

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-04

PROCEDURAL HISTORY

On January 10, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Bellevue 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 January 10, 2018, 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 February 1, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on February 2, 2018. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information.

On February 5, 2018, the Parent requested an extension of time to submit his reply. On February 6, 2017, OSPI granted the Parent an extension of time until February 21, 2018, to submit his response to this complaint.

On February 21, 2018, OSPI received the Parent's reply and forwarded that reply to the District on February 22, 2018.

On February 28, 2018, OSPI contacted the District to request clarifying information and the District provided additional information on March 1, 2018. OSPI forwarded the information to the Parent on March 2, 2018.

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

OVERVIEW

During the 2017-2018 school year, the Student attended a District elementary school and was eligible to receive special education under the category of autism. The Student's individualized education program (IEP) provided for special transportation, and the Student used a seatbelt while on the school bus. On a few occasions in September and October 2017, the Student got out of his seatbelt and his bus seat while the school bus was moving. In response, the District took several steps to address the Student's safety while on the bus, including using a safety cap, which was placed over the seatbelt buckle to make it harder for the Student to unbuckle his seatbelt. However, according to the bus driver, the Student was able to undo the safety cap and continued to get out of his bus seat. The District then used a safety vest with the Student and sought the Parent's consent to continue to use the safety vest. The Parent provided limited consent for the use of the safety vest, asking to see the video footage from the school bus to show that the Student could undo the safety cap. The Parent also requested that the District

schedule an IEP meeting and have a paraeducator ride the bus with the Student to observe his behavior. In response, the District scheduled an IEP meeting, but the Parent then asked that it be rescheduled. The District then scheduled a second IEP meeting, but the Parent then refused to attend the meeting, because District transportation staff would attend the meeting and the District would not allow the Parent to record the meeting. The Parent then met with the elementary school principal, and it was agreed that the District would schedule another IEP meeting and that the Parent may elect not to attend the meeting and could provide input. The District then held a meeting on December 14, 2017, but the Parent did not attend. At the IEP meeting, the IEP team agreed that a paraeducator would ride the bus with the Student for two weeks to collect data. In early January 2018, the District provided the Parent with a prior written notice, reflecting the decisions made by the IEP team at the December 14 IEP meeting. In response, the Parent asked that changes be made to the prior written notice, but the District refused to make changes without holding a meeting to discuss the Parent's request.

The Parent alleged that the District failed to follow procedures for conducting the Student's initial evaluation and failed to follow procedures for developing the Student's IEP, including ensuring parent participation in the IEP meeting, during the 2017-2018 school year. The Parent also alleged that the District failed to follow procedures for obtaining informed consent for the initial provision of special education services and failed to provide the Student with special education and related services in the least restrictive environment during the 2017-2018 school year. The District denied the allegations.

ISSUES

1. Did the District follow procedures for conducting the Student's initial evaluation during the 2017-2018 school year?
2. Did the District follow procedures for developing the Student's individualized education program (IEP), including ensuring parent participation in the IEP meeting as required by WAC 392-172A-03100, during the 2017-2018 school year?
3. Did the District follow procedures for obtaining informed consent for the initial provision of special education services during the 2017-2018 school year?
4. Did the District provide the Student with special education and related services in the least restrictive environment during the 2017-2018 school year?

LEGAL STANDARDS

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. 34 CFR §300.304(c)(6); WAC 392-172A-03020(3)(g). If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that

statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303(b); WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of

majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

Related Services: Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 CFR §300.34(a); WAC 392-172A-01155(1).

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. 64 Fed. Reg. 48, 12479 (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 Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); at the discretion of the parent of the school district, any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are

afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR § 300.322; WAC 392-172A-31000.

Development of an IEP: In developing each student's IEP, the IEP team must consider: the strengths of the student; the concerns of the parents for enhancing the education of their student; the results of the initial or most recent evaluation of the student; and the academic, developmental, and functional needs of the student. 34 CFR §300.324; WAC 392-172A-03110.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or

referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

Consent for Initial Provision of Services: A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student. The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student. If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student. If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district: Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and is not required to convene an IEP team meeting or develop an IEP. 34 CFR §300.300(b)(3); WAC 392-172A-03000(2)(d). Parental consent is for the initial provision of special education and related services generally, not for a particular service or services. Individuals with Disabilities Education Act (IDEA), 73 Fed. Reg. 73,007, 73,011 (December 1, 2008) (comment to 34 CFR § 300.300).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: (1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and (2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

FINDINGS OF FACT

Background Facts

1. The Student lives with both his father (Parent) and his mother.
2. The Student was initially evaluated for special education in June 2014 by another Washington school district, and found eligible to receive special education services under the category of autism.

3. In September 2015, the Student moved to the District and continued to receive special education services through a District preschool program.
4. In May 2017, the District conducted a reevaluation of the Student and determined the Student continued to be eligible for special education under the category of autism.
5. On May 15, 2017, the Student's individualized education program (IEP) team met to develop the Student's annual IEP. The May 2017 IEP stated that the Student's behavior did "not get in the way of his learning or the learning of others". The IEP included annual goals in the areas of communication, social, reading, writing, mathematics, and adaptive. The IEP provided for the following specially designed instruction:
 - Communication – 30 minutes weekly
 - Mathematics – 30 minutes 5 times weekly
 - Reading – 30 minutes 5 times weekly
 - Writing – 30 minutes 5 times weekly
 - Social – 30 minutes 5 times weekly
 - Adaptive – 30 minutes weekly

The May 2017 IEP provided for special transportation, but did not provide for any other related services, or supplementary aids and services.

2017-2018 School Year

6. During the 2017-2018 school year, the Student attended first grade at a District elementary school and his May 2017 IEP was in place.
7. The District's 2017-2018 school year began on August 31, 2017.
8. According to the District's response to this complaint, in September and October 2017, the Student's bus driver observed that the Student sometimes got out of his bus seat while the bus was in motion. In consultation with the District transportation department, the bus driver addressed the behavior by: directing the Student to return to his seat, speaking with the Student about bus rules and safety risks, stopping the bus until the Student was safely seated, conferring with the family, and using a buckle guard (safety cap), which made it more difficult for the Student to unlatch his seatbelt. The interventions were initially effective.
9. According to the District's response to this complaint, on November 13, 2017, the Student got out of his seatbelt, and then his seat, while the bus was moving. In response, the bus driver tried to get the Student to return to his seat, but could not persuade the Student to do

so. The bus driver then used a safety vest¹ with the Student, which is a type of seat harness, so that the bus driver could complete the route without placing the Student at risk.²

10. Later on November 13, 2017, the Parent emailed the Student's general education teacher and included the Student's mother on the email. The Parent stated that he was sure the teacher had already heard the Student's mother's concerns about the use of the safety vest and asked that the teacher relay the concern to the bus driver. The Parent wanted the bus driver to use a safety cap with a seatbelt, instead of the safety vest. The Parent stated that a safety cap had been used with the Student in the past, and that a safety cap was very secure. The Parent stated that he did not want the safety vest used with the Student. The Parent later forwarded the email to the Student's IEP case manager.
11. On November 14, 2017, the District transportation coordinator emailed the Student's IEP case manager, stating that she had sent a safety vest with the bus driver for the Student. The transportation coordinator asked if the family had received the safety vest and signed a consent form to use the vest. In response, the case manager thanked the coordinator for sending the safety vest, and stated that she was not aware there was a consent form. The case manager asked if the consent form had been sent home with the Student, and stated that she could contact the Student's mother to see if she had received the form. The transportation coordinator replied, stating that she had not sent the consent form to the family. The coordinator attached a copy of the consent form, and asked that the case manager have the family sign it. The consent form stated:

I authorize the [] School District to utilize restraint equipment such as a safety vest for the purpose of transporting my child to and from school in a safe manner. I understand that failure to authorize such permission may result in my child not being transported to and from school.
12. Also on November 14, 2017, the Student's IEP case manager responded to the Parent's November 13 email, stating that the bus driver had used a safety cap on November 13, 2017 and had not used a harness. The IEP case manager stated that she would let the transportation department, the bus driver, and a paraeducator, who worked with the Student at school, know that the Parent wanted the safety cap used with the Student.
13. On November 15, 2017, District staff exchanged multiple emails with the Student's mother and the Parent. These emails are summarized below.
 - 5:53 a.m. – The Student's mother responded to the IEP case manager's November 14 email, clarifying that the safety vest had been used with the Student on November 13, and stated that the bus driver had not used the safety cap with the Student "for weeks or months".

¹ A picture of and details about the safety vest can be found at <https://www.especialneeds.com/e-z-on-adjustable-vest-for-family-vehicles.html>.

² A seat harness used to transport a student safely is not considered a restraint device prohibited under RCW 28A.600.485. See WAC 392-172A-01163. <http://apps.leg.wa.gov/WAC/default.aspx?cite=392-172A-01163>.

- 6:14 a.m. – The Student’s mother sent a second email to the case manager, stating that she did not understand the need to use “such a strong and heavy restraining device” with the Student. The mother stated that unless the safety cap or all other devices did not work for the Student, then she did not see the need for the District to use the safety vest. The mother also stated that the Student had been “perfectly fine” with the safety cap in previous years without any issues, and did not understand why the bus driver had used the safety vest without speaking with her first.
- 9:20 a.m. – The IEP case manager responded to the mother, stating that she had spoken with the bus driver and he had relayed that the Student was getting out of his seat 3-4 times per week, and that the Student could get out of his seatbelt even when a safety cap was used. The case manager stated that with the safety vest, the Student and other students were safe, and the Student stayed in his seat. The case manager asked that the mother let her know if she was okay with the District using the safety vest, and that if the mother was okay with this, to please sign the consent form and send it to school with the Student. The case manager stated that otherwise, she was not sure what other options were available.
- 9:25 a.m. – The Student’s mother responded to the case manager, stating that she “seriously” doubted the Student could get out of his seatbelt with the safety cap on. The mother stated that “a few weeks ago he said he didn’t use [the safety cap] because he was behaving well. Now he said he used on and he can get it out?”. The mother stated that she had a “medicine cap” at home and tried to let the Student open it, but the Student had not been able to do so.
- 9:28 a.m. – The Parent responded to the mother’s email, asking if the safety cap was malfunctioning.
- 9:30 a.m. – The Parent sent a second email, stating that perhaps the seat belt itself was not working properly. The Parent stated that the safety cap required a certain amount of force to open, a “push & turn at the same time”, which was not something a six year old could do.
- 3:06 p.m. – The Parent emailed the transportation coordinator to follow-up on a conversation they had earlier that day. The Parent stated that he had requested to review the video recordings of the Student’s bus rides. The Parent asked that the transportation coordinator let him know when he could review the recordings.
- 5:40 p.m. – The Parent emailed the transportation coordinator and the District transportation office’s general email box, asking for a copy of the bus driver’s daily route log³ for each and every incident the District had identified as connected to the matter.

14. On November 16, 2017, District staff exchanged multiple emails with the Student’s mother and the Parent. These emails are summarized below.

³ WAC 392-141-330 requires district bus drivers to “maintain a daily route log that includes the school bus driver’s name, bus number, route number, destinations and student counts by destination, pretrip, and posttrip verification, with the date and school bus driver’s signature. These daily route logs shall be completed in ink and shall be maintained in the district files in accordance with the district record retention schedule. Electronic data collection systems or files may be used for any of this information.”

- 6:14 a.m. – The District transportation manager emailed the Parent, stating that the District had received the Parent’s records request and would pass the request along to the District’s public information officer.
- 9:00 a.m. – The Student’s mother emailed the IEP case manager, stating that the consent form had been sent with some language added. The District’s documentation in this complaint included a consent form signed by the Student’s mother, which stated:

I authorize the [] School District to temporarily utilize safety equipment for the purpose of transporting my child to and from school in a safe manner, pending the resolution of the dispute regarding the alleged incidents occurred on the school bus and the undersigned parent(s)’ review of the surveillance video recordings on the school bus for the alleged incidents. All safety equipment must be operated by the [] School District or its agents.
- 10:18 a.m. – The Parent responded to the transportation manager’s 6:14 am email, thanking him for the response. The Parent clarified that he was only requesting records that related to the incidents at issue and stated that the public information officer could contact him if the officer needed further explanation.
- 12:18 p.m. – The Parent emailed the elementary school principal, the District transportation manager, the IEP case manager, and the Student’s general education teacher, stating that he was hoping the staff members could assist regarding recent incidents which had occurred with the Student. The Parent stated that on “Friday, November 10”⁴ when the Student’s mother picked him up at the bus stop, she found the Student “strapped down on a seat (on bus) with straps (like the one they use for parachuting), like a criminal being transported.” As a result, the mother was shocked. The Parent stated that the District had not given either of the parents prior notice or obtained their consent. The Parent also stated that prior to the incident, the Student’s mother had experienced “some frustration” with the bus driver on two occasions, as the bus driver had “complained” about the Student’s behavior on the bus while in motion. The Parent expressed concern about the bus driver’s demeanor toward the mother. In addition, the Parent stated that at as result of the Student “being strapped down”, the Student’s mother had immediately contacted the case manager to inform her of the situation and the parents’ desire that such equipment not be used with the Student; however, after the phone call, the Student was still “forced to use the strap”. The Parent also stated that on November 14, he had emailed the Student’s general education teacher, the case manager, and the transportation coordinator regarding the parents’ concern, and that on November 15, the transportation coordinator had called the Parent, explaining the District’s concern and the reason why the District wanted to use the “strap”. The Parent said that during the phone call, the transportation coordinator had “insisted” that the Student was getting out of his seat while the bus was in motion, and that when the Parent had questioned her about this, the coordinator had stated that this was “evidenced” in a video recording from the bus. The Parent then requested to see the video footage, and the coordinator had “refused”, citing that the video footage contained other students. The Parent stated that he had questioned the coordinator because the parents knew that “if a properly functional normal seat belt system” was implemented with a safety cap, the Student would not be able to “escape” from the seat. The Parent said that the Student was not aggressive or violent

⁴ This date is incorrect, as there was no school on Friday, November 10, due to the District’s observation of Veterans’ Day. The other documentation in this complaint shows the Student wore the safety vest on Monday, November 13, 2017.

at times, and the recordings would help everyone to know how the Student was getting out of his seat even with a safety cap. The Parent said that he knew the recording was a public record, and should be made available as long as it did not contain any student's personal information. The Parent stated that the transportation coordinator should have directed him to the District's public information officer, instead of denying the Parent's request. The Parent then expressed further concern about his conversation with the coordinator, and stated that, that morning the transportation manager had emailed him (6:14 am email), stating that his records request had been passed along to the District's information officer. Additionally, the Parent stated that he wanted to express his appreciation for everyone's concern and caring about the Student's safety on the bus, but that the parents' recent experience with the transportation department "was much less appreciative". The Parent stated that he hoped the District could address the following issues:

- That no additional equipment be used on the Student without the Parent's express consent and authorization, absent an emergency. The Student's mother had given a "temporary" consent to use safety equipment with the Student on the bus pending the resolution of the allegation made by the transportation department.
- Expedite the records request process.
- Hold an urgent IEP meeting with the Student's case manager, general education teacher, and other necessary personnel regarding the Student's safety while riding the bus, and include safety measures on the meeting agenda.
- If necessary, pending the review of the video footage, have a paraeducator ride the bus with the Student on his ride home "for a week or so" to witness his behavior on the bus and determine whether different safety equipment was needed to ensure his safety.

