

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-72

PROCEDURAL HISTORY

On October 31, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the attorney of a parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 1, 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 October 14, 2019, the District requested an extension of time for the submission of its response regarding SECC No. 19-72. The District was asked to submit its response no later than October 31, 2019.

On October 31, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on November 1, 2019. OSPI invited the Parent's attorney to reply with any information she had that was inconsistent with the District's information.

On November 1, 2019, the Parent's attorney requested an extension of time for the Parent's reply. The Parent's attorney was asked to submit her reply no later than November 22, 2019.

On November 21, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on November 22, 2019.

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

ISSUE

1. Did the District implement the Student's individualized education program ("IEP") with regard to transportation services, in the 2019-2020 school year?

LEGAL STANDARDS

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's individualized education program (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).

FINDINGS OF FACT

1. During the 2019-2020 school year, the Student was a sixth grade student who attended school in the District 9.1 miles from his home. He qualified for special education services under the disability category of autism. The Student's individualized education program (IEP) provided him with the following specially designed instruction and services:
 - Communication, 90 minutes per month, to be provided by a speech language pathologist in the general education setting;
 - Study/organization skills, 60 minutes weekly, to be provided by special education staff in the general education setting;
 - Social/behavior, 60 minutes weekly, to be provided by special education staff in the special education setting;
 - Reading, 100 minutes weekly, to be provided by a special education teacher in the special education setting;
 - Social/behavior, 125 minutes weekly, to be provided by an instructional assistant in the general education setting; and,
 - Occupational therapy, 40 minutes monthly, to be provided by an occupational therapist in the general education setting;
 - Additional classroom instructional assistant support, 180 minutes daily, to be provided by an instructional assistant in the general education setting.

The Student's IEP also provided the Student with special transportation.

2. The first day of school of the 2019-2020 school year for the District was September 4, 2019.
3. From September 4-27, 2019, the District coordinated with a cab company to provide transportation for the Student. In its response, the District acknowledged that while it had worked with the particular cab company "for years," it did not have a contract in place with the cab company to provide services at the commencement of the school year.
4. In its response, the District acknowledged that between September 4, 2019 and October 1, 2019, the District did not consistently provide transportation as required by the Student's IEP. It noted that while the District was "aware of [Student's] transportation needs and attempted to ensure [Student] was provided reliable transportation, transportation nonetheless was inconsistent during that first month of school."
5. On September 4, 2019, the Parent notified the District she would provide transportation for the Student because it was the first day of school. At the end of the school day, the Student

got in the taxi cab and was taken home and dropped off at an empty house The District stated it spoke with the taxi cab company to remind it the Student must be received both at home and school.

6. On September 6 and 9, 2019, a taxi cab was not dispatched to the Student's home in the morning. The Parent transported the Student to school.
7. According to the Parent's reply, on September 11, 2019, the cab waited at the wrong pick-up location at school until 2:30 pm. The Student's scheduled pick-up time was 2:20 pm.
8. On September 13, 2019, transportation was not provided in the morning or afternoon. The Parent transported the Student to and from school. The same day, the Parent reported to the District that the taxi cab "driver is always very late" and that she kept having to drive her son to school, "so he can be on time."
9. On September 17, 2019, the Parent's attorney notified the school's attorney that on September 16, 2019, the Student's taxi cab was 24 minutes late in the morning, resulting in the Parent having to transport the Student to school herself. The Parent's reply additionally noted the taxi cab in the afternoon was also 25 minutes late transporting the Student home, causing the Student to miss his home-based autism therapy.¹
10. On September 17, 2019, a taxi cab was not dispatched to the Student's home in the morning. The Parent transported the Student to school. That afternoon, the Student's driver arrived at school at 3:45 pm for a scheduled pick-up time of 3:25 pm and was not at the correct location. That same day, the District requested the taxi cab company assign a single driver to the Student's route. The taxi cab company told the District it would agree to put the Student on its priority list.
11. On September 18, 2019, a taxi cab was not dispatched to the Student's home in the morning. The Student did not attend school due to a lack of transportation. The Parent reported the taxi cab had arrived 5-15 minutes late three times since the beginning of the school year and "not at all every other day."
12. On September 20, 2019, a taxi cab was not dispatched to the Student's home in the morning. The Parent transported the Student to school. Also on September 20, 2019, the District inquired with the taxi cab company about the District's request to have a single driver assigned to the Student. That same day, the District also changed the Student's pick-up time from 8:18 am to 8:04 am per the Parent's request. Later that day, the Parent requested the pick-up time be changed to 8:08 am and noted the "cab company has only shown up once for this child since the start of the school year."

