

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-77

PROCEDURAL HISTORY

On May 28, 2024, 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 Lake Washington 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 May 28, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on May 29, 2024. OSPI asked the District to respond to the allegations made in the complaint.

Between June 2 and 7, 2024, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on June 7, 2024.

Between June 7 and 14, 2024, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on June 18, 2024.

On June 14, 2024, the District requested an extension of time to respond to the complaint. OSPI granted the extension to June 21, 2024.

On June 20, 2024, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on July 12, 2024.

On June 21, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on June 24, 2024. OSPI invited the Parent to reply.

On July 12, 2024, the OSPI complaint investigator conducted an interview with the Parent.

On July 15, 2024, OSPI requested that the Parent provide additional information, and the Parent provided the requested information the same day. OSPI forwarded the information to the District on July 16, 2024.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interviews.

ISSUES

1. Whether, since May 9, 2024,¹ the District has implemented the following components of the Student's individualized education program (IEP): cue cards for breaks, paraeducator support, specially designed instruction in math, and speech-to-text?

¹ OSPI notes that the Parent's previous complaint against the District, SECC 24-33, decided on May 9, 2024, contained some overlapping allegations as contained in the current complaint, including IEP implementation and IEP meeting procedures/parent participation. On those issues, OSPI cannot

2. Whether, since March 2024, the District has appropriately addressed the Parent's concerns that the Student's absences were disability related and whether additional special education support was required?
3. Whether, since May 9, 2024, the District has, per WAC 392-172A-03095(1)(f), ensured that Parent invitees, such as the Parent's interpreter and parent advocate, could attend IEP meetings?

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 enrollment who is eligible to receive special education services. A school district must 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 student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Development: When developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student. 34 CFR §300.324(a). WAC 392-172A-03110.

Basis for IEP Team Decisions: Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. *See, e.g.*, WAC 392-172A-03020(g); *see also, generally*, WAC 392-172A-03090.

Interpreter and Translation Services: School districts should take whatever action is necessary to ensure that the student eligible for special education's parents understand the proceedings of an IEP meeting. This may require arranging for an interpreter for parents who are deaf or whose native language is not English. 34 CFR §300.322(e); WAC 392-172A-03100(7). In addition to providing an interpreter, a school district is also required to provide prior written notice when it proposes or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to the student in the parents' native language, unless it is clearly not feasible to do so. 34 CFR §300.503(c); WAC 392-172A-05010(3)(a).

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student; not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the

reinvestigate issues already investigated and therefore, will investigate any potential violations occurring after the previous decision.

school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

FINDINGS OF FACT

1. At the start of the 2023–24 school year, the Student was in the fourth grade and was eligible to receive special education services under the category of developmental delay.
2. The District’s 2023–24 school year began on September 5, 2023.
3. The Student did not initially attend school in the District at the beginning of the school year as he was homeschooled, instead began attending school on November 27, 2023, on a partial day schedule per the Parent’s request.
4. On December 6, 2023, the Student’s IEP team reviewed the Student’s IEP and behavioral intervention plan (BIP). The team included the director of the Native American education program, the multilingual teacher, and the Parent’s advocate, among other required IEP meeting attendees. Team considerations included, among others, that the Student was in the multilingual program, which was taken into consideration in developing the IEP. The District noted no concern about the Student’s communication skills, although the Parent expressed a concern.

The IEP included annual goals in reading, writing, math (calculation, problem solving), social/emotional, and behavior, with progress reporting to be provided at the semester. The Student’s IEP provided the Student with the following specially designed instruction in math:² 30 minutes, 4 times weekly (to be provided by special education teacher in a special education setting).

The IEP included accommodations, including as relevant to the allegations in the complaint, “access to breaks both inside and outside of the classroom” and speech-to-text, as needed in all school settings.

5. The Student’s December 2022 BIP included strategies, such as sensory breaks with the use of a timer; clear start and end times for work time, with use of a timer; and a visual schedule.

² The IEP included specially designed instruction in other areas; however, the Parent’s complaint only raised concerns about math. Thus, other areas are omitted for brevity.

