

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-10

PROCEDURAL HISTORY

On February 21, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the Parent's advocate (Complainant)¹ of a student (Student) attending the Seattle School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On February 22, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On March 1, 2019, OSPI received additional information from the Complainant. OSPI forwarded the additional information to the District the same day.

On March 6, 2019, the District requested an extension of time for the submission of its response. The District was granted a one-week extension and was required to submit its response no later than March 22, 2019.

On March 19, 2019, OSPI received the District's response to the complaint and forwarded it to the Complainant on March 20, 2019. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On March 28, OSPI received the Complainant's reply. OSPI forwarded it to the District the same day.

OSPI considered all of the information provided by the Complainant 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 February 22, 2019. 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.

This investigation was limited to a review of whether the allegation made in the complaint demonstrates a violation of Part B of the IDEA, its implementing federal regulations, or corresponding state regulations. It did not extend to a review of whether the District's

¹ The Complainant is the Student's grandmother. She is also the Parent's educational advocate and is listed as the Student's second "parent" on the Student's IEP pursuant to WAC 392-172A-101125(d). The Student's Parent is also involved in the Student's education and is accordingly referred to in this response as "Parent."

transportation policy discriminates against students based on the Student's disability. Allegations of discrimination are reviewed by the U.S. Department of Education's Office for Civil Rights.²

ISSUES

1. Did the District implement the Student's individualized education program (IEP) regarding transportation services?
2. Did the District follow procedures for amending or revising the Student's IEP?

LEGAL STANDARDS

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments affect the student's need for transportation. Included in this consideration is whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or from getting to school in the same manner as nondisabled students. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School District*, 36 IDELR 289 (WA SEA 2002). The term "transportation" is defined as: travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for students eligible to receive special education services. 34 CFR §300.34(c)(16); WAC 392-172A-01155(3)(p).

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 who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. 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

² In its response, the District included an OCR decision, dated August 4, 2017 (OCR reference no. 10171138 and 10171139), which found that the District's policy of "refusing to provide door-to-door (special) transportation services to and from school on days when there is a delayed start due to inclement weather" did not discriminate against students with disabilities. *See attached, Exhibit A.* The Complainant raised concerns that the District's transportation policy discriminates against students with disabilities. As noted in OSPI's opening letters, this investigation does not address the discrimination concern as OSPI does not have authority through the special education citizen complaint process to investigate allegations of discrimination.

failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's IEP. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982). Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000. An eligible student receives a FAPE when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

Provision of FAPE: An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." An IEP must "aim to enable the child to make progress," the educational program must be "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom," and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to received educational benefits, the district is not in compliance with the IDEA. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982). Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE; and (3) caused a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); see 34 CFR §300.513; WAC 392-172A-05105. *Andrew F. v. Douglas County Sch. Dist. RE-1*, further clarifies that to meet the IDEA's substantive obligations, a district must offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. 137 S. Ct. 988, 999-1000, 69 IDELR 174 (2017).

FINDINGS OF FACT

Background

1. The District coordinates with the city in which the District is located each fall to determine pre-designated "snow routes" for buses utilized by the District during inclement weather. In its response, the District described the intent of its policy as follows:

The District endeavors to transport all Students – regardless of disability – safely to and from school each day. When there is inclement weather, such as that seen in February 2019, the District has specific policies and procedures regarding student transportation in place to ensure student safety [. . .] At the start of each school year, the District collaborates with the City [. . .] to identify centrally located streets and major arteries that will be cleared by [City Department of Transportation] in the event of a snowstorm [. . .].

For families receiving door-to-door transportation, the process of determining suitable snow routes begins prior to the fall. In its response, the District explained its process for determining and coordinating transportation for Students receiving door-to-door transportation as follows:

Considerations include the specific location of the student's house and the length of travel to and from school [. . .] Moreover, while the District's First Student buses transport the majority of these students, the District utilizes approximately 400 private taxis and vans. The District contracts with companies [. . .] to provide student pick-up and drop-off at specific times. However, unlike the District's use of First Student buses, the taxi and vans are generally not available to pick-up the student if school is delayed by two-hours, as the private taxis and vans are not reserved for transporting students during the full school day.

