

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-85**

### **PROCEDURAL HISTORY**

On June 6, 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 Cheney 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 June 6, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 10, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On June 26, 2024, 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 24, 2024, the OSPI complaint investigator consulted with an OSPI program supervisor who is an expert in deaf education.

On July 22, 2024, the OSPI complaint investigator talked with the District special education director.

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

### **ISSUE**

1. Did the District implement the interpreter services in conformity with the Student's individualized education program (IEP) by a qualified educational interpreter according to WAC 392-172A-03105?

### **LEGAL STANDARDS**

IEP Implementation: A 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 child'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).

Qualified Interpreter: Certified and/or classified staff assigned as educational interpreters, must meet the performance standards outlined in RCW [28A.410.271](#) by passing an educational interpreter assessment approved by the professional educator standards board. WAC 392-172A-02090.

RCW 28A.410.271 provides the adopted standards for educational interpreters by the Professional Educator Standards Board (PESB), which include defined performance standards for the

educational interpreter assessments. Starting in the 2016–17 school year, school district personnel serving as an educational interpreter must pass the written test of the Educational Interpreter Performance Assessment® (EIPA) and either pass the EIPA performance assessment with a minimum score of 3.5 or receive a National Interpreting Certificate (NIC). RCW 28A.410.271.

## **FINDINGS OF FACT**

### **2023–24 School Year**

1. At the start of the 2023–24 school year, the Student was a ninth grader who attended a District high school. The Student was eligible to receive special education services under the category of multiple disabilities.
2. The District’s 2023–24 school year began on August 29, 2023.
3. On August 29, 2023, the District scheduled a substitute interpreter for the Student according to an email from the administrative assistant to the District special education director (director). The email stated that substitutes would be provided on dates when there was no confirmation from the agency that services would be provided.
4. At the start of the school year, the Student’s educational interpreter unexpectedly went on leave. The District contracted with a community agency for multiple interpreters, according to the District.
5. On September 17, 2023, the agency confirmed with the director that interpreter services would be provided to the Student for part of the day on September 18, 2023.
6. On September 26, 2023, the agency confirmed with the director the dates of services—dates the Student would be provided an agency interpreter—from September 28 to December 19, 2023. The agency first confirmed the dates of services for Monday through Thursday and then for Friday for each time period.
7. On October 9, 2023, the Student’s IEP team developed a new annual IEP for the Student. The “Team Considerations” section stated:

[Student] is deaf and wears hearing aids, uses an FM (frequency modulation) system and has an ASL (American sign language) Educational Interpreter. [Student] hears with his hearing aids and FM system and is able to respond to, engage with and speak English. Parents have expressed that they prefer [Student] to be able to self-advocate for his hearing aids, FM System, and ASL interpretation needs at school.

The IEP also stated that the Student’s need for assistive technology was an FM system connected to his hearing aids, “so he can hear, and engage in the learning at school.” The IEP provided 30 accommodations and modifications, including an FM/DM (digital modulation), ASL educational interpreter in all settings (“as needed”), and grading modifications. The October 2023 IEP included annual goals in math (time awareness and using money), written expression (personal information), reading (sight words), adaptive behavior (utilizing

interpreter and self-regulation), and physical therapy (gait and floor to stand). The Student's October 2023 IEP provided the Student with the following related services and specially designed instruction in a special education setting:

- Adaptive behavior: 57 minutes daily (to be provided by special education staff)
- Math: 52 minutes daily (to be provided by special education staff)
- Reading: 52 minutes daily (to be provided by special education staff)
- Written Expression: 52 minutes daily (to be provided by special education staff)
- Occupational therapy: 20 minutes monthly (to be provided by an occupational therapist)
- Audiology consultation: 20 minutes monthly (to be provided by an audiologist)
- Physical therapy: 20 minutes weekly (to be provided by a physical therapist)

Supplementary aids and services were a 1:1 paraeducator for 358 minutes, five times weekly provided in a special education setting by a paraeducator.