6. Documentation of the Student's schedule indicated the Student received specially designed instruction in math with the special education teacher on Mondays, Tuesdays, Thursdays, and Fridays from 12 to 12:30.
7. The District, in its response, noted that a draft IEP was provided to the Parent prior to the December 2023 IEP meeting and that the draft IEP indicated the Parent had not requested that an interpreter participate in the IEP meeting. The District also stated that while the Student has "been involved in Multiple Language ('ML') programing," the Parent "has never indicated to the District that she is unable to understand English well enough to participate in the Student's IEP team meetings." The District stated the Parent's advocate participated in the meeting.
8. The District was on winter break from December 25, 2023 through January 1, 2024.
9. On January 29, 2024, the Parent emailed District administrators and raised concerns about collaboration with the IEP team. According to the District's response, this was the first time the Parent requested an interpreter, with the Parent stating, "I also request an interpreter as I'm not being perceived as competent to teaching staff as an Alaska Native mother." The District stated further that the "Parent, did not, however, identify that she was unable to understand what was being discussed or communicated by or with the IEP team."
10. An IEP meeting was scheduled for January 30, 2024, and then canceled per the Parent's request.
11. In late-February 2024, the Student was kept home for multiple days according to emails and the Student's attendance report. Emails from the Parent indicated the Student was absent for "mental health reasons" or due to medical appointments.
12. Documentation indicated a meeting was scheduled with the Parent for March 8, 2024, per the Parent's request; however, the Parent did not attend.
13. On March 14, 2024, the Parent met with the District's director of elementary education and the Parent invited multiple guests and advocates. During the meeting, the Parent shared concerns and reiterated these in an email following the meeting.

The District noted in its response that the Parent also reiterated these concerns in a March 20, 2024 email, including concerns about transitioning the Student back to school. The District stated, however, that the Parent "did not note that Student's disability was causing Student to not attend school."³ Via email, the Parent continued to report the Student as being absent for "mental health reasons."

³ The District's response also noted that "At the end of March, the District began preparing to withdraw Student from [school] for 20 days of consecutive non-attendance...[But]Student did not, however, end up being dropped from enrollment."

14. On April 24, 2024, the Parent provided, and the District received, her consent for a reevaluation of the Student. Based on emails, this evaluation was being conducted by a non-District provider with certain assessments in occupational and speech therapy being conducted by District staff. A District school psychologist would also be involved to gather information and lead the evaluation meeting.
15. On April 25, 2024, the director and Parent emailed to clarify the consent form and discussed scheduling an IEP meeting.
16. On May 4, 2024, the Parent emailed the District's director of special services (director) and requested the District provide her with a prior written notice before a meeting to "support the development of [the Student's] IEP." The director responded to clarify whether the Parent was requesting an IEP meeting and stated, "can you provide a list of people you would like to receive the IEP invite. I have noticed there are new individuals included in the emails you have sent and others left off so and I want to be sure we include the correct team members."
17. On May 5, 2024, the Parent provided the District with a "Parent Input" letter, outlining her concerns, which included, in part:
 - That the Student was not making progress in social-emotional learning and culturally appropriate advocacy.
 - That communication and collaboration between all those supporting the Student could be improved.
 - That accommodations and services needed to be reviewed to determine if any changes or additions may be necessary.
 - That the Student needed to be "fully included in the general education environment to the greatest extent possible while receiving appropriate support."
 - That the Parent wanted a better understanding of "the methods and frequency of assessments and progress monitoring, as well as how the results are used to make instructional decisions."

The Parent requested an IEP meeting to discuss the concerns and develop a plan to address the concerns.

18. On May 9, 2024, OSPI issued a decision in SECC 24-33, previously filed by the Parent on March 12, 2024. SECC 24-33 investigated and found no violations related to IEP development, Parent input, IEP implementation, and records disclosure.
19. Regarding the implementation of the Student's IEP since May 9, 2024, the District stated that "in the 20 school days since May 9, 2024, Student has been kept home or reportedly had to go to medical appointments almost 50% of the time." On the days the Student attended, the District stated that staff materially implemented the Student's accommodations and SDI in math. The District noted the IEP did not include paraeducator support.
20. On May 17, 2024, the Parent emailed the special education teacher and general education teacher with concerns regarding math assignments and worksheets. The Parent stated that the "instruction is not adjusted to his level of understanding" and that she had "no idea of what teaching style [Student] has experienced in learning math because he seems very

confused." The Parent expressed concerns that she had not been given information to "support the worksheets."

