

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-101

PROCEDURAL HISTORY

On August 31, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the **[REDACTED]** 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 and other students (Students) receiving special education services at the **[REDACTED]** (junior high) and **[REDACTED]** (high school).

On September 2, 2022, 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 September 16 and 19, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on September 22, 2022. OSPI invited the Parent to reply.

On October 3, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On October 7, 2022, OSPI requested additional information from the Parent. OSPI received additional information from the Parent on October 10, 2022. OSPI forwarded the additional information to the District on the same day.

On October 14, 2022, OSPI received additional information from the District. OSPI forwarded the information to the Parent on October 17, 2022.

On October 19, 2022, OSPI received additional information from the Parent. OSPI forwarded the information to the District on October 20, 2022.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on September 1, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUE

1. Did the District improperly shorten the school day for Students with special transportation on their IEPs by releasing Students early to go to their bus who attend **[REDACTED]** and **[REDACTED]** during the 2021–2022 school year?

LEGAL STANDARDS

Program Length: Students who receive special education should be allowed to participate in a district's educational programs and services to the same extent as their non-disabled peers, consistent with their rights under IDEA. Any decision to limit or restrict their access and participation must be made by their individualized education program (IEP) team, based solely on any adjustments necessary due to their disability and/or unique needs. 34 CFR §300.114; WAC 392-172A-02050. If a student receiving special education services cannot attend school a full school day, the reason must be documented in his or her records and addressed in the student's IEP. 34 CFR §300.320; WAC 392-172A-03090. *See also Shoreline School District No. 412*, 55 IDELR 178 (OCR 2010).

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.

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. 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).

FINDINGS OF FACT

Background

1. The complaint alleged the District shortened the school day for the Students receiving special transportation services at the junior high and high school by having students leave ten and five minutes early, respectively, from their classroom to board the bus. The complaint stated, in part, "Students regularly leave 10 minutes before school is out to go to their buses and leave before the final bell has rung. Denying them access to about 30 hours of instruction every year and access to their peers during the after-school time."

The complaint alleged Students were denied both instruction and access to their general education peers during that time by dismissing the Student's five through ten minutes early. Later, the Parent alleged that the District failed to provide instruction school and provide access to their general education peers to the Students during the first five through ten minutes of the school day at both schools.

2. The District stated that due to bus congestion at both schools and construction at one of the schools, the schools' arrival and departure times were changed by five or ten minutes. The District stated all Students received their special education services in conformity with their IEPs.

2021–2022 School Year

3. According to the District, 47 students in the junior high received special transportation services according to their IEPs and 42 students in the high school received special education transportation according to their IEPs during the 2021–2022 school year. The complaint and the District referred to special transportation as “special education buses.”
4. The District stated that normally, the school schedule ran “bell-to-bell.” But due to the problem of bus congestion at the schools, the Students’ schedules had to change to address the problem.
5. The District response stated the Students who attended the high school did not have a shortened school day. Students attended school 1,740 minutes per week and received all their special education services according to their IEPs. The high school adjusted all the Students’ school schedule by 10 minutes due to bus congestion both in the morning and at the end of the day—in other words—the Students arrived 10 minutes early and departed 10 minutes. The junior high similarly adjusted its schedule by five minutes.
6. The Parent stated her concern was that Students missed instruction at the end of the school day and were denied the opportunity to interact with their non-disabled peers in the morning since they arrived later. Regarding Students arriving early to school, the Parent stated she did not observe Students receiving instruction during this early arrival time. She also stated she saw special education buses dropping off Students the same time as general education buses.
7. When asked by OSPI what special education services were not provided, the Parent stated:

All class time is instructional and part of a FAPE, not just the part that has been designated as specially designed instruction. As is the non-academic time before and after school.
- The Parent stated she did not know if Students missed their special education services due to the change in the schedule.
8. When asked by OSPI on what dates the Parent observed the special education buses leaving early during the 2021–2022 school year, the Parent was able to recall two times when the special education buses left early, and the other parent observed the special education buses leaving early one time.
9. The Parent’s reply further stated:

...And if the students were actually going to instruction early, then they were being denied access to their peers during the non-academic time before school. Or if, as one teacher told me...the students were allowed the time before school with their peers. Then it really was not instructional time, so their day was shortened. It cannot be both ways. Which is why having students attend bell to bell, like all other students, is the only way to provide a FAPE and not violate civil rights.
10. OSPI reviewed a sampling of Student IEPs who accessed special education transportation at the junior high and high school. Each Students’ IEPs identified the percentage of time during

the school day the Student had contact with their general education peers. Taking a sample of the IEPs submitted by the District, the following identifies the Student and percentage of time the Student was in the general education setting:

Student A – 86%	Student F – 77%
Student B – 41%	Student G – 21%
Student C – 20%	Student H – 44%
Student D – 68%	Student I – 84%
Student E – 68%	Student J – 68%

11. According to a sworn affidavit, dated September 16, 2022, by the District special education director (director), the director stated, in part:

- “In responding to these allegations, I spoke with the self-contained teachers at [junior high] and reviewed all student IEPs provided as exhibits to the answer.”
- “During the 2021-2022 school year, students at [high school] did not have their day shortened resulting in a loss of academics and/or behavioral support. Students were in session for 1740 minutes per week, unless otherwise indicated in their IEPs.”
- “All self-contained classrooms at [high school] adjusted their daily schedule by 10 minutes, meaning students in self-contained classrooms arrived to their classrooms 10 minutes prior to the morning bell and were dismissed 10 minutes prior to the afternoon dismissal bell. This allowed support for the transition to and from the bus.”

12. In response to the Parent’s additional information, the director provided a sworn affidavit, dated October 13, 2022. The affidavit included the following statements, in part:

- “[Junior high] was under construction during the 2021–2022 school year, and still is undergoing construction. There have been many moving parts to ensure a safe dismissal for students. The goal was to get students into their guardian’s vehicles and onto the buses as quickly as possible. It was reported that buses were getting onto the road in about seven minutes. [Junior high] building administration confirmed to me that students were expected to exit the building in a timely manner.”
- “Teachers confirmed the shift of schedules, including five minutes at [junior high] and 10 minutes at [high school]. [Junior high] teachers confirmed prior to the school day beginning, students were greeted by support staff, pickup breakfast and were in the classroom five minutes prior to the bell. [Specially designed instruction], such as communication, adaptive skills and emotional skills, were provided in the classroom as well as during breakfast, pick-up and navigating construction.”
- “The bus drivers confirmed the same timeline as the teachers, however, they mentioned there were a few situations when buses may have been late due to lack of drivers for the 2021-2022 school year.”

CONCLUSIONS

Issue One: Shortened School Day – The Parent alleged the junior high and high school were dismissing students who received special transportation early from school, thereby shortening their school day. The Parent alleged students were denied instruction and access to their general education peers. A district must ensure that a student with an IEP must have the same access to the district’s programs and services students without IEPs, including a full school day unless determined otherwise by the student’s IEP team.

Here, at the junior high, the District changed the Students' school schedules by starting school 10 minutes early and dismissing the Students 10 minutes early because of bus congestion when Students arrived at school and were dismissed. At the high school, the Students' schedules were similarly changed by starting school five minutes earlier and dismissing the Students five minutes early. While it would be contrary to the IDEA to shorten a student's school day due to the logistics of transportation (e.g., needing to change schedules solely due to bus congestion), it appears that here, the Students' school day was *shifted*, rather than shortened.

Despite the Parent's claim that Students did not receive instruction at either school during the first five through ten minutes when Students arrived early, there was no evidence that the Students did not receive their special education services in conformity with their IEPs. As an example, the District stated that "students were greeted by support staff, pickup breakfast and were in the classroom five minutes prior to the bell. [Specially designed instruction], such as communication, adaptive skills and emotional skills, were provided in the classroom as well as during breakfast, pick-up and navigating construction."

In addition, the Parent may have been concerned about the Students' lack of contact with general education peers within their first five through ten minutes of school. While OSPI agrees that there can be valuable learning during these informal transition periods to class at the start of school, here, the Students' IEPs provided for substantial contact with their general education peers throughout the remaining school day. Missing some peer contact at the beginning of the day is not a material failure to implement the IEPs of Students. The Parent also stated that Students should be receiving instruction bell-to-bell. However, the Students' IEPs reviewed here did not call for special education services to be delivered every moment of the day.

Even with the schedules being staggered five through ten minutes, OSPI finds the Students' IEPs were implemented as written. In this case, they were. No violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 28th day of October, 2022

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.)