</sup> According to the Student's February 2020 IEP, the 240 minutes a week of specially designed instruction in behavior was provided concurrently with the other 240 minutes a week of specially designed instruction in behavior. According to the Student's February 2020 IEP, though, behavior was the only area of specially designed instruction that was provided concurrently; all other areas were provided separate from one another.

4. According to the District's response:

At the February 2020 IEP meeting, the Student's IEP team determined that Student qualified for Extended School Year (ESY) services...The February 4, 2020 prior written notice explained that 'the IEP [team] discussed Student's need for ESY because of his regression to material learned when there is a long break.' Accordingly, the IEP team developed an ESY IEP.

5. 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.

6. According to the District, it "closed school facilities starting March 13, 2020, and generally did not provide educational services to any student from that date through March 27, 2020."<sup>2</sup>

7. On March 16, 2020, the special education teacher emailed the Parent several questions concerning the Student's ability to complete various types of remote learning.

That same day, the Parent responded, stating, generally: the Student had WiFi at home to access remote learning resources and instruction vehicles; there were "enough people around [Student's home] to support and help Student" log-on to the computer; the Parent was "not sure what to expect from Student behaviorally"; and the Parent would be able to assist the Student in remote learning and "completing worksheets, work packets, [and] other hands-on activities" for "a very small amount each day—no longer than 15-30 minutes total."

8. The District's response included a document labeled, 'Student Log-In Times' (log-in document). According to the District, the log-in document memorializes those services offered by the District that the Student utilized during the closure.

According to the log-in document, from March 16 through 20, 2020, the District sent packets home for the Student and provided the Student with access to certain online resources, but "no live check-ins" took place.

9. According to the District's response:

Each week [beginning in late March] 2020, Student's special education teacher sent Student's family a daily and weekly schedule, including specific assignments for each day and instructions for those assignments. These weekly newsletters are [included in the District's response to OSPI]. Student's continuous learning plan explained these weekly schedules: 'Each week a schedule of assignments is emailed to families and they check-off assignments as they are completed. Recorded lessons and materials are put into their individual Team areas.'

10. The March 22, 2020 weekly newsletter included, in part, assignments in the following areas: reading comprehension exercises; math sheets; writing exercises; typing exercises; drafting journal entries; and "word building [and] phonics" practice.

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<sup>2</sup> The first page of the Student's May 5, 2020 Continuous Learning Plan (CLP) corroborates this statement.

11. In the spring of 2020, after the District closed due to COVID-19, the District created a continuous learning plan (CLP) for the Student.<sup>3</sup> According to the District’s response, the Student’s spring 2020 CLP began to be implemented March 23, 2020.

The Student’s spring 2020 CLP provided the Student with the following specially designed instruction:

- **Social-Emotional/Behavior/Adaptive (concurrent):** 235.2 minutes a week (to be provided by a special education teacher)
- **Math:** 115 minutes a week (to be provided by a special education teacher)
- **Reading:** 115 minutes a week (to be provided by a special education teacher)
- **Writing:** 115 minutes a week (to be provided by a special education teacher)

The Student’s spring 2020 CLP provided the Student with the following related services:

- **Speech:** 10 minutes a week (to be provided by a speech language pathologist)
- **Occupational therapy:** one ‘consultation’ each quarter (to be provided by an occupational therapist)

The Student’s spring 2020 CLP stated adaptive goal 2 would not be worked on during the closure (because it dealt with the Student being able to recognize when he needed to use the restroom and letting a staff member know). The Student’s spring 2020 CLP also stated the social-emotional goal would not be worked on during the closure (because it concerned Student’s ability to maintain ‘an appropriate distance’ from peers and staff members during social interactions).

According to the spring 2020 CLP, the Student’s schedule during the closure was as follows:

<b>Day:</b>	<b>Morning Meeting:</b>	<b>Individual Work Teams Check-In:</b>	<b>Individual Work Teams Check-In:</b>	
<b>Monday</b>	9:00-9:20	9:30-10:30	1:00-2:00	
<b>Tuesday</b>	9:00-9:20	9:30-10:30	1:00-2:00	
<b>Wednesday</b>	9:00-9:20	9:30-10:30	1:00-2:00	
<b>Thursday</b>	9:00-9:20	9:30-10:30	1:00-2:00	
<b>Friday</b>	9:00-9:20 9:20 Group Speech	9:30-10:30	No afternoon Check-In	Work Make-Up Day

The spring 2020 CLP further stated:

Student will participate in Teams chat and discussions and virtual recorded lessons that address and work on specific social, adaptive, and behavior skills. Student will complete activities that work on reading, writing, and math skills.

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<sup>3</sup> The exact date the spring 2020 CLP was created is uncertain: according to the District’s response, the spring 2020 CLP began to be fully implemented starting March 30, 2020, but the footer of the spring 2020 read, “April 2020,” and the communication date on the spring 2020 CLP read, “May 5, 2020.” (In a supplemental response, the District also stated a “team met with Parent [and] formalized the CLP document, and sent it [to the relevant parties] on May 5, 2020.”)