Further, the Parent stated that the parents wanted the Student to safely ride to and from school, but did not want him to "ride like a criminal". The Parent stated that the transportation coordinator had said that the Student was able to "loosen" the seatbelt, not "unbuckle" the seatbelt by himself, which the Parent thought was "suspicious". The Parent stated that the Student had taken the same district buses to school for two years and "never once" had known how to loosen the seatbelt himself, and that if the Student truly did loosen the seatbelt, the Parent questioned if it was functioning properly. The Parent stated that he could not "imagine" that the bus seatbelts were that easy to loosen by children, especially when the buses carried children with special needs.

- 12:33 p.m. – The transportation manager responded to the Parent's email, stating that the Parent's records request had not been denied, but that the transportation coordinator had passed the request along to the transportation manager, who had then forwarded the request to the public information officer. The transportation manager stated that from that point on, the Parent's request would be handled by the information officer. The transportation manager also stated that the records request process was not a "quick process", and that the information officer would contact the Parent when the officer had the information the Parent had requested. The transportation manager stated that there were timeframes to confirm and respond to the Parent's records request, and that the District was in the timeframe and had not violated any laws.
- 12:47 p.m. – The Parent responded that the transportation coordinator had violated the law when she initially denied the Parent's request, and that the coordinator had not made any indication that the Parent's request was being processed, but had instead stated that she would check with

her supervisor to see if providing the Parent with the records was possible. The Parent stated that “it wasn’t until I sent my request to your website email, she wasn’t making any indication that the record sought was allowed to be viewed by me; hence her intent to make it unavailable for my view.” The Parent stated that the transportation coordinator had made it very clear, that he could not see the video footage from the bus, because other children were in the video. The Parent also stated that he was aware of the allowable timeframe for the District to respond to his record’s request, and was not accusing anyone of violating that law, but had been referring to the transportation coordinator’s initial denial of his request.

15. On November 17, 2017, the Parent emailed the transportation manager and the public information officer, asking that the District also provide a copy of the last bus log from the driver who provided the Student transportation during the 2016-2017 school year. In response, the transportation manager stated that all requests should be channeled through the information officer.⁵

16. On Monday, November 20, 2017, District staff exchanged multiple emails with the Parent. These emails are summarized below.

- 9:34 a.m. – The Parent emailed the elementary school assistant principal, stating that he had not received a response to his November 16, 2017 (12:18 pm) email to the school principal. The Parent stated that due to the “sensitivity” of the matter, he was hoping the assistant principal could help. The Parent stated that he wanted to have an IEP meeting to go over the issues he raised in his November 16 email.
- 12:45 p.m. – The District transportation director emailed the Parent, stating that he had tried to call the Parent, but was not sure if he had the correct phone number. The director asked that the Parent call him and he would look into the Parent’s concern.
- 1:44 p.m. – The Parent responded to the transportation director’s email, stating that the District transportation department had informed him that the Student had been walking inside the bus on multiple occasions, while the bus was in motion. The Parent stated that this was troubling, and that while his investigation of the issue was still ongoing, he wanted to address the issue at that time, in hopes that the District could remedy the problem by replacing the “inadequately installed seatbelts to secure the safety of the children riding on the bus, rather than treating this as an isolated incident.” The Parent also stated that the transportation department had not, upon noticing “the issue”, promptly addressed it, which had caused the incidents to reoccur, and that when the department had finally addressed, it had done so poorly. The Parent stated that he had already communicated his concerns to the principal and assistant principal, but had not heard back. The Parent also stated that he hoped the transportation director could remedy the seatbelt situation, which the Parent found troubling for all children who rode the bus.
- 5:00 p.m. – The elementary school principal emailed the Parent, stating that he was working with the IEP case manager and the District director of transportation to resolve the Parent’s concerns, and would ask the case manager to set up an IEP meeting. The principal stated that he had

⁵ The District’s documentation in this complaint includes numerous additional email exchanges between District staff and the Parent regarding the Parent’s November 15, 2017 records request and other subsequent records requests, and request to view the Student’s school bus. These exchanges are not included in this complaint decision as they are not relevant to issues regarding the IDEA and state special education regulations raised by the Parent.

boarded with bus with the Student that day and observed him using the safety vest. The principal stated that the vest seemed like it was “a very effective and positive way” to keep the Student safely in his seat “without undue restriction”. The principal stated that the Student had seemed calm and content and had responded to the principal’s greeting and question. The principal said that the Student did not appear to “be under strain or overly restricted, but secure and safe.” The principal had also spoken with the bus driver, who he noted seemed to have a lot of compassion from the Student and had the Student’s interest in safety in mind.

- 5:03 p.m. – The District transportation director responded to the Parent’s 1:44 pm email, stating that he wanted to call the Parent in the morning on November 21, after the Student’s bus driver came in from his route. The director stated that he had spoken with the elementary school principal and the transportation manager and coordinator, and would also speak with the bus driver. The director also stated that he understood the Parent’s concern about not being notified as the bus driver became concerned about the Student’s safety. The director said that the District told bus drivers not to jump to conclusions and work with students to help teach them to remain safe on the bus, and then if that did not work, to contact parents. The Student’s bus driver had been working with the Student, and the director believed the bus driver had contacted the family earlier that year. The director stated that from what he understood, the Student was initially in a seatbelt, then moved to a booster seat, and then a seatbelt lock (safety cap) was added. When that did not work, the next step was a safety vest, which required parent permission, and the District had notified the Parent of the need to use the safety vest. The director stated that the issue was not inadequately installed seatbelts, but was when students figured out how to get out of the seatbelts. The director said that the District used the least restrictive means to secure students safely in their seats, and only restraints allowed by law. Additionally, the director stated that if a parent refused to allow a safety vest, then the parent must transport the student, and that if a student figured out how to get out of a safety vest, then a paraeducator would be required to sit with the student. The director also stated that unfortunately, the video system on the Student’s bus was old and had not been working, so the District was unable to “prove” how many times the Student had been out his seat.⁶ The director said the District had recently received funding authorized to replace the older video systems, but that even on a new bus, the camera system would not necessarily show how the Student was getting out of the seatbelt. The District was looking to move the Student to a newer bus with a better video system. The director also said that the District would need to continue to work with the Student and teach him not to escape from his safety restraints, and that if after some time the Student stopped trying to escape, the District could try again without the safety vest. The director stated that the bottom line was that the District must keep the Student safe.
- 5:29 p.m. – The Parent responded to the principal’s 5:00 p.m. email, thanking him for riding the bus with the Student and observing his behavior. The Parent stated that his wife’s concern was the required vest the Student wore while riding the bus. The Parent also stated that as the principal had witnessed, the Student was usually very calm and understanding in his surroundings, and was not in need of the vest. The Parent said that the vest was “absolutely unnecessary”, and that the Student had never tried to get out of his seat the last two years. The Parent stated that if the Student was trying to get out of his seat, which had yet to be confirmed via the video recordings, then this raised the question of why the bus seatbelt was easy enough to be loosed by a child. The Parent said that he had briefly touched on this issue with the transportation

