

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-91**

### **PROCEDURAL HISTORY**

On July 29, 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 Central Valley 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 August 4, 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 August 17, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on August 18, 2022. OSPI invited the Parent to reply.

On August 25, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on August 26, 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 July 30, 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.

### **ISSUES**

1. Did the District address the Student's need for special transportation during extended school year services for the 2020–2021 and 2021–2022 school years?
2. Did the District implement the Student's individualized education program (IEP) at the end of the 2021–2022 school year?

### **LEGAL STANDARDS**

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. 34 CFR §300.106; WAC 392-172A-02020.

Extended School Year – Limitations on Services: A school district may not limit ESY services to particular categories of disability, or unilaterally limit the type, amount, or duration of those services. 34 CFR §300.106(a)(3); WAC 392-172A-02020(4).

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).

Graduation: Graduation with a regular high school diploma ends a student’s eligibility for special education services. 34 CFR §300.102(a)(3); WAC 392-172A-02000(2)(b); *Letter to Moore*, 39 IDELR 189 (OSEP 2002). No student will be denied the opportunity to earn a high school diploma solely because of limitations of the student’s ability. A school district’s board of directors is required to adopt written policies and procedures for meeting the unique needs of a student. This may include extending the time a student remains in school, up to the school year the student turns 21, special education programs, and special accommodations for students, including exemptions from the requirements of chapter 180-51 WAC. WAC 180-51-115; *In the Matter of Camas School District*, 106 LRP 2398, OSPI Cause No. 2003-SE-0084 (WA SEA 2003).

Graduation Ceremony (Kevin’s Law): Each school district that operates a high school is required to adopt a policy and develop procedures to determine which students receiving special education services can participate in graduation ceremonies after four years, even if they will remain in school beyond four years. Students who participate in the graduation ceremony will receive a certificate of attendance, which is not a high school diploma. Students will receive a diploma when they complete their graduation requirements. RCW 28A.155.170.

“The legislature finds: 1. There are students with disabilities throughout the state of Washington who have attended four years of high school, but whose [IEPs] prescribe the continuation of special education and related services beyond the fourth year of high school; 2. Through their participation in the public schools and the community, students with disabilities have frequently become identified with and connected to a class of typically developing, age-appropriate peers who will graduate in four years and participate in a high school graduation ceremony; 3. A high school graduation ceremony is an important rite of passage for students regardless of their abilities or limitations; and 4. There is significant value in recognizing students' attendance and accomplishments in their [IEPs] and in allowing students with disabilities to participate in high school graduation ceremonies and activities with their age-appropriate peers without the forfeiture of their continuing special education and related services.”

## **FINDINGS OF FACT**

### **Background: 2020–2021 School Year**

1. During the 2020–2021 school year, the Student was a sixteen-year-old eleventh grader who was eligible for special education services under the category of multiple disabilities.

2. On October 7, 2020, the Student's IEP team met to review the Student's IEP (effective from October 7, 2020 to October 6, 2021). The IEP provided annual goals in the areas of functional academics and adaptive and daily living skills, including accompanying benchmarks/short term objectives. The IEP provided specially designed instruction and related services in the areas of cognitive, adaptive, vision, occupational therapy, physical therapy, paraeducator services, and speech/language consultation. The IEP also stated the Student required special transportation, but did not specify what was needed for the Student.

The IEP provided extended school year (ESY) services, but the specific services were not listed. The meeting minutes stated that ESY services would be determined in April 2021.

3. On June 7, 2021, the IEP team met to determine ESY services for the Student. The "Extended School Year Addendum" provided services in the areas of reading, writing, math, adaptive, and paraeducator services. No special transportation services were mentioned.<sup>1</sup>
4. On July 30, 2021, the one-year timeline for this complaint started.
5. The District provided ESY services from August 10–26, 2021. According to the documentation, the Parents agreed to transport the Student to ESY services.

### **2021–2022 School Year**

6. At the beginning of the 2021–2022 school year, the Student was a twelfth grader who continued to be eligible for special education services under the category of multiple disabilities.
7. On September 8, 2021, the school year began in the District.
8. On October 6, 2021, the team met to review the Student's IEP (effective from October 6, 2021 to October 5, 2022). The pertinent information in the IEP related to this complaint was that the Student received special transportation. However, the IEP did not indicate specific details regarding the transportation.
9. On May 16, 2022, the Student's IEP team met to discuss ESY services. The IEP team determined the Student would continue to receive ESY services in the areas of reading, writing, math, and adaptive behavior. Transportation was not mentioned on the ESY IEP and there was no indication that special transportation was discussed with the Parents.
10. On June 2, 2022, the District special education director sent an email to special education staff, stating, in part:
  - Our District process at the end of the year has been to honor all of our Seniors by including them in our typical Senior activities and timelines. This means:
    - the last day of school for our senior students at [high school] will be June 7th

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<sup>1</sup> The Parents argued, "A student eligible for special transportation on the Individual Education Plan that runs on a yearly basis should be qualified for special transportation to/from ESY."