During the Teams check-in times Student is in a small group with one other student and can access this time weekly to work on skills identified in activities listed above. Student can work through assignments with the help of a parent educator. This optional sign in time can also support completion of assignments with caregivers at different times of the day or week. Each week a schedule of assignments is emailed to families and they check off assignments as they are completed. Recorded lessons and materials are put into their individual Team areas.

Student receives group speech instruction, from a speech language pathologist [SLP], at least 10 minutes a week on Fridays via Microsoft Teams. Student's goal (i.e., inferencing + describing) in the area of speech language pathology will be addressed during this group instruction.

Occupational therapy services are received consultation once a quarter, and items that were needed at home to help with learning have been ordered and received to the Student's home.

12. According to the District's response:

In accordance with Student's continuous learning plan, Student's classroom teacher held class check-ins with the entire class via Microsoft Teams each weekday morning at 9 am [(morning session)] starting Monday, March 23, 2020. At these morning meetings, the teacher discussed the agenda for the day, showed the students their assignments and instructional recordings for the day, and answered any questions. Student regularly attended these whole class check-ins, missing only a few days over the entire closure period of almost three months.

Student then had scheduled twice-daily individual check-ins via Microsoft Teams each morning and afternoon [(midday sessions)], with his paraeducator starting on Monday, March 30, 2020. These individualized check-ins were for the paraeducators to help students work through the daily lessons and more individualized work. If families could not make either of the scheduled work times, lessons were recorded so that students could view them at any time. Student's attendance at these individual check-ins increased towards the end of the school year.

...

Student was offered weekly group speech therapy services via Microsoft Teams beginning the week of March 30, 2020. These sessions were held during the class check-ins on Friday mornings. Student did not consistently attend these sessions. In May, individual speech therapy sessions were added to Student's schedule, also on Friday mornings, [from 8:50 a.m. to 9:00 a.m.], in addition to the group speech therapy.

Regarding occupational therapy, Student's continuous learning plan also addressed his quarterly occupational therapy consult: 'OT services is received through consult once a quarter, and items that were needed at home to help with learning have been ordered and received to the student's home.' The occupational therapy consult that took place during spring quarter included identifying items that were needed at home to help with learning- for example, widgets and theraputty- and ensuring that those items were sent to the student's home and received by the family.

13. During the course of this investigation, OSPI's investigator asked the District for clarity around the 'instructional recordings.' In response, the District stated:

The District did not record [any] paraeducator instruction, [which was provided to the Student after the group meeting in the mornings]. The class met in a morning meeting and then broke off into instructional groups. The teacher create instructional opportunities around a weekly theme, recorded the lesson, and if the parents [of a student] could not attend the instruction with the paraeducator [in the two sessions later in the day, then] the parents could access the [special education teacher's] recording [as a reference tool to help their child complete] the lesson.

14. During the course of this investigation, OSPI asked the District several questions concerning the composition of the Student's early morning session. OSPI's questions, and the District's answers, are as follows:

**Did each of the students in the Student's 'morning meeting' group have IEPs?**

[Each of the students in the 'morning meeting' group were enrolled in the District's self-contained program for students with intellectual disabilities.] Each of the...students in [that] program has an IEP.

**Did each of the students in the Student's 'morning meeting' group receive the same weekly assignments?**

Each student in the 'morning meeting' group received the same morning instruction within the large group activity and weekly assignment, however, instruction embedded the different learning styles of the each student (some use Augmentative Communication for expressive language output, others have different verbal skills). The individualized work sessions [that took place later in the day] were set with each student and family and individualized according to each student's unique IEP goals.

**If each of the students in the Student's 'morning meeting' group did have IEPs, did they have IEPs with similar goals?**

Each student [had] different IEP goals that align[ed] to their [respective] evaluation results. Socially, students work on similar skills needed within the high school and post-secondary setting, however, each skill is individualized according to student's developmental levels and IEP goal(s). Themes center[ed] on turn-taking, initiating greetings, asking clarifying questions, etc.

15. According to the log-in document, each day beginning March 23 and continuing through March 27, 2020, the Student attended the morning sessions. According to the log-in document, no individual, midday check-in sessions took place from March 23, 2020 through March 27, 2020.
16. 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.
17. On March 23, the Parent emailed the special education teacher, asking the special education teacher for advice on how to better encourage the Student to engage with the remote format.



In response, the special education teacher and the Parent set up a time to speak on March 24, 2020.

During the course of this investigation, OSPI's investigator asked the District what the result was of the March 24, 2020 meeting between the special education teacher and the Parent. In response, the District stated:

In [regard to] the March 24 meeting, the special education teacher indicated they talked about the instructional schedule, things the family could work on at home, motivational tools (they ordered and sent parent fidgets to support engagement and motivation), discussed when and how they could sign in with the paraeducator, helped set up a work and learning routine schedule for student in the home setting (example is the garbage routine), reviewed his log-in (attendance) information through Teams, and reviewed access to computer programs made accessible to parents in the program (Reading IQL; Lalilo (phonics program); Reflex Math; Kids Typing).