21. Between May 22 and 24, 2024, emails between the Parent and the school psychologist discussed scheduling an evaluation review and/or IEP meeting for either June 13, 17, or 18, 2024. Based on emails, it appears there was some confusion about the date and purpose of the meeting.

In one email, the Parent asked to include individuals from the children's hospital and a parent advocate in the meeting. The Parent, in an email, also expressed disappointment that the school psychologist had not included the Parent's team on the email regarding scheduling. The school psychologist responded and apologized for any confusion, explaining that her intent was to see if the potential meeting dates worked for the Parent and then once dates were confirmed, she would send out an invitation to the entire team.

In one email, the Parent stated she was available for an IEP meeting on June 14, 2024. The Parent stated, "there is no need to call for a feedback meeting" and that she would provide written input for the IEP.

22. On May 28, 2024, the director emailed the Parent and the team, stating:

I wanted to clarify any confusion. The evaluation feedback meeting needs to occur so we can hear back from [independent evaluator] and the others who assessed [Student] so we are able to develop an IEP if that is the appropriate next step. The feedback meeting is an opportunity to discuss the evaluation process and share [Student's] strengths and areas of continued growth that need to continue. It also is where we decide if [Student] will continue to qualify for special education and in what areas. So it is very important that you participate. If you choose not to participate I would document that and team would still meet as we are required to do. A follow meeting will then occur and a IEP will be presented along with services to support [Student] in those areas he qualifies for. So the next steps

1. Evaluation feedback meeting.
2. Determine Eligibility.
3. Develop an IEP with parent team and school input on goals and services.
4. Have an IEP meeting.

I hope the provides some clarity. Also you indicated that June 14th, 2024 works, do you have a time preference. Thank you.

The Parent responded, "I want an IEP meeting for the current IEP. We can have a separate meeting for the newly developed IEP that [private provider supporting the evaluation] is supporting."

23. Also, on May 28, 2024, the Parent emailed the special education teacher as follows:

I want to communicate clearly with you regarding my request for an IEP meeting for the current IEP at [elementary school]. The tentative date was June 14, 2024. I have attached my letter requesting the IEP meeting...Please look at the attached letter...and feel free to reach out via email if you have any questions.

The attached letter listed specific concerns, including progress reports, multilingual services, that the Student was not getting a cue card for breaks and was not receiving daily incentives or rewards, school to home communication, speech-to-text, and culturally representative reading materials. The Parent also request a copy of the most recent IEP or drafted amended IEP in advance of the meeting, along with copies of evaluation reports, progress reports, and "state requirements that he has missed."

The Parent, in additional information to OSPI, stated the special education teacher did not respond.

24. On May 29, 2024, the director emailed the Student's IEP team, noting that the Parent had requested an IEP meeting related to the Student's current IEP, stating, "Although we are in the middle of the evaluation process and we are going to have a number of meetings in the next couple of weeks, I want to honor [Parent's] request." The director proposed meeting on June 6 or 7, 2024, and per an email from the Parent, proposed the following topics of discussion:
- Progress reports, home/school communication, accommodations, and reinforcements.
 - "Title III ML services."
 - "A school-home communication system for weekly communication."
 - "Access to speech-to-text on all school assignments."
 - "Culturally representative reading materials, and plan to make up missed assessment."

The email noted this IEP meeting was separate from a meeting they were trying to schedule for June 14, 2024.

25. On June 1, 2024, the director emailed that the IEP meeting would be held on June 6, 2024. The director asked if the Parent would be willing to excuse the special education teacher and have another staff member attend and facilitate the meeting in her place. The director also included the agenda proposed by the Parent, noting that multilingual services had been removed as that would be a separate conversation from the IEP. The agenda was as follows:
- Progress Reports: "Progress reports - semester, quarterly, monthly..."
 - Accommodations and Reinforcements:
 - "What is working, what is not or may need to be added."
 - "Access to speech-to-text on all school assignments."
 - "A school-home communication system for weekly communication"
 - "Current system, adult provided, student provide or combination."
 - "How can parent participate in process"
 - "Culturally representative reading materials, and plan to make up missed assessment."