⁶ Later emails show, that the video camera was turned off, as opposed to not working.

director earlier that day. The Parent stated that if the seatbelt was easy to loosen, then a strapped-down vest should not be the solution, especially when other children were riding with the same inadequate seatbelt system. The Parent then went on to state that using the safety vest was “overkill” and appeared to be an attempt by the District to avoid making necessary changes in some, if not all, of the District’s school bus seat belt systems. The Parent also stated that if the seatbelt had been a little tougher to loosen, the Student would not have been able to get out of his seat, if he had tried. The Parent stated that another possible resolution would be to place a safety cap on the seatbelt, and that he did not want the Student to use the safety vest, but wanted the Student to have a more secure seatbelt system, as the Student had had in previous school years. The Parent said that this could be discussed further at the IEP meeting.

- 6:05 p.m. – The Parent responded to the transportation director’s 5:03 p.m. email, stating that, “jumping to conclusions should always be the protocol when handling children with special needs, to prevent any accident from happening in the first place.” The Parent also stated that unless the bus driver was a specially trained educator or driver to handle students with special needs, the driver should not be working with the Student. The Parent stated that he understood the driver tried to help, but should have immediately notified the transportation department, who should have immediately notified the Parent. The Parent then reiterated his concern that the problem was with the seatbelt and not the Student. Additionally, the Parent expressed concern that there was no video footage of the Student getting out of his seat, and stated that the transportation coordinator had stated the prior week that she had viewed the video of the Student getting out of his seat. The Parent asked who was telling the truth, and asked how the District had reached the conclusion that the Student was getting out of his seat, if there was no video footage. The Parent expressed concern that the transportation department appeared to be blaming the Student for an alleged escape, which it could not even affirmatively confirm. The Parent believed the question they should be discussing was did the Student actually escape from his seat.
- 10:19 p.m. – The Parent again responded to the transportation director’s 5:03 p.m. email and expressed further concerns about the lack of video footage and the camera system. The Parent asked that he be provided additional records related to the camera systems.
- 10:47 p.m. – The Parent again responded to the school principal’s 5:00 p.m. email, stating that he hoped the Student’s IEP case manager and general education teacher could help the principal understand who the Student really was, prior to the IEP meeting. The Parent stated that he and the Student’s mother knew how the Student reacted in certain situations and under certain conditions/environments, and most importantly, what the Student was capable and not capable of. The Parent stated that as he had mentioned before, whether the District used the safety vest with the Student or not, the Student would remain the same. The Parent stated that if the transportation director was telling the truth about the lack of video recordings on the bus, then the Parent was suggesting that a paraeducator do a test ride with the Student for a week to see how the Student acted during rides, and that the District also use a bus with a working camera. If the Student was not acting the way the District alleged, then this would be sufficient enough to eliminate the use of the safety vest. If the Student was able to escape, then it could be discussed how he was doing so, and find another solution.

17. On November 21, 2017, the principal responded to the Parent’s November 20 (10:47 p.m.) email, stating that the IEP team could discuss solutions for keeping the Student safe, when the team met.

18. Also on November 21, 2017, the Student's IEP case manager emailed the Parent and the Student's mother, proposing to meet later that week and provided suggested dates and times. The case manager asked that the family let her know what date worked for them. The case manager and the Parent then exchanged several emails and agreed to meet on November 28, 2017.
19. The District was on break November 23-24, 2017.
20. On November 26, 2017, the Parent emailed the Student's IEP case manager, asking to reschedule the IEP meeting due to the Student being ill. The Parent and the case manager then exchanged additional emails over the next two days and agreed to hold the IEP meeting on December 6, 2017.
21. On November 28 and 29, 2017, the Parent and the District special education supervisor exchanged emails regarding the Parent's request to record the upcoming IEP meeting. The special education supervisor stated that per state law, a meeting could only be recorded if everyone in the room was "comfortable", and that she was not comfortable with the meeting being recorded.⁷ The Parent then suggested that the supervisor not attend the meeting, and stated that he was fine meeting with two groups of IEP members separately if recording was an issue for some. The supervisor then responded that none of the District IEP team members were willing to be recorded. The Parent later replied that if members of the District transportation department would be at the IEP meeting, then he would need to record the meeting, but if they did not attend, he would not need to record the meeting. The Parent stated that if the District could not agree on the meeting arrangement, he wanted to meet with the school principal one-on-one about various topics regarding the Student's attendance at the elementary school. The Parent asked that the principal, who was copied on the email, let him know when he was available to meet.
22. On November 29, 2017, the Parent emailed the District members of the Student's IEP team, asking to discuss the following questions at the upcoming IEP meeting:
- How was my special needs child placed with the "related service" as mandated by the District?
 - Were any of the IEP team members notified regarding such "related service" prior to its implementation?

⁷ RCW 9.73.030 states: (1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any: (a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication; (b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation...(3) Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded.

- Did any IEP member notify the parents regarding such “related service” prior to its implementation?
- Did the District (or the IEP team) assess my child in the area of “suspected disability”?
- If assessed, was there a full and individual initial evaluation, before the initial “related service” commenced as required?
- If an evaluation (for the “related service”) was conducted, were the parents notified prior to the evaluation?
- If an evaluation (for the “related service”) was conducted, was the determination of whether my child is a child with “disability of the educational needs” made by a team of qualified professionals and the parent of my child?”

23. On November 30, 2017, the Parent sent another email to the District members of the Student’s IEP team, stating that he wanted to schedule an IEP meeting to discuss his concerns about the Student’s recent behavior change and educational needs at the elementary school. The Parent stated that he wanted the paraeducator, who assisted the Student on a daily basis, to attend the meeting, as this would help the Parent to understand the following:

- How the Student behaved during class and outside the class (spending time alone with the paraeducator or another paraeducator);
- The Student’s daily routine;
- Any noticeable changes in his behavior in recent weeks and what adjustments (if any) applied or were needed;
- Any noticeable (unusual) physical appearance changes in recent weeks;
- Possible reallocation of time in his learning; and
- Any other recommendations for the Student.

The Parent stated that time was of the essence and to let him know when the IEP team could meet.

24. Also on November 30, 2017, the elementary school principal emailed the Parent, stating that he was available to meet with the Parent to discuss the Student’s attendance at the elementary school as requested. The principal stated that if the Parent specifically wanted to meet about the transportation issues, the principal could listen, but any safety measures and resources would need to be discussed by the IEP team, of which the Parent was a member. The principal stated that he could meet with the Parent on December 1, 4, or 5th. The Parent and the principal then exchanged additional emails over the next few days and agreed to meet on December 5, 2017.