18. On March 24, 2020, the SLP emailed the Parent some "information on an excellent opportunity for distance-socialization for students using augmentative and alternative communication." In response, the Parent stated, in part: "I will try to get Student engaged with this and see if he likes it."
19. The March 29, 2020 weekly newsletter included, in part, the following assignments: an etiquette video; a home safety video; creating an emergency response map of students' homes; and a "planned reading...writing [or] typing" activity.
20. According to the log-in document, each day beginning March 30 and continuing through April 3, 2020, the Student attended the morning sessions, but did not attend either of the midday sessions.
21. According to the District's response, "starting March 30, 2020 through the end of the school year...the District provided services to [the] Student in accordance with [the] Student's continuous learning plan."
22. On April 2, 2020, the Parent emailed the special education teacher, stating, in part:  
I'm writing first of all because I wanted to sincerely thank you for everything you are doing to support Student and your other students during this unprecedented and difficult time...Student loves tuning in each morning to see you and his other classmates during the morning check-in, and has also enjoyed the video activities you've provided this week. Thank you for creating these lessons and providing the opportunity to connect every day.  
  
I have to admit I'm also concerned though, because of how little Student has been able to access the additional activities and work being provided. Between my need to be working 6 hours a day, my lack of expertise in the area of special education techniques and strategies, and Student's general unwillingness to focus and receive instruction from me, we're averaging only around 30 minutes per day of school work. The rest of the day Student is spending almost all his time watching YouTube videos and playing Xbox.

He is also starting to engage in dangerous self-harm behaviors, very likely due to being under-supervised and bored, which has us very worried...

I'm also concerned about the fact that Student hasn't received any of his specially designed instruction since the school closures. Is the school planning to start providing more individualized learning in the coming weeks, or are there other plans in place to make sure the students get what they're entitled to?

Like I said before, I know you are doing everything you can to help, that you are very limited in how much you are able to do under these circumstances, and that the [the District's self-contained program for students with intellectual disabilities, that the Student has been enrolled in since 6<sup>th</sup> grade] and [the Student's 2019-2020 high school] are working overtime to meet the needs of an incredibly diverse population of students. All of it seems almost insurmountable and you have my full support if there's anything I can be doing to help. However, I also know our family needs more support, and that Student's safety and well-being rely on him getting more than he's getting. Can you offer any suggestions of how we might proceed?

On April 6, 2020, the special education teacher responded, stating, in part:

I did hear back from [the special education director] in response to your email and she said that we are following district guidance from Friday, that we continue with learning opportunities this week as provided last week...OSPI recommends that we align to what general education learning opportunities are provided. As shared by OSPI 'There is not an expectation that IEP services would be delivered exactly as the IEP states. This is a national emergency, and districts should be communicating with families and making decisions based on student need and how those services can be provided.'

Do you want to talk sometime today or this week and see what I can do to help you guys while we are home learning?

23. The April 5, 2020 weekly newsletter included, in part, the following assignments: a physical education activity; an activity related to calculating everyday expenses; a home scavenger hunt; selecting a desired recipe; "virtually visit[ing] a new place"; drafting emails; conducting research in preparation for a writing assignment; and "Teams chat and video lesson".
24. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
25. 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 9-12: 30 minutes per class (3 hours maximum).
26. According to the log-in document, each day beginning April 6 through 10, 2020, the Student attended the morning sessions, but did not attend either of the midday sessions.
27. According to emails, on April 7, 2020, the District agreed with the Parent that the District would order some fidget objects and have them mailed to the Student's home.
28. The District was on spring break from April 13 to 17, 2020.

29. According to the District's response, on April 13, 2020:

The District, in collaboration with Student's special education teacher and an occupational therapist, also sent Student's family 'fidget toys' and a sensory zip blanket...A week later, Student's special education teacher dropped off bins containing items and activities Student could work on that did not involve computers.
30. The District's response did not include a weekly newsletter related to the week beginning April 20, 2020.
31. According to the log-in document, on April 20 and 22, 2020, the Student attended the morning sessions, but did not attend either of the midday sessions.
32. According to the log-in document, on April 21 and 23, 2020, the Student attended the morning sessions and the first midday session, but the Student did not attend the second midday session.
33. According to the log-in document, on April 24, 2020, the Student attended the morning session (which was a group speech session), but did not attend the midday session. (As April 24, 2020 was a Friday, there was only one midday session—the afternoon was reserved for "staff meetings.")
34. The April 26, 2020 weekly newsletter included, in part, the following assignments: video chat with fellow students; watch a cleaning supply video; conduct geography research in preparation for a writing project; a writing assignment; a reading assignment; create a list of chores; and record a how-to video related a household chore.
35. According to the log-in document, each day beginning April 27, 2020 and continuing through May 1, 2020, the Student attended the morning sessions, but did not attend either of the midday sessions.
36. According to the progress reports, as of April 27, 2020, the District noted the following for each of the Student's goals: "If maintained, current rate of progress is sufficient to achieve annual goal."
37. On April 28, 2020, the Parent emailed the special education teacher, stating, in part:

I'm reaching out because I'd like to request that we start using tele-therapy sessions with Student to administer his specially designed instruction and related services for the remainder of the school year. We are so incredibly grateful for the hard work you both have done to provide materials, create activities and design brand new curricula to ensure your students stay engaged and connected during the Covid school closures. However, I can't help but be concerned that Student has not received any of his specially designed instruction minutes or related services since early March, and that he will be unable to make progress on his goals as a result. Knowing that there are no rules coming from the state that forbids tele-therapy, and that Student has had some initial success with tele-therapy sessions with his private speech therapist, I'm anxious to get started as soon as possible.