- the last day of school for our senior students in our comprehensive high schools will be June 9th
- the last day of school for our senior students in our STL program will be June 10<sup>th</sup>.

A few notes:

*This includes **all** seniors, including those in our [special education] programs and those who will be transitioning to our STL (School to Life) program next year.*

*Transportation will not be provided for our Seniors after these dates.*

*The Graduation Ceremony is the culmination of their academic career as a 9–12 student.*

(Emphasis included.)

11. On June 3, 2022, according to the Parents, the District notified parents of seniors that “their students were not welcome in school the week after senior graduation.” The Parents requested the Student continue to attend school and receive services during the week of June 13–17, 2022. The District agreed to the Student attending school for the week, but the District was unable to provide the Student with transportation because “bus routes for seniors had already been canceled...” The Parents transported the Student to school during the last week.
12. On June 15, 2022, the team amended the Student’s IEP without meeting to determine ESY services (and the Student’s new placement for the next school year). The meeting notes stated, in part, “Parents discussed ESY services, and asked if there will be transportation provided. The director of special education stated that there will not be transportation services provided. [District] does not provide transportation services for ESY.” No prior written notice was provided in the record.
13. The District’s response noted that at the time of the June 2022 meeting, the special education director was not aware of District Board Policy 6625 that stated, in part:  
The board authorizes the use of private vehicles under the following circumstances: Under unusual circumstances, the district may request parents, or a responsible adult, to drive children to school in their own vehicles on a per-mile cost reimbursable basis.

The District’s response further explained why parents needed to transport students to ESY services rather than using District transportation:

As each student in the District who qualifies for ESY has a unique start and end time during the provision of ESY – which times are determined by each student’s IEP teams, in conjunction with input from their parents to be respectful of each of the family’s schedules – and because each individual student receiving ESY receives it in a unique location within the District, the District considers transportation to and from ESY an “unusual circumstance” as identified in Board Policy 6625. The District thus provides per-mile cost reimbursement to parents who transport their students to and from ESY in accordance with District policy and as required by law.

However, the special education director clarified that if parents were unable to provide transportation for a student to attend ESY services, the District would ensure it was provided by “whatever means.”

14. On June 9, 2022, the District held graduation for seniors.

15. According to the Parents' initial complaint:

Parents were also told (for the first time, one week before graduation) that district policy is that all 12th grade students were expected to participate in graduation events as if they were typical graduating students. However, our student is not typical, and will be returning to school until he ages out. The Principal of [high school] allowed students to attend the last week of school, but [District] would not provide transportation...

16. The District's response explained senior activities and stated why the Student was included in senior activities:

The District allows each of its students with disabilities who are considered 'Seniors' to participate in 'Senior Activities' - including Senior Week - to the same extent as their non-disabled peers. The 2021-22 school year for Seniors officially concluded on June 9, 2022, prior to Senior Week. Therefore, Seniors were *not required* to attend school during Senior Week, as their school year had officially ended. As such, attendance was not required and transportation was not provided for Seniors...

The District prides itself on inclusion of students with disabilities to the greatest extent possible. In accordance with its inclusionary practice, the District has allowed all Seniors, regardless of ability, to participate in all senior activities to the best of their ability, including concluding their school year on June 9, 2022 to allow for participation and equal access to Senior events and activities.

The District considers 'Seniors' to be students who have completed grade 12 for these purposes irrespective of whether those students will be returning to the District's transition programs for students aged 18-21 the following school year. As the Student transferred into the District as a student in 'eleventh grade' during the 2020-21 school year, and was thus considered a student in 'twelfth grade' during the 2021-22 school year, [District] High School considered him a 'Senior.' The Student's grade level was indicated in each of the Student's IEP and the Student was included in each of the communications that were sent *only* to 'Seniors' and parents of 'Seniors.'

17. According to the special education director, the IEP team normally determines to what extent a student will not participate in graduation and senior activities. In this case, the IEP team did not address the Student's participation in senior activities and graduation.

18. The Parents later clarified the reasons why the Student should not have been included in senior activities as follows:

- Participation in "graduation" was not discussed at the Student's October 2020 and October 2021 IEP meetings. The Parent requested the Student continue to attend school until he aged out.
- IEP services ran from October 6, 2021 to October 5, 2022.
- The statement regarding the least restrictive environment, the IEP stated that due to cognitive and behavior needs, the Student would not participate in general education or extracurricular activities.
- Parent had conversations with the Student's teachers about the Student returning for the 2022-2023 school year.
- Participation in senior activities should have been determined by the IEP team.
- Communication to the Parents about senior activities should have been more timely.

- The Student's June 2022 IEP confirmed the Student would continue services to 2025.

19. On June 17, 2022, the school year ended in the District.

20. On August 8, 2022, according to a District email, the District provided staff with travel forms for parents to fill out for reimbursement "to and from ESY or recovery services."