26. On June 4, 2024, the Parent emailed the director and other District staff, thanking staff for their work, expressing a desire to collaborate, and outlining her concerns. These concerns included:
- Concern that the Student's special education teacher is unavailable for the scheduled meeting.
 - Concern that multilingual services were not being provided.
 - That the December 2022 IEP needed to "stay put."⁴

⁴ OSPI notes that the concept of "stay put" only applies to due process hearings. When a due process is filed and stay put applied, the student must stay in his or her current educational placement until the hearing

- Concerns around communication, parent input, and that changes were made to the IEP without her consent.
- That the Student had not received a schedule of his day, "a map-out schedule for his possession, including his schedule showing the order of his days...[and] the education time slots."

To her email, the Parent attached various other emails related to requests for math information, the Student's IEP, other information about and assessments of the Student, and other emails and documents. One attachment was a letter from a tribal coordinator from a Native Village, stating the Village "supports the [Parent] add her request to allow an [Inuit] interpreter to assist the learning needs of her children."

27. On June 6, 2024, the Parent emailed the director and stated she did not agree to excuse the special education teacher from the IEP meeting.

An email from the director that same day indicated that he was concerned that not all team members were going to be able to make it to the IEP meeting scheduled that day and suggested they reschedule or combine with the evaluation feedback meeting scheduled on June 14, 2024.

The Parent responded that she did not consent to staff missing the meeting and that she would join the online link for the IEP meeting at 1 pm.

The director replied:

We will proceed with the IEP meeting that you requested at 1:00 without the two staff members and we will reflect in the [prior written notice] that you did not consent to their excusal from the meeting. We will have to meet again as an IEP to bring all members up to speed and make team decisions.

28. On June 6, 2024, the Student's IEP team was scheduled to meet. According to the District's response, the meeting was canceled because the special education teacher was unable to attend.

29. On June 14, 2024, a meeting was held to review the reevaluation of the Student.

30. June 21, 2024 was the last day of school.

31. On July 11, 2024, an IEP meeting was held. In an interview, the Parent stated that the District did not invite her interpreter and the interpreter was not able to attend. The Parent also noted concern that the school psychologist did not attend the IEP meeting.

The Parent provided information about the meeting in her interview with OSPI, stating she shared her concerns with the team, and provided "peer reviewed resources and tribal resources" on ADHD, culturally appropriate instruction, and various ways she believed the

is completed, although the parties may also agree to another placement and amend the IEP in areas not in dispute.

Student could be supported. The Parent stated they did not finalize an IEP and she was told the team would reconvene in the fall.

32. In her complaint, the Parent alleged that the District failed to implement the Student's IEP, including cue cards for breaks, paraeducator support, specially designed instruction in math, and speech-to-text for math assignments.

With respect to math, the Parent stated her allegation was based on a May 17, 2024 emailed request for the Student's work samples, math assessments for math calculation and math problem-solving, and specialized instruction and that, in response, the District sent home "general instruction assignments." The Parent further stated that the case manager and special education teacher did not respond to inquiries regarding barriers to the Student's learning in math. The Parent also stated she had not received progress reports related to the Student's progress in math.

Additionally, the Parent alleged the District did not consider whether the Student's absences were related to his disability, stating, "We have not been allowed to meet and assess whether [Student's] absence and missed assessment are due to his disability" and that the Student's "new mental health diagnosis will lead to a new IEP."

Finally, the Parent alleged that the District was not including individuals such as their interpreter and parent advocate in IEP team meetings.