Later that same day, the special education teacher responded, stating, in part: "Let us look into this a bit more and we will get back [to] you."

38. The May 3, 2020 weekly newsletter included, in part, the following assignments: remote video check-in with fellow students; geography research in preparation for a writing assignment; a writing assignment; a reading assignment; a typing assignment; and review "how to use Speech One Note."
39. According to the log-in document, each day beginning May 4 and continuing through May 8, 2020, the Student attended the morning sessions, but did not attend either of the midday sessions.
40. On May 6, 2020, the Parent emailed the special education teacher, stating, in part: "We are very close to having an [applied behavioral analysis] ABA therapist starting to be [in our house] during the day (35 hours a week!). Once that starts...Student will be able to attend 1-2 (or more) live daily lessons."
41. According to the District's response, on May 8, 2020:  
Student's special education teacher, Student's speech-language pathologist, and a District special education instructional coach met with Student's mother to discuss Student's continuous learning plan. As a result of this meeting, individual speech therapy sessions were added to Student's continuous learning plan in addition to the group speech therapy already offered.

According to the District's response: the individual speech session was available each Friday, from 8:50 to 9:00 am. The individual speech session was in addition to the 'group speech' session available each Friday from 9:20 to 9:30 am.

42. The May 10, 2020 weekly newsletter included, in part, the following assignments: remote video check-in with fellow students; "watch community safety video"; research project; writing assignment; reading assignment; "watch complex emotional lesson"; and "virtual live class field trip."
43. According to the log-in document, each day beginning May 11 and continuing through May 15, 2020, the Student attended the morning sessions, but did not attend either of the midday sessions.
44. According to the Parent, on or about May 12, 2020, she hired both a board-certified behavior analyst (BCBA) and a registered behavior technician (RBT) to work with the Student in the family's home.

According to the Parent: "except for a few days here and there when the RBT was sick or unavailable, Student had an RBT and sometimes a BCBA with him each Monday through Friday, 8:45 am through 2:45 pm," for a total of 30 hours each week.

45. The District's response did not include a May 17, 2020 weekly newsletter.

46. According to the log-in document, each day beginning May 18 and continuing through May 22, 2020, the Student attended the morning sessions, but did not attend either of the midday sessions.
47. According to the District's response, on May 21, 2020:  
Student's special education teacher and the paraeducator who was scheduled to work with Student during the closure met with the private [BCBA] therapist who was working with Student outside school to discuss the plan for Student for the remainder of the school year. Parents were invited to this meeting but could not attend. The staff shared suggestions for building a schedule of preferred and non-preferred activities at home and discussed how Student could gain more independence in his work at home.
48. On May 21, 2020, the Parent emailed the special education teacher, the Student's private BCBA therapist, and the Student's District paraeducator, stating, in part:  
Thank you so much to all of you for meeting this morning and collaborating on how best to support Student! He's so lucky to have the three of you in his life!
- Student and I will be making adjustments to his daily schedule this weekend and he will start attending the 9:30 and 1 pm meetings with [the District paraeducator] starting Tuesday morning. After talking with [the special education teacher and the special education director], we thought it might make sense to start with just 30 minutes at a time and then work up to using the entire hour long windows.
- Later that day, the special education teacher responded, stating: "That sounds good, and we can always adjust the 30 minutes [and/or] assignments as needed."
49. The May 24, 2020 weekly newsletter included, in part, the following assignments: reading a passage or watching a video related to "community safety"; research in preparation of a writing assignment; math practice; a writing assignment; "recognizing anger" exercises; and a speech-related exercise.
50. According to the log-in document, on May 25 and 26, 2020, the Student attended the morning sessions, but did not attend either of the midday sessions.
51. According to the log-in document, on May 27, 2020, the Student attended all three sessions.
52. According to the log-in document, on May 28, 2020, the Student attended the morning session, but did not attend either of the midday sessions.
53. According to the log-in document, on Friday, May 29, 2020, the Student attended the morning session (which related to group and individual speech activities), but the Student did not attend the midday session.
54. The May 31, 2020 weekly newsletter included, in part, the following assignments: reading a passage or watching a video related to "community safety"; research in preparation of a writing assignment; a writing assignment; learning "relaxation techniques"; a reading assignment; and a speech-related exercise.