25. On December 1, 2017, the Student’s IEP case manager emailed the Parent and attached a copy of an IEP meeting invitation for the upcoming December 6 IEP meeting to discuss the seatbelt to be used when transporting the Student. The invitation stated that the meeting participants would include the Parent, the Student’s mother, the IEP case manager, the general education teacher, a speech language pathologist (SLP), the special education supervisor, and the transportation director. In response, the Parent stated that unless they had an agreement about the meeting arrangement, to please stop “pretending we are meeting as you wished”. The Parent stated that as he had said in his prior email, if there was no agreement about the meeting, then he would meet with the principal one-on-one. The

Parent stated that there would “be no IEP meeting”. The Parent asked that the District respect his wish and “stop pretending we had an agreement on our term.” The Parent stated that he was not comfortable with the meeting, because of the District’s “desired arrangement”. The Parent then sent ten additional emails later that evening, stating that the IEP team was not meeting until an agreement was reached and directing the IEP case manager to stop sending documentation regarding the meeting.

26. Based on the documentation in this complaint, at some point in late November or early December, the Parent requested that the District participate in a mediation session facilitated by the state’s third-party mediation contractor.

27. On December 4 and 5, 2017, the District special education supervisor and the Parent exchanged emails about participating in a mediation session and the Parent signing a release so the supervisor could speak with the third-party mediation contractor about the issues regarding the Student. The Parent agreed to sign a release.

28. On December 5, 2017, the Parent met with the elementary school principal.

29. On December 6, 2017, the Parent exchanged emails with the principal. The emails are summarized below.

- 1:00 p.m. – The Parent emailed the principal to follow up their December 5 meeting. The Parent stated that the principal would discuss “our proposal” with the IEP team and hopefully have a resolution and begin implementing the plan soon. The Parent also stated that he had just gotten word that the mediation session could take place the following week. The Parent said that given what he and the principal had discussed, and if the team could work with the proposed plan soon, then it could possibly eliminate the need to mediate, saving everyone time.
- 1:35 p.m. – The principal responded, thanking the Parent for meeting, and stated that he felt like he had better insight into the Parent’s concerns for the Student and the recent issues on the bus. The principal also stated that he had been able to speak with the special education supervisor and relayed the details of the December 5 conversation. The principal said that as he and the Parent had discussed, the District would convene the IEP team as soon as possible to discuss the bus safety issues and make a determination of next steps regarding the implementation of safety measures for the Student’s transportation. The principal stated that he had indicated to the special education supervisor, that the Parent did not necessarily want to be at that specific IEP meeting, but at a minimum, wanted to provide written input into the decision for making the Student’s transportation program. The principal also stated that based on his understanding, the Parent wanted the following:
 - The Student to have the least restrictive environment regarding safety measures on the bus, and not use the current safety vest.
 - To have a qualified adult collect information and make observations about the Student’s actions regarding bus rides over a short period of time to inform any decisions about the level of safety measures.

The principal further stated that the next steps would be for the IEP case manager to arrange the IEP meeting and provide the Parent with a meeting invitation or a phone call to discuss the meeting details. At that time, the Parent could indicate to the case manager his attendance

preference and desire to provide written input. The IEP team would then meet and make a determination about next steps, which could include having a qualified adult observe the Student on the bus. The principal asked that the Parent let him know if there was anything else or if something should be clarified.

- 1:51 p.m. – The Parent responded that on a temporary basis, the proposal they had discussed must be implemented pending the IEP meeting, since the District did “not call for a meeting for such related service prior to the service”. The Parent stated that absent “any meeting/evaluation, no services should be utilized on a child.” The Parent also said that once the IEP meeting concluded and a decision was made, then they could “proceed accordingly”, but absent the “meeting/evaluation, there should be no services performed on the child.” Additionally, the Parent stated that due to the potential safety concern for the Student, the “implementation of the proposed plan should eliminate any possible threat to his safety” during bus rides. The Parent said that he wanted the District to: 1) immediately begin exercising his suggested proposal on a temporary basis; 2) hold an IEP meeting to further discuss and officially place the “suggestion and proposal in the plan”; and, 3) make any changes to the plan later. The Parent stated that if this arrangement could be worked around, then the mediation session could be postponed.

30. On Thursday, December 7, and Friday, December 8, 2017, the Parent and District staff exchanged multiple emails. The emails are summarized below.

- 12/7 (10:39 a.m.) – The Parent sent a follow-up email to the principal regarding the proposed plan and copied the special education supervisor.
- 12/7 (12:19 p.m.) – The special education supervisor responded to the Parent’s email, stating that she thought the District could “make these things happen” and asked that the case manager, who was included on the email, try to find a staff member to ride the bus with the Student and take data on his behavior. The supervisor also asked that the case manager set up an IEP meeting for the team to discuss the data, so that a decision could be made about the Student’s needs while riding the bus.
- 12/7 (12:28 p.m.) – The Parent replied, asking that the special education supervisor keep him updated on the progress. The Parent also stated that the District needed to make sure the bus camera was working and turned on during the bus rides. The Parent asked that the supervisor send him “the plan”, so that he could review it and give his consent. Additionally, the Parent asked that the staff member who would ride with the Student, briefly discuss each day’s ride with the Student’s mother when the mother picked up the Student at the bus stop, so the mother was updated with any progress each day. The Parent did not believe this would take much time and delay the bus schedule.
- 12/7 (12:50 p.m.) – The special education supervisor responded that the plan need to be written at a meeting, and that she was uncertain if a meeting could take place that day or the next. The supervisor asked if the Parent was alright with the District going back to using a seatbelt with the Student that afternoon, and then working on the plan the following week. The supervisor then stated that it would take a while to get someone to ride the bus with the Student, but thought the District could probably get this in place by December 11, 2017. The supervisor then asked the principal to ask the paraeducators at the elementary school if any of them would be willing to ride with the Student for the next week.

- 12/7 (12:54 p.m.) – The Parent replied, stating “for today only, let’s keep the vest on” and that hopefully someone would be available to ride the bus with the Student the next day.
- 12/7 (8:01 p.m.) – The special education supervisor emailed District transportation staff, the principal and other staff, and copied the Parent. The supervisor stated that for now, the Student would be moved back to using the seatbelt with the safety cap, and that a paraeducator would ride the bus with the Student and take data regarding his behavior. The supervisor noted that a paraeducator was not available to ride the bus the next day.
- 12/8 (7:50 a.m.) – The District transportation director responded to the supervisor’s email, confirming that the Student would use the seatbelt with the safety cap.
- 12/8 (4:20 p.m.) – The Parent responded that the Student had worn the safety vest on the bus that afternoon. The Parent asked for an update about a paraeducator to ride the bus with the Student and for “the plan documents regarding this goal”.
- 12/8 (4:45 p.m.) – The elementary school principal responded to the Parent, explaining that the Student’s case manager had been out of the building and as a result, the classroom paraeducator had not been informed about discontinuing the safety vest. The principal stated that the Student did not need to wear the vest on Monday, December 11, and that a paraeducator was available to ride the bus with the Student on December 12. The principal also stated that an IEP meeting had been schedule for December 14, 2017, at 3:30 p.m., and asked that the Parent let him know if the Parent had any questions.