2018-2019 School Year

2. During the 2018-2019 school year, the Student was in the seventh grade and attended a District middle school. Pursuant to the Student's November 11, 2018 evaluation, the Student was found eligible for special education services under the category of Autism.
3. The District's 2018-2019 school year began on September 5, 2018.
4. On October 10, 2018, the District provided families receiving door-to-door transportation a "Special Service Ice and Snow Request" form. The form asked families whether they "would want their students assigned to an emergency ice and snow route. If families requested a snow route, the District established a pre-determined pick up and drop off location, and notified them of the alternative pick-up and drop-off locations. These forms were also available on the District's website. A link to the forms was also included in communications that went to families during the snowstorms that occurred during February 2019.
5. A "Special Service Ice and Snow Request" form was not submitted on behalf of the Student. Accordingly, an alternative snow route consistent with the District's safety guidelines was not established for the Student during the 2018-2019 school year.

6. In its response, the District acknowledged that “a better system and improved communication is possible.” It stated it is “currently working on modifying its inclement weather procedure for the 2019-2020 school year. While door-to-door transportation will still not be possible when snow routes are in place, the District will be moving towards automatically assigning families receiving door-to-door transportation with an alternative route rather than requiring them to submit a ‘Special Service Ice and Snow Route Request’ form.”
7. On November 21, 2018, the Student’s IEP team met to develop his IEP. The IEP included ten measurable annual goals, several accommodations and modifications, occupational therapy as a related service for 40 minutes monthly, and indicated that the Student would spend 87.81% of his time in the general education setting. The Student’s November 2018 IEP was in place from November 21, 2018 through March 7, 2019.

The November 2018 IEP provided the Student with the following specially designed instruction:

- Written language, 30 minutes, 5 times weekly in the general education setting;
- Social behavior, 40 minutes, 5 times weekly in the special education setting;
- Adaptive/life skills, 15 minutes, 5 times weekly in the general education setting;
- Study/organization skills, 5 times weekly in the general education setting; and,
- Communication, 90 minutes, monthly, in the special education setting.

The November 2018 IEP included “special transportation³ with a bus monitor in order to ensure his safety and the safety of others.”

8. On December 6, 2018, the District’s transportation office sent a letter to parents of students who received special transportation, notifying them of the District’s ice and snow procedures. In this letter, the District advised parents that ice and snow conditions may necessitate modifications to normal transportation procedures, including that the District would not provide door-to-door transportation services in the event of adverse weather.
9. On January 11, 2019, the Complainant contacted the District’s special education department by email to notify the District that the Student would be moving to a new address within the same attendance area as the Student’s current school. The Complainant told the District the move would happen the last week in January. The Complainant expressed a goal of “providing transportation without a gap in services.”
10. On January 14, 2019, one of the District’s student support services supervisors (supervisor 1) directed the Complainant to submit a new address change form to the school and the District enrollment department. She additionally stated that she would submit the transportation request to begin on January 28, 2019.

³ According to the District’s response, “special transportation” means “door-to-door” transportation, and “door-to-door” transportation means that the bus stop is located within fifty (50) feet of the entryway to the Student’s home.