33. Regarding the Parent's allegations that the District did not address the Student's absences, the District stated:

Here, the District states that prior to the filing of the Complaint, Parent has not identified Student's attendance issues as being caused by Student's disability or requested that Student's IEP include strategies or supports to improve Student's attendance. Rather, the District understands that Parent has had many concerns about her perception of Student's treatment at school and her own alleged mistreatment by various school and District staff and administrators...In turn, it appears to the District that Parent choose to keep Student home and/or reportedly schedule medical appointments at times in conflict with Student's school schedule while Parent's various mistreatment concerns were addressed...However, Student continued to be kept out of school by Parent even after OSPI issued its decision in SECC 24-33 rejecting Parent's allegations about Student's educational programming...And in continuing to keep him out of school in May, Parent again did not raise a need for Student's IEP team to address Student's attendance until the filing of the Complaint.

34. Regarding the Student's absences, the Parent stated in an interview that the Student had been hit by another student in January and February 2024 and thus did not feel safe at school. The Parent described the Student having anxiety and that they sought counseling to help support the Student. The Parent stated that no one from the District addressed the concern that the Student was absent for mental health reasons, that the District did not add counseling to the Student's IEP, and that the school psychologist did not provide them with information about resources or services.

35. Regarding the Parent's allegations about an interpreter and IEP team membership, the District noted that the Parent did not request an interpreter for the Student's December 2023 IEP meeting, although the Parent's advocate participated. The District also noted that despite attempts to schedule multiple IEP meetings, since the December 2023 meeting, the IEP team has not met again. The District noted the Parent has met with District administrators and has been able to invite other participants to those meetings.
36. The Parent stated in an interview that she did start requesting that an interpreter attend IEP meetings after the December 2023 meeting. The Parent stated she felt like there has been a lot of misunderstanding and miscommunication and because she is an Indigenous communicator, she felt as though her language and statements have been taken out of context and she is not able to correct herself or clarify. The Parent stated she feels like the District does not understand her, that she should but is not able to use Indigenous storytelling, and that she has not received "linguistically appropriate meeting support."
37. Regarding implementation of the IEP, the District response included documentation, describing how math goals were worked on during the "math intervention group." The description outlined work on multi-step word problems and calculation strategies, and foundational math concepts. The special education teacher also supported the Student in working on the general education math curriculum, providing re-teaching, modifying assignments and assessments, and communicating weekly with the general education math teacher. The special education teacher described accommodations provided, including extended time on assignments and assessments, small group or 1:1 testing, sensory tools, preferential seating, breaks, scribe, oral responses, a multiplication chart, manipulatives, graphic organizers, text to speech and speech to text, and having an adult read to him. The teacher noted that the Student does not use the accommodation of having an adult read often because "his reading has improved so much."

Related to breaks, the special education teacher described that the Student "knows to set a 5-minute timer and if needed he can ask for another 1 or 2 minutes" and that the Student is great at advocating for a break. The teacher noted they are working on addressing the "importance of how/when/why to take breaks during our social group, but we work on this all throughout the day."

The District response also included data sheets with data collection on the Student's reading and math goals and a progress report with progress as of January 24, 2024.

38. During an interview, the Parent stated the reason she was concerned that specially designed instruction in math was not being provided was because the Student was supposed to receive math instruction from a paraeducator⁵ and he was not receiving this; and because there was

⁵ OSPI notes that the IEP the Parent was referring to was the Student's December 2022 IEP, which included a paraeducator as the "service provider for delivering services" and the special education teacher as the

an instance when the Student left the classroom for a learning group and when he returned to the classroom, the Parent stated the general education teacher said the Student could not participate in the assignment he missed.

39. During an interview with the Parent, the Parent also expressed to OSPI the following concerns:

- The Parent felt her concerns and the resources she has provided have not been taken into consideration or implemented, or that she was told what she was requesting was not realistic.
- That the Student is often compared by staff to his neurotypical peers.
- That the District is not supporting the Student in a culturally sensitive or linguistically appropriate manner.
- That the principal is not addressing the Student's needs or raising concerns with the Parent in a timely manner.

CONCLUSIONS

Issue One: IEP Implementation Since May 9, 2024⁶ – The Parent alleged that the District failed to provide the Student with cue cards for breaks, paraeducator support, specially designed instruction in math, and speech-to-text.

