

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-106**

### **PROCEDURAL HISTORY**

On July 7, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On July 7, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on July 10, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On July 27, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on July 28, 2023. OSPI invited the Parent to reply.

On August 23, 2023, the OSPI complaint investigator emailed the Parent to arrange for an interview, but did not receive a reply prior to the completion of this decision.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on July 7, 2022.<sup>1</sup> These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUE**

1. Did the District implement modification of materials in conformity with the Student's individualized education program (IEP) according to WAC 394-172A-03105 during the 2022–23 school year?

### **LEGAL STANDARDS**

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through

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<sup>1</sup> The Parent also filed a complaint related to IEP implementation with OSPI on December 15, 2022. The first complaint, SECC 22-150, related to the 2022–23 school year. However, the December 2022 complaint focused exclusively on assistive technology (AT) and the 1:1 paraeducator. The instant case alleged a different IEP implementation issue, specifically related to the modification of materials during the 2022–23 school year. As such, this report will not consider the use of AT or a paraeducator, as these matters were previously decided by OSPI in 22-150. Any references to AT or the paraeducator are included for context and continuity.

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. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007)

## **FINDINGS OF FACT**

### **Background**

1. The Student was previously found eligible for special education services as a Student with a visual impairment. He was initially found eligible for special education in 2017, for multiple disabilities. The Student has an extensive history of visual impairment and an associated need for specially designed instruction, as well as supplementary aids and services.
2. On June 15, 2021, an out-of-state individualized education program (IEP) was drafted for the Student.
3. During the 2021–22 school year, the Student attended a private school. The Student subsequently enrolled in the District in March of 2022.

### **2022–23 School Year**

4. On September 14, 2022, the District held its first day of instruction for the 2022–23 school year. The Student attended a District school as a sixth grader.
5. On October 11, 2022, the Student's IEP team created an IEP for the Student for the 2022-23 school year. The adverse impact summary stated that:  
[Student's] ability to interpret and interact with his environment, including academic functioning and social interactions, is impacted by Cortical Visual Impairment such that direct services and modifications/accommodations are required throughout his educational day. Therefore he qualifies for [specially designed instruction] SDI in the areas of Math, Reading, Social, Vision and Writing and related services in Speech-Langue Pathology.

The adverse impact statement for writing in the IEP also specifically stated that, "[Student] requires accommodations to the learning materials and modifications to the learning environment."

The October 2022 IEP included special education services in reading, writing, math, speech language pathology, and vision. The IEP goal for vision was related to self-advocacy. This goal required that the Student, when given a written organizer and sample worksheet or reading

passage, will describe in his own words (e.g. cluttered, needs bigger font) whether the material has been appropriately modified to his visual abilities, improving self-advocacy from 0/5 observable opportunities to 4/5 observable opportunities as measured by systematic observation.

The following "classroom" accommodations were listed on the October 2022 IEP:

- Access to adapted PE equipment and caution during physical activities
- Access to bold marker/pencil, slant board, visual occlude
- Access to tablet with productivity apps and CCTV/Video Magnifier
- Add color highlighting to items in lower visual field that may be difficult to detect (e.g. high contrast tape on stairs)
- Allow extra time for transitions in classroom and moving around school
- Extra time to process visual information; allow vision breaks
- Frequent checks for understanding
- Give short, one step directions
- Highlight 2-3 salient features using yellow (or red) in visually presented materials
- Highlight key words to reduce complexity and need for visual search
- Keep pathways clear of tripping hazards (e.g. chairs pushed in)
- Limit overhead lighting, ensure iPad is not too bright, wear hat outside, alternate screen time learning and paper copies
- Paper copies
- Multiplication Table (Grades 4 and Above Only)
- No lamination/glare materials
- Personal copies of instructional materials
- Preferential seating – front right when teacher is facing, windows behind if possible
- Present information on a tablet in a program that can zoom in all for all printed materials or provide preferred font (26 pt., (Century Gothic preferred) 4 pt. kerning, double space between lines)
- Reduce visual complexity of materials and environment
- Shortened assignments
- Student selected break available
- Use descriptive language to narrate what is happening in environment (materials, people, actions, environmental features)
- Use of brightly/highly saturated color to promote visual attention

On the team considerations portion of the October 2022 IEP, the box for "students who are blind or visually impaired" is checked. In this area, the IEP team wrote that:

[Student] is diagnosed with Cortical Visual Impairment (CVI), which is an impairment of visual functioning due to the way the brain processes visual information. Based on the functional vision assessment, [Student's] reading media is 26-point font, increased spacing with 4pt. kerning and double spacing between lines. Braille instruction is not appropriate at this time.