55. According to the log-in document, on June 1, 2020, the Student attended all three sessions.
56. According to the log-in document, beginning June 2 and continuing through June 5, 2020, the Student attended morning sessions, but did not attend either of the afternoon sessions.
57. On June 3, 2020, the Parent emailed the special education teacher, stating, in part: "Just a heads up Student won't be at the morning meeting today. His [private] behavior tech isn't coming today and [Student's father] and I are both unavailable to help him. We'll hope to have him back tomorrow!"
58. The June 7, 2020 weekly newsletter included, in part, the following assignments: reading a passage or watching a video related to "community safety"; research in preparation of a writing assignment; a writing assignment; working with "sensory techniques"; a reading assignment; and a speech-related activity.
59. According to the log-in document, each day beginning June 8 and continuing through June 11, 2020, the Student attended all three daily sessions.
60. According to the log-in document, on Friday, June 12, 2020, the Student attended the morning session (which related to group and individual speech activities), but the Student did not attend the midday session.
61. On June 12, 2020, OSPI received the Parent's complaint and opened this investigation. The Parent's complaint read, in part:

After schools closed in March 2020, my child...did not receive his specially designed instruction in any of his service areas, and only received ten minutes of one-on-one speech a handful of times. He was not working on his IEP goals...and was only given generalized assignments and access to websites for independent learning. He was also not give the accommodations he's entitled to.

...

Due to [his] disabilities, my child was unable to access the following services that were offered [by the District during the closure]: worksheets, the reading kit that was sent home, the various websites [that were provided], access to the general education class (horticulture), one-on-one midday meetings with [a] paraeducator, research projects, and physical education [and] activity tracking.
62. The June 13, 2020 weekly newsletter included, in part, the following assignments: drafting thank you letters; science research; a writing assignment; a reading assignment; "end of year classroom [exercise:] virtual escape!"; a math assignment; and a speech-related exercise.
63. According to the log-in document, on June 15, 2020, the Student attended all three daily sessions.
64. On June 16, 2020, the District provided the Parent with a prior written notice that read, in part: "The IEP team proposed to discontinue [Student's February 2020] ESY IEP...Student qualifies for ESY services, but Parents declined ESY services this summer as it will be held remotely, rather than in person, in a building."

65. The log-in document provided by the District in its response had no information regarding the Student's attendance from June 16 through 18, 2020. According to the District's response, though, "The Student attended the sessions on June 16 through 18, 2020."
66. According to the progress reports, as of June 15, 2020, the District noted the following for each of the Student's IEP goals (except for the speech language pathology goal): "Due to limitations of remote learning, progress towards [this] goal will be assessed when in-person services resume." For the speech goal, the progress report noted: "If maintained, current rate of progress is sufficient to achieve annual goal."
67. According to the log-in document, on June 19, 2020, the Student attended the morning session (which pertained to individual and group speech activities) and there was no midday sessions scheduled, for any students, on that day.
68. June 19, 2020 was the last day of the 2019-2020 school year for the District.
69. On July 8, 2020, the OSPI received the District's response to the complaint. The District's response read, in part: "The District plans to convene an IEP meeting once normal school operations resume to determine any services that may be necessary for Student at that time based on any effect the school facilities closure may have on his progress toward his IEP goals."
70. On July 20, 2020, OSPI received the Parent's reply to the District's response to her complaint. The Parent's reply read, in part:
- [I]n order to ensure Student was safe [our family] had to hire in-home help [for Student]<sup>4</sup> to get by...I am not refuting that the school tried to give us services. His teacher and team were very generous with sending home occupational therapy tools, reading materials and websites to use, as well as attempting to schedule opportunities to check in virtually with paraeducators. However, even with those items, Student was not able to access his learning.
- The specific assignments were not things he could do without direct support from a trained special educator/paraprofessional. He was fidgety to the point of being aggressive when I attempted to teach him myself. He destroyed the occupational therapy tools and reading materials almost as soon as they arrived in our home. When given a math website, he randomly pounded on the keyboard until he was lucky enough to stumble on the right answer. He was asked to listen to recorded messages about various states in the US and complete worksheets about [those states] when Student is unable to read or write. If I asked him to tell me the answers so I can write them for him, he couldn't regurgitate a single correct answer that he learned from listening to the recordings. We were invited to meet with paraeducators in the middle of the day, but my husband and I work fulltime and Student is unable to logon or attend a meeting independently, [which] means Student was not able to attend until we hired our own in-home help. This lack of access was ongoing. Student experienced serious regression and boredom that exacerbated his disability to the point where our only choice was to hire a professional to come into our home, which we are paying for partially out of pocket.

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<sup>4</sup> According to the Parent, with this language, she was referring to the private RBT and BCBA she hired to assist the Student.

Without the consistent access of school, behavior support, and IEP accommodations, Student's behavior and mental health degraded significantly. Within a month of school closing Student's pica (a mental health condition that involves compulsively eating non-food items) had flared so significantly that he ended up eating 5-8 entire whole blue rubber gloves. Had COVID 19 not made our hospitals unsafe, this would have likely resulted in a hospitalization. Instead it led to severe vomiting which resulted in him missing a week of school, including one of the group speech therapy sessions.

Regarding ESY: To clarify, our family turned down ESY for the first time ever this summer because, as I have articulated above, school was very difficult for us to manage, and showed minimal to no benefit to Student. It was more cumbersome than helpful for our family. ESY could have been an opportunity to address the serious regression that Student experienced but if it were delivered as the school services had been it would be harmful/boring to Student and more work for us to administer than benefit received. It would be incorrect to assume our decision to pass on ESY means we believe Student didn't regress during these closures. He absolutely did regress but was unable to access distance learning in the way it was presented. He should not be penalized for this.