A school district must 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 student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

First, it is necessary to address the IEP in place and thus under investigation. The Parent, in emails, referenced that the Student's December 2022 "needed to stay put" and referenced this IEP with respect to her allegations around math instruction and instruction provided by paraeducators. However, "stay put" only applies to due process hearings, and here, the Parent did not file a due process noting disagreement with the December 2023 IEP. Stay put does not apply in a community complaint. And, here, the Student's IEP team met in December 2023 to develop his annual IEP, this is the IEP in place during the 2023–24 school year, and is, as such, the IEP that OSPI will base its conclusions on.

Specially Designed Instruction in Math: The Student's December 2023 IEP included 30 minutes of specially designed instruction in math, 4 times weekly, to be provided by a special education teacher, in a special education setting.

staff person responsible for monitoring. The Parent stated in an email that "things got changed without really going over it."

⁶ OSPI notes that the Parent's previous complaint against the District, SECC 24-33, decided on May 9, 2024, contained some overlapping allegations as the current complaint, including IEP implementation. OSPI cannot reinvestigate issues already investigated and therefore, will only investigate any potential violations occurring after the previous decision.

The Parent stated the reason she was concerned that specially designed instruction in math was not being provided was because the Student was supposed to receive math instruction from a paraeducator and he was not receiving this; and because there was an instance when the Student left the classroom for a learning group and when he returned to the classroom, the Parent stated the general education teacher said the Student could not participate in the assignment he missed. In addition, the Parent stated she requested the Student's work samples, math assessments for math calculation and math problem-solving, and specialized instruction and that, in response, the District sent home "general instruction assignments." The Parent further stated that the case manager and special education teacher did not respond to inquiries regarding barriers to the Student's learning in math. The Parent also stated she had not received progress reports related to the Student's progress in math.

The District provided documentation from the Student's teachers, describing how instruction was provided. The documentation described how math goals were worked on during the "math intervention group." The description outlined work on multi-step word problems and calculation strategies, and foundational math concepts. The special education teacher also supported the Student in working on the general education math curriculum, providing re-teaching, modifying assignments and assessments, and communicating weekly with the general education math teacher. The District response included data sheets with data collection on the Student's reading and math goals and a progress report with progress as of January 24, 2024.

Regarding the Parent's more specific concerns, OSPI notes that the December 2023 IEP did not include that a paraeducator would deliver the instruction. Thus, services from a paraeducator were not required. While potentially concerning that the Student was prevented from completing an assignment, this instance does not actually indicate that *specially designed instruction* was not provided; in fact, it indicates the opposite—that the Student *was* receiving specially designed instruction in math per his IEP in a pull-out math intervention group. Finally, the Parent did receive progress reports at the semester, she just did not receive progress reports as frequently as she may have wanted them; however, the IEP indicates that progress reports will be provided at the semester.⁷ In addition, the Parent expressed concerns that she did not know what curriculum or teaching style was being used in math, and that she as the Parent had not been given information to "support the [math] worksheets." While OSPI understands the Parent was frustrated and that she wanted more information in order to support the Student's homework and learning at home, these examples do not indicate that specially designed instruction in math was not being provided at school.

Overall, the District provided documentation, indicating that specially designed instruction in math has been provided since May 9, 2024. OSPI finds no violation.

⁷ If the Parent believes that more frequent progress reports are needed as part of a FAPE for the Student, the Parent should request and the IEP should discuss whether to change the frequency of progress reporting in the Student's IEP.

Accommodations: The Student's IEP and BIP did include accommodations and strategies related to taking breaks, and included speech-to-text, as needed in all school settings.

The District provided documentation from the Student's teachers, describing how accommodations were implemented. The special education teacher described accommodations provided, including extended time on assignments and assessments, small group or 1:1 testing, sensory tools, preferential seating, breaks, scribe, oral responses, a multiplication chart, manipulatives, graphic organizers, text to speech and speech to text, and having an adult read to him. The teacher noted that the Student does not use the accommodation of having an adult read often because "his reading has improved so much." Related to breaks, the special education teacher described that the Student "knows to set a 5-minute timer and if needed he can ask for another 1 or 2 minutes" and that the Student is great at advocating for a break. The teacher noted they are working on addressing the "importance of how/when/why to take breaks during our social group, but we work on this all throughout the day." Upon investigation, there is no indication that the Student's accommodations were not materially provided. OSPI finds no violation.