31. Based on the documentation in this complaint, the paraeducator who was scheduled to ride the bus with the Student on Tuesday, December 12, became unavailable. Due to potential safety concerns with the Student using the seatbelt with the safety cap, the District had another bus driver ride the bus with the Student in the afternoon on Monday, December 11 and on December 12 and 13. A different paraeducator began riding the bus with the Student on Thursday, December 14, 2017, and also began taking data.

32. Based on the documentation in this complaint, the Student’s IEP team met on December 14, 2017. The IEP team included the Student’s IEP case manager, general education teacher, the elementary school principal, and a District special education program coordinator. The Parent did not attend the meeting and did not provide written input prior to the meeting. At the meeting, the IEP team agreed to have a paraeducator ride the bus with the Student for two weeks to take data. The IEP team also agreed that staff would use a social story to teach the Student correct bus behavior and use reinforcement for “good” bus behavior. Additionally, the IEP team agreed to meet after January 16, 2018, to go over the data.

33. The District was on break December 18, 2017 through January 1, 2018.

34. On January 2, 2018, the Student’s IEP case manager emailed the Parent and attached a copy of the Student’s amended May 2017 IEP⁸, a meeting invitation for the December 14, 2017

⁸ The amended May 2017 IEP changed the amount of the Student’s specially designed instruction in the area of social from 150 minutes per week to 120 minutes per week. According to information provided by the District, the change in the amount of minutes addressed a clerical correction that the case manager had discussed with the Student’s

meeting, and a prior written notice, dated December 14, 2017, detailing the decisions reached by the IEP team regarding the bus. In response, the Parent asked questions about the prior written notice, which included: who the special education program coordinator was, what social stories District staff planned to use with the Student, and what kind of reinforcement would be used with the Student. The Parent also requested that the following changes be made to the prior written notice:

- Language be added to state: “The IEP team will also review recordings of my child’s ride with para; transportation and IEP depts. will coordinate to obtain the recordings.”
- The section titled “The reason we are proposing or refusing to take action is” be changed to state that the “Student was allegedly getting up 3-4 times a week on the bus” and “Parents believes the allegation against the Student must be proven true and the school (district) must try to place the student in the ‘Least Restrictive Environment’”.
- The section titled “Description of any other options considered and rejected” include the following language “action implemented without prior IEP meeting and the team’s knowledge, rejected: used Most Restrictive method on bus without prior assessment or evaluation.”
- The section which stated the reasons the District considered and rejected other options be changed to state: “Parents disagreed with the school’s (district) implementation of Most Restrictive Environment method without evaluation.”
- The section titled “Any other factors that are relevant to the action” be changed to state: “the team agrees to further evaluation by having a para on the bus, after the 2 week plan ended, if necessary.”

35. On January 3, 2018, the case manager emailed the Parent in response to his request to change the December 14, 2017 prior written notice. The case manager stated that she needed to “lock” the IEP as it was written during the December 14, 2017 meeting. The case manager also stated that the IEP team would have another meeting before the end of January 2018, and that it would be great if the Parent could attend and give input. The Parent replied that he had been told he could provide “input from a distance”. The Parent also stated that he did not want the “record” to reflect inaccurate information, since it was the “parents” who had requested the meeting and the change in service. The Parent stated that “he did not agree to not participate in the meeting”, and that he had not “physically attended but wanted to participate.” The Parent asked that the case manager let him know if she could incorporate his “input into the December 2017 meeting”, and suggested that the case manager add an addendum to “the back of the page to reflect the parent’s input.” The Parent stated that the other IEP meeting later that month was not what he was talking about, and that he needed to have the correct information on the IEP documents from the December 2017 meeting. The Parent also stated, “my child’s parents will never agree to not participate in the meeting.”

mother at the start of the school year. The outcome of that conversation was that the Student would receive his specially designed instruction in social through participation in a social group that met 30 minutes 4 times per week. Following consultation with the parents, it was determined to wait until the next IEP meeting to update the matrix rather than do an amendment at the start of the school year. When the team met in December 2017, the case manager took that opportunity to make the previously discussed change to the matrix. The December 2017 amendment did not result in a change to the services the Student was actually receiving.

The Parent later sent a second email, asking that the case manager respond to the questions he asked in his January 2 email.

36. On January 4, 2018, the special education supervisor emailed the Parent, stating that the IEP meeting in December 2017 was to document the issues around the Student wearing a safety vest on the bus, and the Parent had declined to participate. Due to this, the District members of the IEP team had done the “best” they could without the Parent. The supervisor stated that at that point, the District would not make any more changes on the document (December 14, 2017 prior written notice) until the Parent was present at a meeting, and would also not respond to the Parent’s request to change the document until there was a meeting. The supervisor also stated that parents were essential members of the IEP team and the District needed the Parent’s participation. The supervisor asked that the Parent let the District know when he was available to attend a meeting.
37. On Friday, January 5, 2018, the Parent emailed the school principal, stating that he was sad to see that the District special education department had decided to ignore his participation, refused to respond to his request, and proceeded with actions regarding the Student without the Parent’s input. The Parent stated that he and the principal had discussed the method of the Parent participating in IEP meetings, and the Parent was expecting a “document for review and input after the team meeting (without my physical attendance)”. The Parent stated that as the principal knew, the Parent was very much involved in the meeting, and not only had the Parent called the meeting, but also took time off work to meet with the principal in person to discuss this. The Parent stated that the District special education department had repeatedly ignored the wellbeing of the Student, and the Parent’s requests. The Parent said that this was a very serious violation and was hoping the principal could address this.
38. On Monday, January 8, 2018, District staff and the Parent exchanged multiple emails. The emails are summarized below.
 - 1:01 p.m. – The principal responded to the Parent’s January 5 email. The principal stated that he had been able to “touch base” with special education program supervisor and the Student’s IEP case manager. The principal stated that he believed the IEP and prior written notice documented the plan the Parent had requested, which the principal and the Parent had discussed during their meeting on December 5, 2017. The principal stated that per their discussion, and from the multiple emails the Parent had sent, the principal had communicated the Parent’s request that the District stop using the safety vest and return to using the original seatbelt with the safety cap, and that a paraeducator ride the bus to observe the Student’s functioning. The principal said that the ride-along would go from the last of week of school in December 2017 until or about January 12, 2018, and that the IEP team would then reconvene soon after to review the data and determine next steps. Additionally, the principal stated that it appeared the actions derived from the December 14 prior written notice were those that the Parent requested and those that the IEP team that met on December 14, agreed to and were being implemented. The principal said that the District could add the language the Parent suggested when the IEP team met again, if the Parent believed this would help clarify decisions made or actions taken, and that the language could be added under the section for “reports or other factors, where there was already a note about parent input and observations. The principal further stated that the special education supervisor had noted that it would be important to have the Parent participate in an IEP team

meeting in real time to better capture his “thoughts/concerns/solutions”, and that although the principal’s meeting with the Parent on December 5, 2017 was important, it did not replace the IEP team meeting, as the principal could not unilaterally make decisions for a student eligible for special education. The principal said that he understood it was difficult for the Parent to take time off work, but suggested that the Parent could participate by phone conference. The principal stated that email was a poor substitute of effective communication on complex topics. In addition, the principal stated that he would work with the case manager to respond to the questions in the Parent’s January 2, 2018 email, and the case manager would contact the Parent to set up an IEP meeting for as soon as possible the following week.