8. The complaint alleged the District failed to provide the Student with a qualified ASL interpreter. The District acknowledged that there were "lapses" of interpreter services during the 2023–24 school year. When OSPI asked if the community agency interpreters were qualified, the director replied that he could not guarantee that the interpreters used met the required qualifications.
9. Beginning in November 2023, the District provided reports on the Student's progress based on the October 2023 IEP annual goals. The reports, which included quantitative data, provided the following information:

<b>Goal</b>	<b>November 2023</b>	<b>January 2024</b>	<b>March 2024</b>	<b>June 2024</b>
Math-Time	Insufficient Progress	Emerging Skill	Emerging Skill	Sufficient Progress
Math-Money	Emerging Skill	Sufficient Progress	Sufficient Progress	Sufficient Progress
Reading-Sight Words	Sufficient Progress	Sufficient Progress	Sufficient Progress	Sufficient Progress
Writing-Personal Information	Sufficient Progress	Sufficient Progress	Sufficient Progress	Sufficient Progress
Adaptive Behavior-Interpreter	Emerging Skill	Emerging Skill	Insufficient Progress	No Code <sup>1</sup>
Adaptive Behavior-Self-Regulation	Emerging Skill	Emerging Skill	Sufficient Progress	Sufficient Progress
Physical Therapy-Gait	No Code	Sufficient Progress (February 2024)	Sufficient Progress (May 2024)	
Physical Therapy-Floor to stand	No Code	Sufficient Progress (February 2024)	Mastered (May 2024)	

<sup>1</sup> The report stated, "[Student] did not have an ASL interpreter the majority of this semester so we are unable to have data for this goal-[teacher]."

10. On January 17, 2024, the agency emailed the special education director that the interpreter was unable to come to school because of weather conditions.
11. On January 22, 2024, the agency confirmed with the director the dates that services would be provided to the Student from January 23 to March 28, 2024.
12. On February 8, 2024, the District and agency exchanged emails about the District's continued request for an interpreter. The agency responded that it was unable to fill the request and provided some options, such as using a virtual interpreter.
13. On March 5, 2024, the director, administrative assistant, and the agency exchanged emails about providing interpreter services in April 2024.
14. On March 8, 2024, the agency confirmed with the director the dates of service from April 8 to April 30, 2024.
15. On March 12, 2024, the agency confirmed with the director the dates of service from March 12 to April 26, 2024.
16. On March 14, 2024, the agency sent an email to the director, clarifying the role of the interpreter. The email stated, in part:

Interpreters have expressed some concern over the expectations of interpreters from some classroom staff. Interpreters are only contracted for language services, so they are not able to tutor or teach materials. They also are not permitted to be alone with any students or to supervise them. If all staff leave the classroom, the interpreters must also leave the room until a staff member returns.
17. According to the District, the interpreter from the previous school year was scheduled to return sometime after January 2024. However, on March 19, 2024, the previous interpreter requested leave through the remainder of the 2023–24 school year.
18. On March 26, 2024, the agency emailed the special education teacher that the agency interpreter was sick that day.
19. On May 2, 2024, the special education teacher emailed the director and Parent to report that the Student did not have an interpreter for the second day.
20. On May 9, 2024, District staff exchanged emails because the Student did not have an interpreter "all week." The District had also notified the Parent. The District emailed the agency, requesting an interpreter for the remainder of the school year. On May 13, 2024, the agency responded that it was not able to fill the District's request for an interpreter.
21. On May 21, 2024, the director emailed the special education teacher and copied the Parent, stating the agency had not been able to find an interpreter for the Student and a paraeducator had been requested to support the Student. The special education teacher replied that she had not received any other paraeducator support.

22. Also on May 21, 2024, the Parent emailed the director and the special education teacher about concerns that the Student was not receiving consistent interpreter services and that the interpreters were not qualified. The Parent stated as a result, the Student's progress had been "hindered." The Parent requested a meeting that included a representative from the Washington Center for Deaf and Hard of Hearing Youth (CDHY).
23. The District's response to the complaint stated the District acknowledged "inconsistencies and missed ASL interpreter services" during the 2023–24 school year. The District also proposed holding an IEP meeting with a representative from CDHY and conducting an evaluation in fall 2024. In addition, the District proposed providing compensatory education services during the summer of 2025.