11. On January 23, 2019, the Complainant emailed the District that she was still waiting for verification that the Student would "be provided transportation from [his] new address beginning Monday, January 28."
12. On January 25, 2019, the Complainant phoned the special education office to request a status update on the new transportation route. In the Complainant's reply, the Complainant expressed concern that at the time of her phone call on January 25, the process to change transportation still had not yet begun.
13. On January 25, 2019, supervisor 1 emailed the Complainant route numbers and pick up and drop off times for the Student. In the complaint submitted by the Complainant, the Complainant alleged that the route provided by the District did not comply with the Student's IEP. In particular, the Complainant did not believe the new route provided door-to-door transportation and was unsafe for the Student based on his disability related needs.
14. On January 27, 2019, supervisor 1 responded to the Complainant's email that "transportation was updating their system for [the Student]" and that the "request was being routed." She said it was her hope the route would begin the following day or the day after.
15. From January 28, 2019 through February 1, 2019 (four days), the Complainant transported the Student to school following miscommunications about the location of pick up and disagreement with the District regarding the safety of the Student's bus stop.
 - On January 28, 2019, the Student's bus did not arrive at the Student's new address as scheduled. The Complainant and supervisor 1 exchanged emails regarding the miscommunication and the District confirmed that a bus would be available the next day (January 29, 2019).⁴
 - On January 29, 2019, according to the District's response, the District bus arrived at the corner of street 1 and street 2 at 8:08 am. However, according to the Complainant and documents provided in the Complainant's reply, the bus that arrived to transport the Student was a different bus than the Complainant believed she was told would be transporting the Student⁵ and it arrived 11 minutes early. Additionally, the bus arrived in a different location than specified in previous emails with the District and the Complainant asserted the location of the new bus pick up was unsafe. In emails exchanged with the District, the Complainant stated that "even with adult supervision, [the Student] is not safe near traffic because he has difficulty following directions and does not understand how to keep himself safe," and "[he] must be kept inside the house to be safe." The Complainant requested that the Student's IEP be amended to

⁴ In its response, the District acknowledged that on January 28, 2019, "the first day [Student] was to be picked up at his new address, he did not receive transportation services, and that communication with [Complainant] could have been improved." The District additionally asserted in its response that door-to-door transportation was still provided at the corner of street 1 and street 2, "which [was] less than fifty feet from [Student's] entryway." According to the District's response, this distance was considered to constitute "door-to-door."

⁵ The District's response stated that "It [was] unclear why the original email to [Complainant] conveying [Student's] transportation information stated that [Student] would take Route [2], as District Transportation records only show that [Student] was assigned to Route [1]. Nonetheless, the bus arrived on the morning of January 29, consistent with [Complainant's] email."

specifically indicate that the Student requires "door-to-door" transportation, which she believed he had previously been receiving, but was no longer receiving now that the new bus stop was 50 feet away from the entryway.

- On January 30, 2019, the District asserted in its response that door-to-door transportation was made available for the Student at the corner of street 1 and street 2, but that the Complainant transported the Student to school anyway.
- On January 31, 2019, the Complainant transported the Student to school.
- On February 1, 2019, the Complainant transported the Student to school.

16. On January 31, 2019, the Complainant emailed one of the District's directors of special education services (director 1) and supervisor 1 to request an update on the status of the transportation situation.
17. On February 1, 2019, the Complainant emailed director 1 and supervisor 1 regarding concerns she had after learning from student support services supervisor 2 (supervisor 2) earlier that day that the District was proposing to send a cab for the Student as a solution to the transportation concerns.
18. Also on February 1, 2019, supervisor 1 emailed the Complainant transportation details for the Student and explained that the Student would be provided a taxi instead of a bus. The email stated that "per [her] conversation with [the Complainant] a monitor is not needed at this time."
19. In its response, the District acknowledged that "when it was determined that a bus monitor was no longer needed to accompany [Student] in a cab, the change should have been made by the entire IEP team at an IEP meeting or outside of an IEP team meeting if the parent and District agreed to amend the IEP document without a meeting. While [Complainant] agreed that a monitor was not needed, this was not done by IEP amendment. The District has since remedied this." The Student's IEP was later amended on March 7, 2019, to reflect the removal of a bus monitor due the change in transportation to a taxi.
20. Transportation of the Student by taxi was scheduled to begin on February 4, 2019.
21. According to the District's response, student support services supervisor 1 "mistakenly informed [the Complainant] that [the Student's] IEP did not call for door-to-door transportation because it did not specify 'door-to-door.' The Director of Special Education clarified to [student support services supervisor 1] that anytime a District IEP requires 'special transportation' door to door transportation is provided."
22. The District additionally asserted in its response that because the intersection of street 1 and street 2 "is less than 50 feet from the [Student's] home's entryway [. . .] the District considered the corner of [street 1] and [street 2] to constitute door-to-door transportation. The District's asserted in its response that its decision to amend the Student's IEP to provide the Student with a taxi for transportation instead of a bus with a monitor did not change the fact that the District has always considered the Student to be receiving door-to-door transportation per District policy regarding "special transportation."