- 1:20 p.m. – The Parent replied that he wanted to address three points. The Parent stated that it was never his intention not to participate in the IEP meetings and that “participation does not mean physical attendance. My participation includes inputting comments to the report generated from the meeting post such meeting.” The Parent stated that the District could not ignore or not respond to a student’s parents, and the special education supervisor’s statement about not responding to the Parent’s request/input was refusing the Parent’s participation at the IEP meeting. Additionally, the Parent stated that the proposed changes to the December 14, 2017 prior written notice were to “merely reflect the actual event” and was not meant to alter the fact. The Parent said that even if a parent was absent from an IEP meeting, the “report/document” should still reflect the facts, and that since a parent’s interest was being effected by the document, he/she should be able to “make such a proposal”. The Parent stated that the District could not “unilaterally write in whatever it please[d] without a parent’s input, especially when the parent wishe[d] to provide input.” Further, the Parent stated that the upcoming IEP meeting would require a review of the “evaluation report/documents”, and the IEP team could not meet without the Parent first reviewing the “reports” prior to the meeting. The Parent asked that the IEP team not schedule any meetings until after the Parent had reviewed the “evaluation report/documents”. The Parent also stated that he looked forward to seeing a revised prior written notice.
- 1:30 p.m. – The special education supervisor responded that exchanging emails was not working for the District staff, and that the IEP team really needed to meet face to face. The supervisor asked that the Parent provide some dates and times to meet, so that they could move along with providing the Student the education he deserved. The supervisor stated that if the IEP team did not meet, the District could attach the Parent’s email to the back of the December 14 prior written notice and title it “parent input”. The supervisor stated that this would not mean the District agreed with the information. The supervisor asked that the Parent let the District know if he wanted to meet or have his input attached to the prior written notice.
- 1:47 p.m. – The Parent replied that a physical meeting was not working for him and the Student’s mother, and that they really needed to write emails to discuss the issues. The Parent asked that the District give him “some times/dates about sending these emails”. The Parent stated that if the District did not agree with the proposal, then there would need to be other methods to resolve this.
- 1:57 p.m. – The special education supervisor responded that District staff would no longer continue with the email exchange, would invite the Parent to an IEP meeting, and would attach the Parent’s response to the December 14 prior written notice to the back of the prior written notice.

- 2:20 p.m. – The Parent responded, addressing the elementary school principal. The Parent expressed concern about the special education department’s “unwillingness to work” with him. The Parent asked that the principal discuss changing the prior written notice with the special education department, and further expressed his frustration with the District not accepting his input, including his wish to participate in the IEP meeting. Additionally, the Parent stated that the special education department had refused to answer the questions in his January 2 email.

39. On January 10, 2018, the Student’s IEP case manager and the Parent exchanged several emails. The emails are summarized below:

- 8:11 a.m. – The case manager emailed the Parent to respond to the questions the Parent raised in his January 2, 2018 email. The case manager apologized for not responding sooner, stating that she thought an IEP meeting would take place and the team would go over the Parent’s questions. The case manager then clarified who the special education program coordinator was. The case manager also stated that she would attach a copy of the social story regarding the bus that would be used with the Student and that the Parent could review the story with the Student at home. The case manager said that the reinforcements currently being used with the Student were a “high five” from the bus driver and special coloring page. The case manager asked that the Parent let her know if he had suggestions for other reinforcements.
- 2:12 p.m. – The Parent replied that the IEP team could not have another meeting until the “current proposed action items and Notice [had] been cleared and resolved” and the Parent had a chance to review “the evaluation report, including recordings.” The Parent asked if the special education program coordinator was the person responsible for “the arrangement of [the Student’s] education related services” and whether the coordinator should be included in their communications. The Parent also asked the case manager to elaborate about the social story, and asked whether the paraeducator who rode the bus with the Student read the story to the Student, or if the Student read it to himself. Additionally, the Parent asked for a sample of the coloring page being used as reinforcement.
- 3:40 p.m. – The case manager replied that the special education program supervisor would answer the questions regarding the program coordinator. The case manager stated that the classroom paraeducator who worked with the Student read the social story to the Student at various times during the day, and that the coloring page was of a cartoon character, which she could provide the Parent a copy of.
- 4:01 p.m. – The Parent responded that if the classroom paraeducator was reading the social story to the Student during his time at school, then the prior written notice must reflect this specifically. The Parent stated that he did not want incorrect information or “impression” on that notice. The Parent also indicated that the prior written notice should clearly state whether the coloring page was given to the Student on the bus or on school grounds. Additionally, the Parent asked the principal, who was copied on the email, to relay his “inquiries” to the District special education department, since the department “had blatantly refused to respond to his requests.”

40. Also on January 10, 2018, the Parent sent a letter to the District superintendent, stating that the Student had been “unlawfully placed under very restrictive environment on the bus” without an evaluation, and that after numerous attempts to correct this, the special education department had agreed to conduct an evaluation. The Parent stated that the District’s actions against the Student were unacceptable, and that while the “intention was

well-received and suited given the circumstances”, the District “did not properly administer the procedures necessary to ensure safeguard” of the Student, which caused him to be placed in the “most restrictive environment” without any assessment or evaluation. Additionally, the Parent expressed concerns about not being allowed to participate in the December 14, 2017 IEP meeting and that the District would only respond to his request to change the December 14 prior written notice by holding a meeting. The Parent asked that the District accept the revised prior written notice he was providing. The Parent also asked that for all future IEP meetings to be conducted “via a distant communication method”, such as by phone or video conference, and that the District accept the Parent’s post-meeting inputs and comments on IEP documents as part of participation in the meetings.

41. Also on January 10, 2018, OSPI received this citizen complaint.

42. On January 12, 2018, the period for taking data on the Student’s behavior on the bus ended. Based on the data, during that time period, the Student rode the school bus on seventeen occasions. The data showed that the Student unbuckled his seatbelt, with the safety cap, during three bus rides, but did not get out of his seat. Additionally, the Student attempted to get out of his seatbelt on two occasions, but did not unbuckle the seatbelt.

43. On January 15, 2018, the IEP case manager emailed the Parent to invite him to an IEP meeting on January 17 to review the data from the bus rides. District staff and the Parent then exchanged multiple emails regarding the meeting, and eventually agreed to meet on February 16, 2018.

CONCLUSIONS

Issue 1: Procedures for conducting the Student’s initial evaluation during the 2017-2018 school year – The Parent alleged in his complaint that the District failed to follow procedures for conducting the Student’s initial evaluation, because the District did not evaluate the Student to determine if he needed to use the safety vest prior to using the vest with the Student, which the Parent believes is a related service. The Student was initially evaluated for special education in June 2014 by another Washington school district. Therefore, any IDEA or state regulations related to the Student’s initial evaluation are not applicable to this complaint. However, OSPI will address whether the District followed procedures for conducting a reevaluation during the 2017-2018 school year.

A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A school district must obtain a parent’s consent prior to conducting a reevaluation.