The October 22 IEP also included the following "Program" accommodations:

- Access to PE equipment and strategies (e.g., left visual field deficit, educate peers to call name before throwing or kicking ball), daily/all school settings
- Access to bold marker/pencil, slant board, occluder, daily/all school settings
- Access to breaks during testing, daily and during tests/all school settings
- Access to tablet with productivity apps and CCTV/Video Magnifier, daily/all school settings

- Allow vision/brain breaks, daily/all school settings
- Color highlight key words to reduce complexity and need for visual search, daily/all school settings
- Allow extra time for transition in classroom and moving around school, daily/ all school settings
- Discussion of salient features (his words) with new materials, daily/all school settings
- Extra time to process visual information; allow vision breaks, daily/all school settings
- Frequent checks for understanding, daily/all school settings
- Give short, one-step directions, daily/all school settings
- Give specific directions, daily/all school settings
- Highlight 2-3 salient features using yellow (or red) in visually presented materials, daily/all school settings
- Highlight every other line a different color in a chart/list, daily/all school settings
- Keep pathways clear of unexpected tripping hazards (e.g., chairs pushed in), daily/all school settings
- Large print, daily and during testing/all school settings
- Limit overhead lighting, ensure electronic screens are not too bright, alternate screen time learning and paper copies, daily/all school settings
- Modified tests and quizzes, daily and during testing/all school setting
- Multiplication table (grades 4 and above only), daily and during testing/all school settings
- No lamination/glare materials, daily/all school settings
- Personal copies of instructional materials, daily/all school settings
- Present information on a tablet in a program that can zoom in for all printed materials or provide preferred font (26 pt., Century Gothic preferred), 4 pt kerning, double spaced between lines), daily/all classroom settings
- Preview and review of academic materials/ daily/all classroom settings
- Reduce background or ambient noise, use of sound reducing headphones to reduce sensory complexity, daily/all school settings
- Reduce visual complexity (minimize clutter light, movement) of materials and learning environments (noise), daily/all school settings
- Shortened assignments, daily/all school settings
- Small group/alternate setting for testing available, daily and during testing/all school settings
- Speech-to-text, daily and during testing/all school settings
- Strategic seating – front right when teacher is facing, windows behind if possible, daily and during testing/all school settings
- Student selected break available, daily/all school settings
- Text to speech, daily and during testing/all school settings
- Use of comparative language/thought to support cognition, daily/all school settings
- Use of brightly/highly saturated color to promote visual attention and cognition, daily/all school settings
- Use of 'what does that look like', 'what do you think that is' vs. 'can you see that?', daily/ all school settings
- Visual aids to support pre-teaching and info previously learned to support visual recall, daily/all school settings

The October 2022 IEP included the following modifications: "Assistive technology; use of iPad and/or CCTV/daily/in all school settings."

6. In January of 2023, the District completed the three-year reevaluation of the Student and determined that he would continue to meet IDEA's eligibility standards, was eligible for special education services as a student with a visual impairment.
7. On February 2, 2023, the Student's IEP team met to amend the Student's IEP. At this meeting, the team discussed the January 2023 reevaluation results. The team also discussed the Student's progress toward the current IEP goals. The team added several accommodations to the IEP, including:
  - Allow head eye position that is Student preferred, daily/all school settings
  - Give specific, descriptive directions, daily/all school settings
  - May leave class 2 minutes early to navigate the halls
  - New recommended font for printed work: 18pt, 2pt kerning, Century Gothic, double spaced, daily/all school settings
  - Preview of new settings for field trips, outdoor educational experiences, new schedule with a map ahead of time, daily/all school settings
  - Repeat directions using the same language, do not rephrase, daily/all classroom settings
  - Supplement materials with realistic, color photos/charts/tables instead of black and white, daily/all school settings
  - Use of descriptive language to narrate what is happening in the environment (materials, people, actions, environmental features), daily/all school settings
  - Use of brightly/highly saturated color to promote visual attention and cognition, daily/all classroom settings
  - Visual aids to support pre-teaching and info previously learned to support visual recall, daily/all school settings
  - When assigning a locker, best would be left end of a bank of lockers, alternate lock can be offered, daily/all school settings
8. On March 15, 2023, the Student's special education instructional assistant emailed the Student's team and stated that for the past two months, she had been manually color highlighting the Student's math worksheets. She wrote that the Parent had requested a computer-generated highlighter instead, for better visual clarity, and that the school wanted to comply with this request. The special education instructional assistant asked the team if she may access the digital printer, to handle the printing work for the team. She also asked for others' input into how to best meet this request for the Student.
9. On March 15, 2023, the District's teacher of the visually impaired emailed the Student's special education instructional assistant with the Student's new IEP accommodations, including the information about using the new font (18 pt., 2 pt. kerning, Century Gothic, double spaced).
10. On March 23, 2023, the Parent emailed the special education teacher to follow up on a phone call, during which the special education teacher mentioned a "behavior problem and being specifically concerned." In this message, the Parent wrote that she was "concerned about [Student's] modifications or lack thereof." The Parent also wrote in this message that:

Below are 2 examples, of giant copies of materials given to him in science. And a photo of [Student] needing to work way too close to materials (most TVs should understand that is not a 'comfortable working distance.'). His IEP does not say enlarge materials to 11 x 17; instead it gives specific text specifications to be followed. That is partly also why he has a

para[educator]. So why his IEP is not being followed in this area by his teacher, is beyond me (this regularly happens with science).

Student's accommodations also apply to art. A few times Student has described a project and I ask, 'Were you given a picture so you could see?' for a drawing/sketch activity (toucan) and he tells me no. Student's IEP calls for 'personal materials.' And even if they are expected to draw a toucan- perhaps from memory?- he has a deficit in his visual memory and needs an image to work from. Or drawing an eye, or whatever. He does not have visual access to these things, that's what his IEP is all about.

I want to know how his modifications are going to happen, because I can see they are not being followed- and his IEP is not being followed.

Next, on our call you said Student had 'options' for brain breaks, leaving early before passing time. But anything in his IEP needs to be followed, that's why it is in there. IEP accommodations aren't 'optional.' Any administrator will tell you that. All of these things take a toll on him and his fatigue - and that's now playing out. I said at the start of the year- everything he needs to be successful, included, and make progress in his IEP (that included his appropriate assistive tech).

You make it sound as if Student's 'preferences' are respected - he doesn't want breaks, or to leave early. Yet somehow his preferences are completely disrespected and ignored when it comes to the most familiar and visually accessible assistive technology, a basic MacBook<sup>2</sup>...

...

At this point, I would like [a specific doctor and specialist] support specifically in helping the team understand CVI and social skills...

11. On March 29, 2023, the special education teacher responded to the Parent by email. The special education teacher wrote that in regard to making assignments visually accessible, that she would review the Student's accommodations with his team. The special education teacher noted that the IEP does include large print as an accommodation, but she wrote that she would emphasize the other components in the Student's team meeting. She wrote that the District's teacher for students with visual impairments continues to work with the Student. The special education teacher also wrote that the Parent may invite her specialist/doctor to the next IEP team meeting if she would like to do so.
12. On March 30, 2023, the Parent emailed the special education teacher again and wrote that large print was "not supposed to be in the IEP." The Parent also wrote that large print has a specific definition that does not support the Student's needs. The Parent wrote that they had talked about removing this requirement, because the IEP does include the font information that helps the Student and the Parent asked again for her preferred specialist/doctor to be added as a consultant to the Student's IEP team. The special education teacher wrote back

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<sup>2</sup> As noted above, issues concerning AT and the MacBook were addressed in OSPI's investigation and decision in 22-150.

promptly, that at this point, this request related to the specialist would need to go to the District level special education administrators for consideration.

13. During these email exchanges, the Parent provided the District with one photo of the Student working very closely to his assignment. His face is no more than four inches from the paper in this photograph. The Parent also provided a photograph of two worksheets with enlarged print, that do not show any highlighted text or other accommodations.
14. On March 28, 2023, the Parent wrote to the Student's orientation and mobility specialist to ask about any mobility instruction or goals for the Student. The Parent noted that the Student walks to school (with the Parent). The Parent asked that any mobility instruction outings be done before or after school so the Student would not miss class time. The Parent also asked to be notified in advance if the Student would be out of the school building.

The mobility specialist responded by email on March 30, 2023, and explained her work with the Student. The mobility specialist wrote that the Student would go on instructional outings during his art class period. The specialist wrote that she would notify the Parent in advance of the outings, and work with the Student's team so that he would also know of any such outing in advance.