Paraeducator Support: The Student's December 2023 IEP did not include that instruction would be delivered by a paraeducator, nor that the Student would receive additional adult support from a paraeducator. The Parent, in an interview, stated that she believed, based on the December 2022 IEP, that the Student should be receiving instruction from a paraeducator. However, as described above, the Student's December 2023 was in place and did not include a paraeducator; therefore, there is no violation as the District was not required to provide the Student with paraeducator support.

Issue Two: Addressing Student's Attendance – The Parent alleged the District failed to address her concerns that the Student's absences were disability related.

When developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student. Generally, an IEP team's decisions must be based on a student's needs resulting from that student's disability. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability.

Here, the Student began staying home from school more regularly in mid-to-late February. The Parent indicated the absences were for "mental health reasons" or medical appointments. In an interview with OSPI, the Parent explained that the Student had been hit by another student in January and February 2024 and thus, did not feel safe at school (although it is not clear if or when the Parent communicated this reason to the District). The Parent described the Student having anxiety and that they sought counseling to help support the Student. The Parent stated that no one from the District addressed the concern that the Student was absent for mental health reasons, that the District did not add counseling to the Student's IEP, and that the school psychologist did not provide them with information about resources or services.

The District responded, to the complaint, that the Parent did not raise concerns that there was a disability related reason the Student could not attend school. The District stated:

Prior to the filing of the Complaint, Parent has not identified Student's attendance issues as being caused by Student's disability or requested that Student's IEP include strategies or supports to improve Student's attendance. Rather, the District understands that Parent has had many concerns about her perception of Student's treatment at school and her own alleged mistreatment by various school and District staff and administrators...Student continued to be kept out of school by Parent even after OSPI issued its decision in SECC 24-33 rejecting Parent's allegations about Student's educational programming...And in continuing to keep him out of school in May, Parent again did not raise a need for Student's IEP team to address Student's attendance until the filing of the Complaint.

While the Parent stated that "We have not been allowed to meet and assess whether [Student's] absence and missed assessment are due to his disability," based on documentation in the complaint, it does not appear the Parent specifically requested a meeting to discuss the Student's attendance or raised this concern clearly at other meetings/in other communications. For example, the Parent, along with her advocate and other guests, met with the District's director of elementary education on March 14, 2024, and shared concerns, which were reiterated in later emails. The District noted in its response that the Parent also reiterated these concerns in a March 20, 2024 email, including concerns about transitioning the Student back to school. The District stated, however, that the Parent "did not note that Student's disability was causing Student to not attend school." Via email, the Parent continued to report the Student as being absent for "mental health reasons."

While the District/IEP team could have initiated a meeting to talk about the Student's absences and whether they were related to his disability, it is important to note that there were opportunities for the Parent to raise this concern with the Student's IEP team—an IEP meeting was scheduled for January 30, 2024, and then canceled at the Parent's request, and another meeting was scheduled per the Parent's request for March 8, 2024, and then the Parent did not attend. There were further attempts to schedule and hold an IEP meeting, although another IEP meeting did not occur during the remainder of the 2023–24 school year.⁸

Here, it is not certain based on the investigation that the Student's absences, even if for mental health reasons, were related to his disability. The Parent noted that the Student stated he did not feel safe at school, but overall, OSPI finds that the Parent did not clearly express that she wanted

⁸ OSPI notes there are several reasons why an IEP meeting did not get scheduled, including challenges finding a date for a meeting; the special education teacher's unavailability, which necessitated rescheduling an IEP meeting scheduled for June 6, 2024; and, someone confusing communication where in some emails the Parent indicated she wanted separate IEP meetings to talk about the current IEP and then new IEP (to be developed following a reevaluation) and in some emails indicating "there is no need to call for a feedback meeting" and that she would provide written input for the IEP. Despite this, the District attempted to schedule and hold several meetings in June 2024 and the District proposed agenda items for the meetings that addressed many of the concerns the Parent had raised in emails throughout the spring of 2024 including progress reports, accommodations, school to home communication, culturally representative teaching materials, etc.