¹ The Parent's transportation of the Student to school on September 16, 2019 was not included in the District's response; however, it was mentioned in the Parent's reply and supported by email documentation included with the District's response.

13. On September 23, 2019, the District submitted the Parent's request to the taxi cab company that the Student's pick-up time be changed from 8:04 am to 8:08 am.
14. On September 27, 2019, the Parent's attorney notified the attorney for the District that transportation in the morning had been going better.
15. Also, on September 27, 2019, the District informed the Parent that the Student's transportation would be changed from a taxi cab to a special education bus. The Parent's attorney raised concerns via email that the bus would get the Student home at 4:15 pm, which was too late to accommodate his 4:00 pm home-based autism therapy, and requested the District change the bus route to ensure the Student was home by 4:00 pm. The attorney for the District responded to the Parent's attorney that she would attempt to rearrange the bus schedule to accommodate the request.
16. On September 30, 2019, the driver was not aware of a new bus route change and failed to pick up the Student on time. A back-up bus was sent to the home to take the Student to school. The documentation is not clear regarding whether the Student made it to school on time. In the Parent's reply, the Parent's attorney noted the Student also arrived home after 5:00 pm that afternoon, causing the Student to miss his home-based autism therapy.
17. On October 1-4, 2019, the Student was on a school field trip and did not require door-to-door transportation.
18. On October 8, 2019, the District changed the Student's transportation so that he rode a bus to school with one other student, and then a bus home by himself to ensure he arrived home by 4:00 pm.
19. According to the Parent's reply, on October 16, 2019, the Student arrived home in the afternoon 45 minutes later than the scheduled time.
20. According to the Parent's reply, on October 17, 2019, the Student arrived home from school in the afternoon 20 minutes later than the scheduled time.
21. On October 17, 2019, the director of student transportation for the District emailed the Parent to acknowledge the issues the Student had been experiencing in transportation since the beginning of the school year and proposed the following to the Parent as a remedy:
 - District will reimburse the Parent for the days the Student was privately transported. The director of student transportation noted his office would be reaching out to the special education department to make sure the Parent received the necessary paperwork for reimbursement. He noted, "Once that has been done and the request has been received you will be reimbursed."
 - District will provide compensatory education for the instructional time that Student had lost due to transportation.
22. In his email to the Parent on October 17, 2019, the director of student transportation noted that morning routes had been running smoothly since route changes had been made. He

acknowledged that the afternoon route may be late at times due to traffic congestion but stated he would continue to monitor the situation to see if adjustments needed to be made.

23. On October 24, 2019, the District special education supervisor (supervisor) emailed the Parent in an attempt to again offer compensation for transportation. The supervisor apologized for transportation being inconsistent and expressed his understanding that no transportation was provided in the morning of September 4, 6, 9, 13, 17, 18, and 20, 2019,² that no transportation was provided the afternoon of September 13, 2019, and that afternoon transportation was late on September 10 and 24, 2019. His email further stated his understanding that the Parent drove the Student each day morning transportation was not provided—except September 18, 2019, when the Student was unable to attend school due to lack of busing, and that the Parent drove to school on September 13, 2019 to pick up the Student. The District offered the Parent compensation for seven (7) round trips between the Student’s home and the school. The supervisor additionally offered compensatory special education services on behalf of the District for the time the Student lost on September 18, 2018, due to transportation not being provided.
24. In its response, the District clarified it continues to offer the Parent reimbursement and compensatory services. The District has proposed three hours of compensatory instruction and reimbursement for seven (7) round trips, which is a total of 127.4 miles (9.1 miles x 14 trips = 127.4 miles).
25. On November 21, 2019, the Parent’s attorney submitted a reply to the District’s response on behalf of the Parent. In the reply, the Parent’s attorney asserted that in addition to the dates provided by the District, the District should have listed September 5, 10, 11, 12, 16, 24 and October 16 and 17, 2019 as dates where there were documented transportation problems. The Parent’s attorney cited the Parent’s transportation complaint on September 13, 2019, which stated the Student’s cab was “always very late,” and the Parent’s report on September 18, 2019 that the cab had arrived late three times and “not at all every other day” of the school year. The Parent’s attorney noted several dates during which the Student was late getting home, including September 24, 2019, and October 16 and 17, 2019, which often caused the Student to miss home-based therapy for his autism as well as time with a terminally ill parent.