15. On March 30, 2023, the Parent wrote to the Student's orientation and mobility specialist again, to ask why he did not "qualify for direct services." The Parent also stated that if the Student was off campus, the Parent preferred for that to happen before or after school. The Parent asked why the District sent home a permission slip for the Student to do some work off campus.
16. Also, on March 30, 2023, the District's mobility specialist replied to the Parent by email, to notify her that the Student qualified for related services for mobility, which included direct instruction, collaboration, observation, materials preparation, and staff training. The specialist wrote that she provided direct services to the Student along with some staff training for his teachers. The orientation and mobility specialist also wrote that she would focus on helping the Student access the community and attend age-appropriate outings with peers.
17. Later, on March 30, 2023, the Student's math teacher sent a message to all families in the class. In this message, the math teacher noted that the next test would be given the week of April 5th, and he wrote that he announced this to the class the prior day, and had students make a study plan. He further stated that 29% of students in the class felt that they could have prepared more for the last exam, so he noted that families should work with their child to make sure they feel prepared for the exam. The teacher also wrote the main topics of the exam and shared resources for studying, which were posted on his Schoology page.
18. On April 2, 2023, the Parent emailed the math teacher and asked to see the Student's modified math test beforehand. The Parent wrote that she believed that the math teacher had stated that practice problems on Schoology are probably not very accessible to the Student, so the Parent asked for paper modifications so the Student could access these materials. The Parent

wrote to the math teacher again on April 2, 2023, and stated that the Student's instructional assistant could help the Student make his study plan. The Parent wrote that she asked the Student if he had made a study plan and that the Student said he did not make a study plan.

19. On April 3, 2023, the math teacher replied to the Parent via email. The math teacher stated that the Student told him that he was able to access the study resources on Schoology and that the Student told him that he does not need problems on a modified worksheet. The math teacher shared the Student's study plan with the Parent. The math teacher also reported that the Student had already done some studying. The math teacher shared the exam with the Parent and noted her feedback would be welcome. In this message, the math teacher also wrote that the Student needed a lot of support in math. The math teacher reported that the Student would work with the teachers but would not work with the instructional assistant in class.
20. On April 4, 2023, the Parent responded to the math teacher's email. She wrote that the Student would always say that he did not need things modified but "that is what the IEP is for." The Parent also wrote that the Student's study session was scheduled "last minute on Monday" and that she believed the Student made his study plan at a different time than the other students. The Parent also wrote that she had always stressed that the Student should work with his instructional assistant. The Parent wrote that the Student's difficulty to work with the IA was due to the District's:
  - failure to provide him with a 1:1 para support, again from his IEP, from day one of the school year...If he is having a hard time, then his team needs to figure that out. That is special education. He needs that support whether it's academic work, planning, organizing his materials, or social interactions, etc.
21. The math teacher responded to this message the same date by email. He wrote that the Student made a study plan with the rest of the class, the prior week. The math teacher wrote that he would put together a study guide with practice questions that are modified for the Student for the next exam, and that he can use this guide along with the Schoology materials. The math teacher wrote that he and the special education teacher were continuing to work with the Student to encourage him to use his IA, and that they asked him to do so on a daily basis. The math teacher ended his message by stating that, "Just so you know, we are giving Student extensive support in class and with modifying materials. We are giving support with academic work, planning, materials, and social interactions. If you ever have suggestions for how I can better support Student, please let me know."
22. In its responsive materials to this complaint, the District submitted a sample math study guide which shows enlarged print, bold font, different colored text (red, blue, green and black).
23. On April 7, 2023, the Parent emailed the special education teacher, the principal, and the science teacher with concerns about the Student's modifications in the science class. In this message, the Parent wrote that the Student continued to bring home items in large text that were "blown up vs. modified per his IEP." The Parent wrote that she was concerned about three recent problems: text was not being modified per the IEP, images and graphics (fuzzy



black and white charts, illustrations, etc.) are not being modified (as opposed to giving “realist images” per the IEP), and finally the Parent wrote that “I can only assume that the IA is not fully trained in modifying his materials. Or that process has not been established.”

The Parent also sent a photo of the Student holding a science worksheet very close to his face, along with a copy of two science worksheets. One worksheet included two fuzzy black and white images, both worksheets had text that was not enlarged, and all text was only in black and white. The Parent wrote that she expected all of the Student’s work to be appropriately modified for his disability related needs.

24. On April 7, 2023, the special education teacher responded to the Parent by email and stated that she had just met with the IA and the science teacher to address the concerns. The special education teacher wrote that the science teacher would share a “onenote notebook” with the Student, so that he would have digital copies of all science documents, so that he can access the materials digitally and type his answers. She noted that this would give the Student the ability to manipulate all texts digitally. All graphics and charts would be available in the “onenote notebook,” so the Student could use the “Amplify” program to enlarge, color, or print out charts to fit his specific needs.