the IEP team to meet specifically about the Student's absences, although she did express other concerns. At the same time, the District, in May and June 2024, attempted multiple times to schedule an IEP meeting, which would have been the appropriate venue to discuss such concerns. The IEP team ultimately met for an IEP meeting in July 2024 (the team did review the reevaluation in June). Therefore, OSPI finds that the District acted reasonably based on the information it had about the Student's absences and attempted to schedule an IEP meeting prior to the end of the school year. OSPI finds no violation. If the Parent continues to have concerns or believe the Student needs mental health support from the District, the Parent should raise these concerns at the next IEP meeting.

Issue Three: Parent Invitees and Interpreter Services – The Parent alleged that the District has not ensured that Parent invitees, such as the Parent's interpreter and parent advocate, could attend IEP meetings.

Included in the required IEP team membership regulation is the following, "at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate." Further, districts should take whatever action is necessary to ensure that the student eligible for special education's parents understand the proceedings of an IEP meeting. This may require arranging for an interpreter for parents whose native language is not English.

The District stated, in response to this issue, that the Parent had not requested that an interpreter participate in the December 2023 IEP, although a parent advocate attended and participated in that meeting. The District also stated the Parent "has never indicated to the District that she is unable to understand English well enough to participate in the Student's IEP team meetings."

The Parent explained in an interview with OSPI that she did start requesting that an interpreter attend IEP meetings after the December 2023 meeting. The Parent stated she felt like there have been misunderstandings and miscommunications, and because she is an Indigenous communicator, she felt as though her statements have been taken out of context and she is not able to correct herself or clarify. The Parent stated she feels like the District does not understand her, that she should but is not able to use Indigenous storytelling, and that she has not received "linguistically appropriate meeting support." Based on emails, January 29, 2024 was the first time the Parent requested an interpreter, stating, "I also request an interpreter as I'm not being perceived as competent to teaching staff as an Alaska Native mother." In a June 4, 2024 email, the Parent included a letter from a tribal coordinator from a Native Village, stating the Village "supports the [Parent] add her request to allow an [Inuit] interpreter to assist the learning needs of her children."

In attempts to schedule an IEP meeting toward the end of the school year, the District's director of special services did ask the Parent to clarify the attendees she wished to invite, stating for example, "can you provide a list of people you would like to receive the IEP invite. I have noticed there are new individuals included in the emails you have sent and others left off so and I want to be sure we include the correct team members." Although, between when the complaint was filed and the end of the school year, no IEP meeting was held. However, an IEP meeting was held until

July 11, 2024, and according to the Parent, the District did not invite her interpreter, nor was a parent advocate able to attend.

OSPI notes that because the regulations require districts to take whatever action is necessary to ensure that the student eligible for special education's parents understand the proceedings of an IEP meeting, to some degree, we must rely on and, at times, defer to a parent expressing a need for an interpreter. Here, the Parent, while she may appear to the District to not need an interpreter, now has expressed several times that she believes there have been misunderstandings and miscommunications due to her being an Indigenous communicator and her belief that having an interpreter at the IEP meetings would allow her to more fully participate.

Because the District did not ensure an interpreter was invited to the July IEP meeting, OSPI finds a violation. The District will be required to ensure that the Parent's interpreter is invited to the IEP meeting in the fall.

CORRECTIVE ACTION

By or before **September 20, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

IEP Meeting with Interpreter

By or before **September 13, 2024**, the Student's IEP team will meet and continue updating the Student's IEP. The District will ensure the Parent's interpreter is invited and prioritize scheduling a meeting at a date and time the interpreter is able to attend.

By **September 20, 2024**, the District will provide OSPI with: i) a copy of the Student's IEP; ii) the relevant meeting invitations; iii) the prior written notice documenting the meeting; and iv) any other relevant documentation.

DISTRICT SPECIFIC:

None.

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

Dated this 19th day of July, 2024

Dr. Cassie Martin
Executive Director of 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.)