...

Except for the last few weeks when the professional we hired was available to help Student attend meetings with his paraeducator, Student received almost no direct instruction through the entire closure. He was given some videos to watch and many websites to use, but definitely did not get the minutes promised in the CLP.

It should be noted that the paraeducator, not the special education teacher, was providing the specially designed instruction...Since school closed in March, Student's behavior and mental health have suffered. As I mentioned earlier, his Pica has reached dangerous heights. Additionally, he's shredding/eating the clothing he wears on a daily basis, and usually can only wear an item of clothing once before it's destroyed and needs to be thrown away. He's compulsively stealing and hiding food items around the house. He's writing on walls, eating pet food, refusing to go outside, and cutting chunks out of his own hair. Without proper support and stimulation, he is regressing at an alarmingly rapid pace.

71. On July 30, 2020, OSPI's investigator conducted a phone interview with the Student's special education teacher. OSPI's investigator's notes from that interview are as follows:

The Student's class was comprised of seven students, all of whom had similar goals.

The 'morning meeting' sessions were devoted to three main activities: i) socialization time for the students; ii) occasionally, a group activity of some kind; and iii) making announcements.

The weekly tasks assigned by the special education teacher were the same for each of the seven students.

The 'recordings' made by the special education teacher related to that week's topics and assignments. The 'recordings' were not really individualized for specific students.

The midday paraeducator sessions is where individualized instruction took place. The Student's paraeducator had worked with the Student extensively prior to the COVID closure and so was really familiar with how to individualize instruction for the Student. The special



education teacher also met with the Student's paraeducator each and every morning of the school week.

72. During the course of this investigation, OSPI's investigator asked the District the following question: "Regardless of the fact that the Student may not have attended a fair number of the midday sessions during the first part of the closure, does the District know: was the Student still completing and turning in assignments on time during these weeks?"

In response, the District stated, in part: "Student completed...one of the instructional activities that related to chores around the house—students picked their favorite chores to do...Other than this, the teacher indicated the Student completed three activities."

## CONCLUSIONS

**Issue One: IEP Implementation** – The Parent alleged the District did not implement the Student's February 2020 individualized education program (IEP) that was in effect during the COVID-19 closure.

### *The Student's February 2020 IEP*

The Student's February 2020 IEP was in effect during the COVID-19 school facility closures. The February 2020 IEP provided the Student with the following specially designed instruction in a *special education setting*.

- **Social-Emotional:** 240 minutes a week (to be provided by a paraeducator)
- **Adaptive:** 240 minutes a week (to be provided by a paraeducator)
- **Behavior:** 240 minutes a week (to be provided by a paraeducator, concurrently with behavior)
- **Math:** 240 minutes a week (to be provided by a paraeducator)
- **Reading:** 240 minutes a week (to be provided by a paraeducator)
- **Social-Emotional:** 240 minutes a week (to be provided by a paraeducator)
- **Writing:** 240 minutes a week (to be provided by a paraeducator)
- **Adaptive:** 240 minutes a week (to be provided by a paraeducator)
- **Behavior:** 240 minutes a week (to be provided by a paraeducator, concurrently with behavior)

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

- **Speech language pathology:** 30 minutes a week (to be provided by a speech language pathologist)

### *Services Provided and Accessed During the Closure*

Here, the District acknowledges—and the record shows, that the Student's February 2020 IEP was not fully implemented from March 13, 2020, when the District first closed school facilities due to COVID-19, through the end of the 2019-2020 school year.

For example, according to the District's response, the District "generally did not provide education services to any student from [March 13] through March 27, 2020." The record does show the Student was provided with some services prior to March 27, 2020: a) according to the log-in

document, from March 16 through 20, 2020, the District sent packets home for the Student to complete, and also provided the Student with access to certain online resources—but “no live check-ins” took place during this time; and, b) beginning March 23, 2020, the Student’s spring 2020 continuous learning plan (CLP) began to be implemented.

The spring 2020 CLP can be summarized as follows:

- Prior to the start of each week, the special education teacher emailed Student (and the other students in Student’s class), a “weekly newsletter.”
  - The weekly newsletter included “specific assignments for each day [of the coming week, as well as] instructions for those assignments...and families [were to] check-off assignments as they [were] completed.”
  - The assignments—and the instructions for those assignments, that were provided to the Student were the exact same as those assignments and instructions provided to the other students in the Student’s class.
- Each day, Monday through Friday, from 9:00 a.m. to 9:20 a.m., Student could remotely access a morning meeting.
  - The morning meeting was led by the special education life skills teacher.
  - The morning meeting group was comprised of seven students, all of whom had IEPs and had previously been enrolled in the District’s self-contained program for students with intellectual disabilities. These seven students had similar, but unique, IEP goals.
  - The morning meeting was devoted to three main activities: i) socialization time for the students; ii) occasionally, a group activity of some kind; and iii) making announcements.
- Each Friday, from 9:20 a.m. to 9:30 a.m., Student could remotely access a group speech session designed so that Student could work on the February 2020 IEP communication goal that related to “inferencing [and] describing.”<sup>5</sup>
- Each day, Monday through Friday, from 9:30 a.m. to 10:30 a.m., the Student could remotely access an individual work check-in session. The Student could remotely access an additional individual work check-in session from 1:00 p.m. to 2:00 p.m., Monday through Thursday.
  - During these individual work check-ins, the Student’s paraeducator was available to help the Student with that week’s assignments.
  - The Student’s paraeducator had worked extensively with the Student prior to the COVID closure, and so the paraeducator knew how to individualize instruction in response to the Student’s specific needs. Furthermore, the special education teacher met with the paraeducator each morning, Monday through Friday, to discuss the paraeducator’s work with the Student.<sup>6</sup>
- Each week, the special education teacher would record a lesson that related to that week’s topics and assignments.
  - These recorded lessons were not individualized to specific students and they were intended to be accessed by the students’ families whenever a particular student was unable to log-in to the ‘individual work check-in’ sessions.