The special education teacher also wrote that the IA was “planning to look ahead on Student’s One Note and in Amplify to see if any charts/pictures would be better printed out in color or modified for ease of use” and that the IA would be able to access assignments in “onenote”, to also give the Student print copies. The special education teacher wrote that they would start this system the next school day, the following Monday.

25. On May 2, 2023, the Parent again wrote to the special education teacher, principal, and language arts teacher, with a worksheet with small black and white print attached. The Parent asked why she had to keep writing to the school for her student’s IEP to be implemented. The Parent noted there was supposed to be a dedicated staff person for modifying materials. The attached worksheet was a calendar for reading. The worksheet asked students to log their monthly reading, and return the sheet if they read over 4,000 minutes a month. The worksheet also included a page of suggested young adult titles for reading.

26. The language arts teacher replied by email that day, and stated the Student brought home a general optional worksheet from the school library. The worksheet was left out for all students and was not a class assignment or student specific learning material. The language arts teacher wrote that all students took a copy if they wanted one, and that she was not aware the Student had taken the worksheet. The language arts teacher also wrote that the Parent could disregard the library worksheet and clarified that the Student maintained a reading log for her class in his “OneNote” notebook.

## **CONCLUSIONS**

**Issue: IEP Implementation for the Modification of Student Materials** – The Parent alleged that the District failed to implement the Student’s IEP with respect to needed modifications for

classwork, testing, and assignments. Specifically at issue was the District's use of large print text on printed materials in several instances, one instance where a science worksheet used gray scaling and enlarged text that was not visually accessible to the Student, one instance when the Student picked up an optional library "for fun" worksheet that included a black and white chart that was not visually accessible to the Student, one instance in math class when the Parent believed the Student was not given an accessible test or study guide, and one other concern shared with the school team about two of the Student's science class worksheets that used enlarged text, as opposed to the other modifications outlined in the IEP.

At the beginning of each school year, each district must have in effect an 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. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

In this case, the District and the Parent disagreed as to the accessibility of the Student's materials that used enlarged print. The Parent stated that print should not be enlarged, but rather a specific font used. The IEPs did both outline specific preferred print size and font style specifications that work best for the Student's visual needs. However, the October 2022 IEP and the later amendment to the IEP did allow for the use of enlarged print as a modification for the Student. Although, the amended IEP included large print only for testing. Thus, the use of enlarged font, while there may be disagreement over best practice, was not a failure to implement the IEP.

Additionally, the records show that while there were a few instances of materials not being modified per the IEP, each teacher and District staff member worked extensively with the Parent and Student. After the second issue with the science class worksheets, the District gave the Student access to a "onenote" notebook on the computer with the "Amplify" program, so the Student could create his own visual images as needed in each class and for every assignment. The IA was also trained on the "onenote" notebook and "Amplify," and went in to "work ahead" to help the Student with his worksheets and visual items in "onenote." Encouraging the Student to create his own visual materials was aligned with one of the Student's IEP goals as well. The IEPs included advocacy goals for the Student, related to these visual needs. Documentation reviewed in the complaint, provided by the District and Parent, indicates there were two science assignments, one math test and one optional library worksheet (which was not a Student assignment or requirement) that were not appropriately modified.

When the Parent raised concerns, the District responded to each concern raised by the Parent promptly to ensure that the IEP was implemented, and that the Student received a free appropriate public education (FAPE). Further, other documentation shows that the staff were modifying the Student's materials, for example, highlighting the math worksheets and exploring technology that would make providing modified materials more accessible. While a district should strive to implement the IEP completely, minor deviations from the IEP do not mean there has been a material failure to implement the IEP. Here, the handful of documented instances of

improperly modified Student classwork do not amount to a “material failure” to implement the Student’s lengthy IEP. Thus, OSPI finds no violation.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

OSPI notes that the Student’s IEP contained an extensive number of accommodations, many of which were duplicated as classroom and program accommodations, with different wording or additional detail. Additionally, many accommodations were listed as needed daily and across all settings. OSPI notes that it is likely that the number of accommodations, potential duplicates, and lack of specificity around time/location could lead to difficulty implementing the accommodations. OSPI strongly recommends the Student’s IEP team review the accommodations and ensure accommodations are individualized to the Student’s needs, including the appropriate time and location/setting of accommodations based on the Student’s needs.

Dated this 31st day of August, 2023

Dr. Tania May  
Assistant Superintendent of Special Education  
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**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.)