23. On February 2, 2019, the Complainant canceled the Student's afternoon transportation.
24. On February 4 and 5, 2019, the District canceled school for all students due to weather conditions.
25. On February 6, 2019, there was a two-hour delay. The Student was not provided door-to-door transportation by the District on this date. Instead, the Complainant transported the Student to school.
26. On February 6, 2019, the Complainant and District transportation staff exchanged several emails regarding confusion and miscommunication over the provision of door-to-door transportation:
 - The morning of February 6, 2019, the taxicab arrived at the Student's house; however, the Complainant had already provided transportation to the Student's school because "[the] website and notices about the 2-hour delay said, 'no door-to-door transportation' and 'no taxicab service.'" The Complainant emailed the District's transportation department at 11:57 am to express her confusion about what transpired and to request clearer communication moving forward. She also asked whether the taxi would be taking the Student home from school that day.
 - At 1:17 pm, the lead transportation control center representative (transportation representative) emailed the Complainant to confirm that there "should not have been any door-to-door or taxi services" to school that day. The transportation representative explained that the District "found out earlier [that day] [that] some cab drivers arrived at stop locations anyway." The transportation representative replied that she had contacted the cab company and confirmed that they could transport the Student home.
 - At 2:23 pm, the Complainant emailed the transportation representative to cancel the Student's afternoon transportation due to "lack of communication and the uncertainty of the situation." She explained that "[because] of [the Student's] disability, [the Student] cannot cope with this type of confusion and upon the recommendation of his [special education] teacher at [his school] we are cancelling the cab for this afternoon." The Parent's Complainant said she was hoping that regular taxi service would begin for the Student the next day.
 - At 5:57 pm, the Complainant emailed director 1 a summary of what transpired that day, including her understanding that the taxi showed up to transport the Student at 2:45 pm.
27. On February 7, 2019, schools started on time, buses were operating on snow routes, and no door-to-door transportation was offered. Accordingly, the Student did not receive door-to-door transportation. Instead, the Complainant transported the Student to school.
28. At 7:38 am on February 7, 2019, the Parent emailed the director and the District superintendent regarding her concerns about the lack of transportation for the Student. She explained that "the email sent to families last evening regarding school transportation today did not clearly communicate the status of taxi cab service."
29. On February 7, 2019, the District responded to the Parent that it was the "[District's] official policy when schools are open on time, but buses are operating snow routes" that there is "No door-to-door service," and "No Taxi Cab." The email further provided the following information on the District's "opt-in" snow route request policy:

While the District arranges for alternative snow routes consistent with safety guidelines for all students, it cannot provide door-to-door transportation during certain weather conditions. Families of students with special education transportation in their IEP were invited to request a snow route in October 2018 and may do so again now. Parents/Guardians requesting a snow route are responsible for taking their student to the pre-determined pick-up location in the morning and receiving their student at the same location in the afternoon. Upon receipt of the Opt-In request attached below, the Transportation Office will contact you within five business days.