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<sup>5</sup> Beginning May 15, 2020, the Student was also given the opportunity to remotely access an individual speech session in addition to the group session. The individual speech session was available each Friday, from 8:50 a.m. to 9:00 am.

<sup>6</sup> Assuming the Student had participated in the most recent ‘individual work check-ins’. See below.

In terms of those services the Student was able to access from March 23, 2020 through the end of the school year, the record supports the following:

- Student attended 83% of the morning sessions (50 of the 60 sessions offered.)
- Student attended 23% of the midday sessions (23 of the 98 sessions offered.)
- Student attended approximately 28% of the group speech sessions (approximately 3 of the 11 sessions offered.)<sup>7</sup>
- Student attended approximately 0% of the individual speech sessions.
- According to both the District's response and the Parent's reply, on or about April 13, 2019, the District provided the Student's family with various occupational therapy tools, including fidget toys and a sensory zip blanket.

### *Analysis*

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; and to ensure access of the student to the general curriculum.

Due to the exceptional nature of the COVID-19 closure, 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." Finally, OSPI guidance stated districts were to provide students with IEPs student-specific continuous learning opportunities beginning March 30, 2020.

Here, as detailed above, the District began providing the Student with continuous learning opportunities, and specially designed instruction, beginning March 23, 2020—in the form of the Student's spring 2020 CLP. For example, under the Student's spring 2020 CLP, the Student was to receive specially designed instruction from his paraeducator during the midday sessions, which were to consist solely of the Student and the Student's paraeducator.<sup>8</sup> Additionally, beginning May 15, 2020, the Student was provided the opportunity to receive specially designed instruction during the individual speech sessions on Friday mornings, from 8:50 to 9:00 am. (However, in contrast to the midday session and speech sessions, for two reasons, both the morning sessions and the weekly assignments themselves would likely not have constituted individualized instruction under OSPI's COVID-19 closure guidance: i) the assignments were the same for all

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<sup>7</sup> On the log-in document, the morning session is identified by the label 'whole class check-in'; in other words, the weekly charts included in the log-in document do not appear to clearly break down the morning session into individual speech time (beginning May 15, 2020), group lesson time, and group speech time—at least in terms of determining which of these three lesson types the Student attended.

<sup>8</sup> According to the special education teacher, the Student's paraeducator had worked with the Student extensively prior to the COVID-19 closure, and so was aware of how to individualize instruction for the Student. Furthermore, the special education teacher regularly checked in with the paraeducator.

students in the class; and, ii) the special education teacher stated individualized instruction did not take really take place during the morning sessions.)

For the following reasons, though, the Student's ability to engage with the remote specially designed instruction was limited: i) the Parent's work schedule; ii) the Parent's "lack of expertise in the area of special education techniques and strategies"; and, iii) the Student's needs resulting from his disability, which limited the Student's ability to self-engage with remote learning.

In relation to the preceding paragraph, it is important to note the following: the parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the specially designed instruction their child requires. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and, (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum.

And, here, the Parent informed the District of the challenges the Student was experiencing in being able to engage with the remote specially designed instruction. For example, on April 28, 2020, the Parent emailed the special education teacher, stating she believed the Student would better be able to access remote specially designed instruction if the Student was provided with a remote therapist. From the record, there is no indication the Student's IEP team considered the Parent's request. Then, on or about May 12, 2020, the Parent hired a registered behavior technician (RBT) to work with the Student in the family's home for a large portion of the regular school week. Soon thereafter, the Student's attendance at the midday sessions significantly increased, showing the RBT had a positive impact on the Student's ability to engage with the remote specially designed instruction.

In light of the foregoing, the Student's IEP team—at minimum—should have considered the Parent's request that the District provide the Student with a remote therapist, and potentially other strategies to increase the Student's access to instruction. And the Student's IEP team should have issued a prior written notice, documenting both its decision, and the factors relevant to that decision. The fact that this did not occur represents a violation of the IDEA, and the District will be required to send an email to certain staff, reminding them that the requirement of parent participation applies to COVID-related disruptions to the regular school schedule.

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. 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.