## CONCLUSIONS

**Issue One: IEP Implementation** – The complaint alleged the District failed to implement the special education services in conformity with the Student's IEP. The complaint stated the Student was provided interpreter services inconsistently and the interpreters were not qualified. The District acknowledged the complaint that the interpreter services had been provided inconsistently.

Here, the Student's October 2023 IEP provided for an accommodation for an ASL interpreter in the special education and general education settings "as needed."<sup>2</sup> The IEP did not clarify what "as needed" meant or when interpreter services were needed. The IEP must be clear enough that a reasonable person would know when a particular service is needed. "As needed" was not sufficiently clear to determine when the Student needed an interpreter. A violation is found.

State regulations provide the adopted standards for educational interpreters by the Professional Educator Standards Board (PESB), which include defined performance standards for the educational interpreter assessments. Starting in the 2016–17 school year, school district personnel serving as an educational interpreter must pass the written test of the Educational Interpreter Performance Assessment® (EIPA) and either pass the EIPA performance assessment with a minimum score of 3.5 or receive a National Interpreting Certificate (NIC). RCW 28A.410.271. These standards also applied to any contracted staff working with the Student. The District was unable to verify that the agency's interpreters that District contracted with were qualified. A violation is found.

The District was required to implement the ASL interpreter service in conformity with the Student's IEP, which as noted above should have more clearly identified the frequency and duration of interpreter services. But the record indicated that the District sought to contract with the agency

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<sup>2</sup> OSPI notes that generally, when educational interpreting services are determined to be needed by the IEP team, they are included in the IEP as a "related service" (WAC 392-172A-01155), if the interpreting is required to assist the student to benefit from special education services. See "Educational Interpreters for Students who are Deaf, Hard of Hearing, or Deaf-Blind," [October 2019 Special Education Update \(ospi.k12.wa.us\)](https://ospi.k12.wa.us)

to provide the interpreter most, if not all, of the day, rather than “as needed.” The cumulative amount of interpreter services missed by the Student was not clear in the record, but the record indicated the missing services were material. The District acknowledged that an interpreter was not consistently provided to the Student during the school year and compensatory education services for the Student are required. A violation is found.

Despite the IEP being unclear about the frequency and duration of the interpreter service, the missing services, and unqualified interpreter, the Student made sufficient progress towards his annual goals, except the goal to attend the interpreter, contrary to the Parent’s statement that progress was hindered. The progress made mitigates the need to provide minute-for-minute compensatory education services; thus, the District must provide ten hours in the area most affected by the missing interpreter services.

### **CORRECTIVE ACTIONS**

By or before **September 20, 2024** and **July 8, 2025**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **IEP Meeting & Compensatory Education**

By or before **September 13, 2024**, the District will hold an IEP meeting to address the accommodation for an ASL interpreter. The IEP team will determine when interpreter services must be provided and document it on the Student’s IEP. In addition, the District and Parent will develop a schedule for ten hours of compensatory education in the area most affected by missing interpreter services. If the District and Parent are unable to agree, OSPI will make the decision.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District’s school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student’s areas of service. The District will provide OSPI with a copy of the IEP, meeting notice, prior written for the IEP and documentation of the schedule for services by or before **September 20, 2024**.

If the District’s provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours’ notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **July 1, 2025**.

By or before **July 8, 2025**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **July 8, 2025**.

**IEP Implementation Plan**

Immediately after the IEP meeting, the District must develop a plan to ensure that the Student's IEP is implemented as written and the plan must ensure that any interpreter services provided in the Student's IEP will be provided by qualified interpreters. The District must submit the plan by **September 20, 2024**, to OSPI for approval.

**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.

**RECOMMENDATION**

OSPI recommends the District and Parent request CDHY's assistance in evaluating the Student and developing the IEP.

Dated this 5th day of August, 2024

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.)