30. Also on February 7, 2019, the District transportation department emailed all families, including the Parent, regarding opt-in for snow routes.
31. On February 8, 2019, schools closed 75 minutes early. Normal transportation was provided. According to the District's response, the Complainant had canceled the Student's afternoon transportation for this date on February 2, 2019.
32. On February 11-13, 2019, school was closed due to inclement weather.
33. On February 14, 2019, there was a two-hour delayed start. Buses were operating on snow routes. No door-to-door transportation was provided. The Complainant provided the Student with transportation to and from school on this date.
34. In its response, the District asserted that while it failed to implement the Student's IEP regarding door-to-door transportation on February 6, 7, and 14, it believes the Student has "received meaningful educational benefit from his IEP and that the District's failure to fully implement his IEP on those days – when the District could not guarantee [Student's] safety (or the safety of any student receiving door-to-door transportation) does not constitute a denial of FAPE."
35. On March 7, 2019, the IEP team met to amend the Student's IEP. The IEP included occupational therapy as a related service for 40 minutes, ten measurable annual goals, and several modifications and accommodations. It indicated that the Student would spend 87.81% of his time in the general education setting. The IEP provided the Student with the following specially designed instruction:
 - Written language, 30 minutes, 5 times weekly, in the general education setting;
 - Social behavior, 40 minutes, 5 times weekly in the special education setting;
 - Study/organization, 10 minutes, 5 times weekly in the general education setting; and,
 - Social/behavior, 20 minutes, 5 times weekly in the general education setting.

The March 2019 IEP included special transportation. The bus monitor was removed from the IEP as the Student was now receiving door-to-door transportation via taxicab.

CONCLUSIONS

Issue 1: IEP Implementation – The first issue was whether the District implemented the Student's individualized education program (IEP) regarding transportation services. Specifically, the

Complainant alleged that the Student did not receive door-to-door transportation from January 28, 2019 through February 1, 2019 (January 28, 29, 30, 31, and February 1) during which time the Student was in a period of transition from his previous address to his current address, and that the Student was denied door-to-door transportation during days when the District had a delayed start or early release and the District was operating on snow routes (February 6, February 7, and February 14).

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction 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. If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to receive educational benefits, the district is not in compliance with the IDEA. Procedural violations of the IDEA amount to a denial of a free appropriate public education (FAPE) if they impeded a child's right to a FAPE, significantly impeded the parent's opportunity to participate, and caused a deprivation of educational benefits. However, when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

If transportation is included in the student's IEP as a related service, the transportation must be provided for the student at no cost to the parent. Additionally, a school district must ensure that the student's IEP describes the transportation arrangement. The term "transportation" is defined as: travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for students eligible to receive special education services.

The District—in the interest of safety for all students and transportation staff—is permitted to adopt policies which may result in a temporary inability to implement door-to-door transportation for students who have door-to-door transportation on their IEPs during periods of inclement weather when buses are operating on predetermined snow routes (see Exhibit A, attached); however, under such circumstances, the District continues to have an obligation to provide all students with IEPs a FAPE. Whether a district has denied a student a FAPE as a result of its inability to provide transportation services during inclement weather must be determined on a case by case basis.

January 28, 2019: The Student's November 2018 IEP indicated that the Student required "special transportation with a bus monitor in order to ensure his safety and the safety of others." The November 2018 IEP was in place in January 2018. January 28, 2019 was the first day the Student was supposed to receive transportation at his new address. The Complainant began communicating with the District around January 14, 2019, regarding the need for a change in address. In its response, the District admitted that on January 28, 2019, it failed to provide transportation to the Student according to his IEP and that miscommunication occurred between the District and the Complainant regarding the new pick up location. Because the District did not provide transportation, the Complainant provided the Student with transportation to school. On

January 28, 2019, the District accordingly failed to implement the Student's IEP. When a student's IEP indicates that a student requires transportation as a related service, transportation must be provided to the student at no cost to the parent. Accordingly, the District will be required to reimburse the Complainant for the transportation she provided to the Student on January 28, 2019.

January 29, 2019 through February 1, 2019: From January 29, 2019 through February 1, 2019, the Student's IEP November 2018 IEP was in place, which stated the Student required "special transportation with a bus monitor."