Here, on April 27, 2020, the District provided the Parent with a progress report that related to the Student's February 2020 IEP goals. For each February 2020 IEP goal, the entry was as follows: "If maintained, current rate of progress is sufficient to achieve annual goal." In regard to the April 27, 2020 progress reporting, though, OSPI notes the following: the April 27, 2020 progress reporting entries are limited to the foregoing, quoted sentence, and the progress reporting entries do not clearly inform the Parent of the Student's actual progress as the reporting does not contain the unit of measurement that each respective goal was written in. While the report is minimally sufficient under the IDEA, OSPI recommends that the District report progress on measurable annual goals in the same unit of measurement as the goals themselves are written. For example, the Student's speech-language pathology goals has a goal of making inferences when confronted with social scenarios, "improving his ability to make and express connections from 0/5 opportunities to 4/5 opportunities..." But the April 27, 2020 progress report entry for the speech language pathology goal does not include a figure between 0 and 4 that reflects the Student's ability as of April 27, 2020. The April 27, 2020 progress report entry for the speech language pathology goal would have better informed the Parent of the Student's progress on this goal if it included a figure between 0 and 4. In sum, OSPI recommends that the District report progress on measurable annual goals in the same unit of measurement as the goals themselves are written.

To be clear, though, OSPI recognizes the progress reporting during the COVID-19 closures may not look the same as it did during regular, in-person instruction. For example, OSPI does not expect progress reporting during the COVID-19 closures would necessarily include progress on every IEP goal (as the district may not have worked on every goal, given the understanding that IEPs were not necessarily implemented as written).

The next progress report was issued on June 15, 2020. For every goal but the speech language pathology goal<sup>9</sup>, the June 15, 2020 progress report read: "Due to limitations of remote learning, progress towards [this] goal will be assessed when in-person services resume." This does not provide the Parent with any information about the Student's progress or lack of progress during the closures. This is a violation of the IDEA, as districts must follow IEPs in regard to how a student's progress toward his or her 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.

Therefore, the District will need to collect progress data or conduct new assessments to determine the Student's progress and then hold an IEP team meeting. After the Student's IEP team meets, the District will provide OSPI with a copy of the prior written notice that documents the IEP team's answers to the following questions:

1. Where does the Student currently stand on the goals in his February 2020 IEP? For example, has the Student's ability in the February 2020 goal areas regressed, stayed the same, or progressed?<sup>10</sup>

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<sup>9</sup> The progress report for this goal read: "If maintained, current rate of progress is sufficient to achieve annual goal."

<sup>10</sup> This question will need to be answered by gathering existing data and communicating with the Parent and the Student. It is possible the District will be required to seek consent from the Parent for a partial or complete reevaluation to determine the Student's current standing on the February 2020 goals.

2. Based on the foregoing answers, does the Student require recovery services and/or compensatory education, and, if so, how much and in which areas?
3. Does the Student's February 2020 IEP need to be revised in any way?

Furthermore, the District will be required to create a detailed, District-wide plan for how it will gather and report progress on IEP goals for all students with IEPs during the 2020-2021 school year, as the unique circumstances present in the spring of 2020 are likely to also be present during the 2020-2021 school year. The District will also be required to develop, and present, a training that informs certain District staff of the detailed, District-wide plan for gathering and reporting progress on IEP goals for students with IEPs during the 2020-2021 school year.

### **CORRECTIVE ACTIONS**

By or before **August 28, 2020, October 6, 2020, and November 6, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **IEP Meeting**

By or before **October 30, 2020**, the Student's IEP team will meet to discuss, and answer, the following questions:

1. Where does the Student currently stand on the goals in his February 2020 IEP? For example, has the Student's ability in the February 2020 goal areas regressed, stayed the same, or progressed?<sup>11</sup>
2. Based on the foregoing answers, does the Student require recovery services and/or compensatory education, and, if so, how much and in which areas?
3. Does the Student's February 2020 IEP need to be revised in any way?

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

If the Student's IEP team does recommend the Student requires recovery services and/or compensatory education, then by November 13, 2020, OSPI will either approve or revise the IEP team's recommendation on this matter.

#### **DISTRICT SPECIFIC:**

##### **Create District Policy on Progress Reporting and Training on the Same**

By **September 25, 2020**, the District will develop a detailed, District-wide plan for how it will gather and report progress on IEP goals for all students with IEPs during the 2020-2021 school

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<sup>11</sup> This question will need to be answered by gathering existing data and communicating with the Parent and the Student. It is possible the District will be required to seek consent from the Parent for a partial or complete reevaluation to determine the Student's current standing on the February 2020 goals.

year. Also by **September 25, 2020**, the District will develop a training that incorporates and summarizes this plan.

By **August 28, 2020**, the District will submit a draft of both the plan and the training materials to OSPI for review. The training materials will include examples. OSPI will approve the materials or provide comments by September 4, 2020 and additional dates for review, if needed.

By **October 6, 2020**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet; and, 2) a roster of who should have attended so OSPI can verify that staff participated.

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

### **RECOMMENDATION**

OSPI recommends that the District report progress on measurable annual goals in the same unit of measurement as the goals themselves are written.

Dated this \_\_\_ day of August, 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.)