21. At the time of the District's response, the District was still attempting to reimburse the Parents for transporting the Student for ESY during the 2020–2021 and 2021–2022 school years.

## CONCLUSIONS

**Issue One: Special Transportation ESY** – The complaint alleged the District failed to provide the Student special transportation for ESY services during the 2020–2021 and 2021–2022 school years. A district must implement the special education services, including transportation, in conformity with a student's IEP.

### 2020–2021 ESY

Here, the Student's IEP team developed an ESY IEP in June 2021. The Student's IEP provided for ESY services but no special transportation as a related service, although the Student received special transportation during the 2020–2021 school year. Since the June 2021 ESY IEP was developed before the one-year complaint timeline—which began on July 30, 2021—OSPI cannot render a decision regarding the development of the ESY IEP.

Although the Student's ESY IEP did not provide special transportation to the Student, the District's ESY transportation policy stated parents would be reimbursed for transporting their student to ESY services. Despite the District's policy, the Student's ESY did not call for special transportation. Thus, the District implemented the Student's ESY IEP as written. Therefore, there was no violation.

### 2021–2022 ESY

In May 2021, the IEP team developed the Student's ESY IEP for the 2021–2022 school year. The ESY IEP provided for specially designed instruction but not special transportation. At the meeting, the Parents requested special transportation, but the request was denied because the District stated it did not provide transportation for ESY, despite a District policy stating parents could be reimbursed for transporting students to the ESY program. The Parents transported the Student to ESY for summer 2022. Given that the Parents requested transportation, the IEP team should have considered the Student's need for special transportation during ESY like any other special education or related services the Student was receiving. Although the Parents argued that the Student should have received special transportation for ESY because the IEP was written for a year and the Student received special transportation during the "regular" school year, the IEP team needed to make an individualized decision whether special transportation was required for the Student to benefit from ESY. And the decision needed to be documented in a prior written notice to the Parents. This did not occur.

In addition, there also should have been discussion about what kind of special transportation would be provided. Despite the District's difficulty with scheduling transportation during ESY, the District transporting the Student should have been discussed, along with the option of the Parents being reimbursed for transporting the Student. The District cannot rely on parents transporting students as the sole option and there must be mutual agreement for a transportation reimbursement option. Based on the failure to make an individualized decision regarding the need for special transportation, not considering the option for the District to transport the Student, and providing prior written notice to the Parents, a violation is found. The District will be required to review and revise, if necessary, its transportation policy and conduct training.

**Issue Two: IEP Implementation** – The complaint alleged the District failed to provide the Student with services, including special transportation, during the last week of school of the 2021–2022 school year.

Here, the District had a tradition of “senior week”—the last week of school when seniors were not required to attend school. As seniors did not attend school during the final week, transportation was not provided. According to the District, teachers notified parents about participating in “senior week” and the IEP team would determine the extent each student would be involved. In this case, the Student's teacher did not get input from the Student's Parents and there was no IEP meeting specifically to discuss the Student's involvement in senior week. According to the record, there appeared to be, in part, a misunderstanding on the part of the Parents about the Student participating in senior activities. It was not clear, but the Parents may have believed that the Student walking during graduation and participating in other senior activities with all the other seniors meant that the Student was no longer eligible for special education services and could not attend school to age 21, which was clearly not the case with the Student. (See Kevin's Law above.) The documentation showed that the Student would be attending to age 21 and that the IEP team had discussed his placement for the following year.

After the Parents contacted the District about their preference that the Student attend school the final week, the Student was able to attend school. Although the District did not provide special transportation as stipulated in the Student's IEP, the Parent agreed to transport the Student and the District attempted to reimburse the Parents. Further, given the Student was able to attend during the final week per the Parents' request, the lack of transportation the final week of school is a minor deviation from the IEP and not a material failure to implement. No violation is found.

### **CORRECTIVE ACTIONS**

By or before **October 7, 2022, October 11, 2022, October 14, 2022, and November 4, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.

## **DISTRICT SPECIFIC:**

### **Policy Review**

By **October 21, 2022**, the District is required to review and revise, as needed, its policy regarding ESY special transportation. By **October 11, 2022**, the District is required to submit a draft of the policy to OSPI. OSPI will provide feedback as necessary and further deadlines at that time to finalize the policy if updated.

### **Training**

By **October 28, 2022**, the District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), is required to conduct a training with the staff that serve as District representatives, special education teachers, and District special education administrators from the Student's school regarding the following:

- Making individualized decisions regarding special transportation for ESY;
- Ensuring transportation options are discussed at IEP meetings;
- Ensuring transportation is provided when IEP teams determine it is a necessary related service; and,
- Providing prior written notice to parents.

By or before **October 7, 2022**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **October 14, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments as needed.

By **October 28, 2022**, the District will conduct the training regarding the topics raised in this complaint decision.

By **November 4, 2022**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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 27th day of September, 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.)