Prior to moving to his new address, the Student received transportation to and from school via a bus with a bus monitor. Each morning, the bus picked up the Student at the entryway of the Student's home. In its response, the District explained that its practice is to provide all special transportation as "door-to-door" transportation—which may include transportation by bus or by taxicab, among other options. The District further stated its understanding of "door-to-door" transportation, regardless of vehicle used, to mean a student is picked up within 50 feet of the entryway to his home. The Student accordingly received "door-to-door" transportation at his previous address according to his IEP. The Student's new home was located in a cul-de-sac, which the bus with a monitor was unable to maneuver. Accordingly, the Student was assigned a new bus stop approximately 50 feet from the entryway to his home at the corner of street 1 and street 2. According to the District's response, the District considered the Student's newly assigned stop to continue to provide the Student "door-to-door" transportation as indicated in his IEP because the stop was within 50 feet of the entryway to the Student's home. The Complainant, however, felt that the new stop was unsafe for the Student, who she believed required pickup at his entryway due to his disability-related behaviors. The Complainant was misinformed by at least two District staff members that she needed to request the Student's IEP be amended from "special transportation" to "door-to-door" transportation. During this time, the Complainant transported the Student to school.

OSPI clarified with the District that it was the District's practice of characterizing all special transportation as "door-to-door" transportation, and most "door-to-door" transportation as a pick up that occurs within 50 feet of a student's entryway. The District clarified that this practice was not memorialized in writing and was therefore not an official District transportation policy. Neither the Parent nor Complainant received anything in writing explaining this practice.

The District asserted in its response that from January 29, 2019 through February 1, 2019, it made "door-to-door" transportation available to the Student according to the practice described above. It further stated that the Complainant declined to use the transportation provided out of concerns that it was unsafe and chose to provide transportation herself on these dates. However, in the Complainant's reply, the Complainant provided documentation to show that on at least one occasion (January 29, 2019), the District did not provide transportation as indicated. On this date, the documents provided by the Complainant showed the bus did not arrive at the time communicated to the Parent, was not at the location communicated to the Parent by the District, and that the bus arrived on a street the Complainant and Parent felt was unsafe for the Student.

The Complainant additionally provided documentation to show that between January 29, 2019 and February 1, 2019, there was confusion between the District's special education department, the District's transportation department, and the Complainant regarding what the Student's transportation needs were and what/how transportation would be provided.

When a student has transportation as a related service on his IEP, it must be provided to the Student at no cost to the parent. Here, because the IEP did not clearly describe the Student's transportation needs and what type of transportation he required at his new address—and given the confusion that resulted—transportation was not provided at no cost to the Parent between January 29, 2019 and February 1, 2019. Instead, the Complainant reasonably felt she had to transport the Student from January 29, 2019 through February 1, 2019, until transportation could be arranged that could safely maneuver the Student's cul-de-sac and pick the Student up safely at his entryway. Transportation by taxicab officially began on February 4, 2019. Accordingly, the District will be required to reimburse the Complainant for transportation provided to the Student from January 29, 2019 through February 1, 2019.

February 6, 7, and 14, 2019: On February 6, 7, and 14, 2019, the city in which the District is located experienced inclement weather, which caused delayed starts and an early release. Per District inclement weather policy, the District did not provide door-to-door transportation to the Student—or to any student receiving door-to-door transportation on these dates. Instead, on February 6, 7, and 14, the Complainant transported the Student to school herself.

Accordingly, on these dates, the District failed to implement the Student's IEP regarding transportation. However, while the District failed to implement the Student's IEP, OSPI acknowledges that this does not automatically mean that the failure to implement the IEP was material. A failure to implement the Student's IEP is material when educational benefits are denied and where a student was denied a FAPE. Here, on the three days the Student was not provided door-to-door transportation, the Complainant transported the Student to school where he received instruction and services as indicated in his IEP. While understandably the lack of door-to-door transportation was inconvenient and was not provided free of charge to the Student, there is no documentation to show that the Student was denied meaningful educational benefit as a result of the District's inability to provide transportation for the three days inclement weather occurred or that the Student was otherwise denied a FAPE. However, because the District did not provide transportation to the Student free of charge, the District will be required to reimburse the Complainant for the transportation she provided the Student to and from school on February 6, 7, and 14, 2019.