CONCLUSIONS

Transportation: The Parent alleged the District denied the Student the specialized transportation in his individualized education program (IEP). Transportation is included in a student’s IEP when the student requires transportation as a related service due to the impairments that affect the student’s need for transportation. 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 at no cost to the parents.

² The documentation shows the Parent also drove the Student to school on September 4, 2019.

The District acknowledged that from September 4, 2019 to October 1, 2019, it did not consistently implement the transportation services in the Student's IEP. On some days, the Parent had to provide transportation at her own expense, and on one occasion, the documentation shows the Student missed an entire day of school due to lack of transportation. OSPI agrees the District did not consistently implement the transportation services in the Student's IEP and finds the District in violation. Accordingly, OSPI accepts the District's proposal to provide reimbursement for seven (7) round trips for the times the Parent provided transportation to the Student on September 4, 6, 9, 13, 16, and 17, 2019 and three (3) hours of compensatory services for the time the Student was absent due to transportation not being provided on September 18, 2019.³

In her reply, the Parent asserted the District should have additionally listed September 5, 10, 11, 12, 24, and October 16 and 17, 2019 as dates where there were additional problems with transportation. Additional problems described in the Parent's response included the taxi cab driver being 5-15 minutes late to pick up the Student in the morning,⁴ arriving 10 or more minutes late or to the wrong location to pick-up the Student after school, and delivering the Student home between twenty minutes to over an hour late in the afternoon due to traffic or driver errors, which caused the Student to miss home-based therapies and time with a terminally ill parent. Also, on one occasion, the taxi cab picked up the Student at school when the Student was supposed to be picked up by the Parent and dropped off the Student at an empty house, and left without making sure the Student was received by an adult.⁵ OSPI acknowledges the inconvenience and hardship the Student and family endured as a result of these issues. However, with the exception of September 16, 2019 (when a cab was not dispatched), the documentation did not show the additional issues with transportation raised in the Parent's reply prevented the Student from receiving transportation at public expense and no cost to the Parent, or from benefiting from his IEP. For these reasons, no further corrective actions will be ordered for these dates. However, OSPI recommends the District continue to work with its special education and transportation departments as well as with families to find solutions to its transportation problems.

³ There is documentation to show the Parent opted to drive the Student on September 4, 2019 because it was the first day of school; however, in all communication reviewed between the District and Parent, as well as the District's response, the District has included September 4, 2019 as one of the dates for which it has offered reimbursement. It is further unclear if a cab was dispatched on September 4, 2019. Accordingly, OSPI is accepting the District's offer to include September 4, 2019 as one of the days for which it has offered reimbursement as a sign of good faith by the District. On September 13, 2019, the Parent provided two round trips—one in the morning and one in the afternoon. On September 18, 2019, the Parent was unable to provide transportation and the Student did not attend school.

⁴ There was no documentation to show the Student was late for school or missed any specially designed instruction when the taxi cab was 5-15 minutes late in the morning, but still was dispatched and utilized by the Student.

⁵ This issue was acknowledged by the District and transportation company. The District spoke with the taxi cab company to remind them that the Student must be received at school and at home.

CORRECTIVE ACTIONS

By or before **December 20, 2019, January 3, 2020, and January 24, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Instruction: The District will be required to provide the Student 3 hours of compensatory instruction.

By or before **December 27, 2019**, the District will work with the Parent to develop a schedule for delivering 3 hours of specially designed instruction in the areas of communication, study/organization, social/behavior, or reading. The Parent and District may determine the distribution of time between the Student's service areas.

Services will occur in a one-on-one setting and be provided by a certificated special education teacher. Compensatory sessions will occur outside of the District's regular school day but may occur on weekends or over breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. The District will provide OSPI with documentation of the schedule for services by or before **January 3, 2020**. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **January 17, 2020**.

The District must provide OSPI with documentation on **January 24, 2020** of the compensatory services provided to the Student. This documentation must include the dates, and length of each session, and state whether any of the sessions were rescheduled or missed by 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 reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation that it has reimbursed the Parent by **January 24, 2020**.

Reimbursement: By **December 13, 2019**, the District will reimburse the Parent for seven round trips of transporting the Student to and from school (9.1 miles x 14 trips = 127.4 miles). The District will reimburse this distance (127.4 miles) at the District's privately owned vehicle mileage reimbursement rate. By **December 20, 2019**, the District will submit documentation to OSPI that it reimbursed the Parent.

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 ____ day of November, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
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.)