Issue Two: IEP Amendment – The second issue is whether the District followed procedures to amend the Student's IEP.

Request to Amend Transportation: In the original complaint, the Complainant alleged that her request of the District to change the Student's transportation from "special transportation" to "door-to-door transportation" took more than a week, causing a delay in transportation services.

Changes to the IEP may be made either by the entire IEP team at an IEP meeting, or by amending the IEP without a meeting. When transportation is included in the student's IEP as a related service, a school district must ensure that the student's IEP describes the transportation arrangement. The term "transportation" is defined as: travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for students eligible to receive special education services.

In the District's response, the District provided documentation to show that the Student's IEP had always provided the Student with "door-to-door" transportation and that therefore, a request to amend the IEP to include "door-to-door" in place of "special" transportation was unnecessary. The District's documentation explained that special transportation was intended to mean "door-to-door" transportation; however, a policy stating this was not included in or submitted with the Student's IEP. The Student's November 2018 IEP—which was in place from November 21, 2018 through March 7, 2019—did not specify that transportation was door-to-door but did state that the Student required "special transportation with a bus monitor in order to ensure his safety and the safety of others." Further, the District's practice was misunderstood by a new District employee and miscommunicated to the Complainant, resulting in a request by the Complainant for an ultimately unnecessary amendment to the IEP for "door-to-door" transportation when the Student already had "door-to-door" transportation. Because an amendment was unnecessary and because there was no substantial disruption in the Student's transportation services caused by the request to amend the IEP, no violation is found. However, OSPI recommends that the District be as specific as possible when describing the transportation services required by students to avoid similar confusion among District staff and parents moving forward, which may delay or prevent the receipt of transportation by students receiving special transportation.

Amendment to IEP to Reflect Removal of Bus Monitor: The District was supposed to begin transporting the Student by taxicab instead of by bus on February 4, 2019. When the Student began utilizing a taxicab instead of a bus, the District and Complainant agreed that he no longer needed a bus monitor; thus, his IEP should have been changed accordingly. In its response, the District acknowledged that this did not happen until the Student's IEP meeting on March 7, 2019, nearly a month later. While this should have occurred sooner, because the District has already held an IEP meeting and corrected the error, no additional corrective action is necessary.

CORRECTIVE ACTION

By or before **May 31, 2019**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By or before **May 24, 2019**, the District will be required to reimburse the Complainant for transportation the Complainant provided to the Student to and from school on the following dates:

- January 28, 2019
- January 29, 2019

- January 30, 2019
- January 31, 2019
- February 1, 2019
- February 6, 2019
- February 7, 2019
- February 14, 2019

The District must reimburse the Complainant for round trip mileage at the District's privately-owned vehicle rate. By **May 31, 2019**, the District will submit documentation that it has provided the above reimbursement to the Complainant.

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

Decisions regarding transportation and the type of transportation to be provided should be included in an IEP if a student needs specialized transportation as a related service. IDEA, 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School District*, 36 IDELR 289 (WA SEA 2002); *Letter to Dubois*, 211 IDELR 267 (OSEP 1981). Further, the IEP must clearly describe the transportation arrangement. *Notice of Interpretation*, Appendix A, Question 33 (1999 regulations). Although the District stated in its response that "special transportation" means "door-to-door" transportation, it was unclear because this was not documented as such in the Student's IEP. Further, this seems to be a District practice, as the District's documentation did not include an official District policy that defines "special transportation" as "door-to-door." Conceivably, special transportation could be interpreted as encompassing several different forms and methods of transportation, including door-to-door. Further, there was confusion regarding what "door-to-door" transportation meant for the particular Student in this complaint. Moving forward, OSPI strongly recommends that the District more clearly describe in the IEP the transportation related needs of the Student and the transportation arrangement agreed to by the IEP team—including type of transportation and type of vehicle to be used, if necessary.

Dated this ____ day of April, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)