Related services, as defined by 34 CFR §300.34 and WAC 392-172A-01155, means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-

language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. 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 use of a safety vest or any other type of seatbelt or safety harness in order to transport a student is not a related service as defined by the IDEA or state special education regulations. Therefore, the District is not required to conduct an initial evaluation or a reevaluation prior to using a safety harness to transport a student. Additionally, having a paraeducator ride the bus with the Student to observe his behavior and take data did not amount to an assessment as part of a reevaluation. Therefore, the District was not required to obtain the Parent’s consent for the paraeducator to take data on the Student. The District did not fail to follow procedures for conducting a reevaluation of the Student.

Issue 2: Procedures for developing the Student’s individualized education program (IEP), including ensuring parent participation in the IEP meeting as required by WAC 392-172A-03100, during the 2017-2018 school year – The Parent alleged that the District failed to allow him to participate in an IEP meeting during the 2017-2018 school year.

The IDEA and state special education regulations require that a school district ensure that one or both parents are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

November 28, 2017 IEP Meeting – The documentation in this complaint shows that on November 16, 2017, the Parent requested that the District hold an IEP meeting with the Student’s IEP case manager, general education, and other necessary personnel to discuss the Student’s safety while riding the bus. In response, the District worked with the Parent to schedule an IEP meeting at a mutually agreeable time, November 28, 2017. However, the Parent then requested that the November 28 meeting be rescheduled. The District followed procedures for responding to the Parent’s November 16 request to hold an IEP meeting, by scheduling an IEP meeting at a mutually agreed up time.

December 6, 2017 IEP Meeting – As discussed above, the Parent requested that the November 28, 2017 IEP meeting be rescheduled. In response, the District worked with the Parent to reschedule the meeting at a mutually agreeable time, agreeing to hold the meeting on December 6, 2017. However, the Parent then refused to attend the upcoming IEP meeting if District transportation department staff were present at the meeting and he was not allowed to tape

record the meeting. There is no requirement that a school district must allow a parent to tape record an IEP meeting because the parent does not like a particular staff person. Additionally, a school district has discretion to invite individuals who have knowledge or special expertise regarding a student to an IEP meeting. Given that the purpose of the December 6 IEP meeting was to discuss the Student's safety on the bus, it was not inappropriate for the District to include District transportation department staff as part of the IEP team. The District followed procedures for scheduling the December 6, 2017 IEP meeting and ensuring the Parent an opportunity to participate.

December 14, 2017 IEP Meeting – After the Parent refused to attend the December 6, 2017 IEP meeting, the Parent and the elementary school principal met on December 5, 2017, to discuss the Parent's concerns about the Student using a safety vest and other issues. Based on the documentation in this complaint, during the December 5 meeting, the principal and the Parent discussed that the IEP team would meet to consider the Parent's request to have a paraeducator ride the bus with the Student to take data, and that the Parent did not necessarily want to attend the IEP meeting, but wanted to provide written input into the decisions for making the Student's transportation program. District staff and the Parent then exchanged additional emails about the proposed plan to take data. Based on those emails, it appears that the Parent may have been confused about the District's next steps, and was possibly under the impression that the District would develop a draft transportation plan prior to the upcoming IEP meeting and that he would be provided a copy in order to provide input. However, the District did not create a draft transportation plan, but notified the Parent that the IEP meeting had been scheduled for December 14, 2017. The Parent did not respond to the email invitation, indicating that he planned to attend the meeting, or ask that the meeting be rescheduled. The District then held the IEP meeting on December 14, 2017. The District followed procedures for scheduling the December 14, 2017 IEP meeting.

On January 2, 2018, after the District's winter break, the District provided the Parent with a copy of the Student's amended IEP and a prior written notice (December 14 prior written notice), outlining the decisions the IEP team reached at the December 14, 2017 IEP meeting. In response, the Parent then asked for additional details about the decisions made by the IEP team and the District provided additional details. The Parent also asked that the District make several changes to its December 14, 2017 prior written notice and the District refused to make the changes without meeting with the Parent. The Parent alleged in his complaint that the District's refusal to change the December 14, 2017 prior written notice to reflect his input, denied him the opportunity to participate in the December 14, 2017 IEP meeting, because the District was required to use other methods to ensure parent participation in the December 14 meeting.

Federal and state special education regulations require that if neither parent can attend an IEP meeting, a school district must use other methods to ensure parent participation, including video or telephone conference calls. The purpose of the requirement is to allow a parent who cannot attend an IEP meeting in person, to still participate in the meeting discussion while the meeting is occurring. Here, the Parent was invited to the December 14 IEP meeting, but elected not to

attend the IEP meeting or ask that it be rescheduled. Therefore, the District was not required to ensure the Parent had another means, such as video conferencing, to participate in the meeting.

Additionally, there is no requirement that a school district allow a parent to provide input after an IEP meeting. What is required, is that an IEP team consider the concerns of the parents for enhancing the education of their student. Here, the District's documentation supports that the District considered the Parent's concerns about the Student's transportation program, as the IEP team agreed to the Parent's request to discontinue the use of the safety vest with the Student and have a paraeducator ride the bus with the Student to observe the Student's behavior. While the Parent was later upset that the District would not agree to change the December 14 prior written notice to include more detailed language about the decisions reached by the IEP team and other language that reflected his personal opinions and interpretation of special education regulations, this does not show that the District failed to consider the Parent's input. The District followed procedures for ensuring the Parent's participation in the December 14, 2017 IEP meeting.

Issue 3: Procedures for Obtaining Informed Consent for the Initial Provision of Special Education Services During the 2017-2018 School Year – The Parent alleged that the District failed to obtain consent for using the safety vest, which was a related service, prior to using the safety vest with the Student.

A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student. Parental consent is for the initial provision of special education and related services generally, not for a particular service or services. Here, the Student was initially determined eligible to receive special education services in June 2014 by another Washington school district and it presumed that the Parent provided consent for the initial provision of special education services at that time. This is evidenced by the Student's transfer IEP in place when he moved to the District in September 2015.

Once a parent has provided consent of the initial provision of special education services, there is no requirement that a school district later seek consent in order to provide a student with the specially designed instruction or related services recommended by a reevaluation and agreed to by an IEP team. This is true even if a student transfers to a new school district in the same state. As discussed in issue 1, the District's use of a safety vest with the Student is not a related service. And, even if it was a related service, the District would still not be required to seek consent to provide the service, since the Parent had already provided consent for the initial provision of special education services in June 2014. It is also noted that there is no requirement under Washington State general education transportation regulations that a school district seek a parent's consent prior to or after using a safety harness with a student on a school bus.

Issue 4: Special Education and Related Services in the Least Restrictive Environment during the 2017-2018 School Year – The Parent alleged that the District's use of the safety vest with the Student on the bus was not the Student's least restrictive environment. The term least restrictive environment (LRE) refers to the IDEA's requirement that a school district ensure that the

provision of services to each student eligible for special education be provided “to the maximum extent appropriate in the general education environment with students who are nondisabled” and the use of “special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.” The principle of LRE also extends to transportation, in that a student eligible for special education should ride the same bus as his/her non-disable peers, unless the IEP team has determined that special transportation is more appropriate based on the student’s individualized needs. The principle of LRE does not extend to the use of a seatbelt or safety harness on a bus. Here, the Student’s IEP team determined that based on the Student’s individualized needs, the Student would not ride the school bus with his non-disabled peers, but would instead receive special transportation. This is evidenced by the Student’s May 2017 IEP. The District provided the Student transportation in his LRE.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

None

Dated this ____ day of March, 2018

Glenna L. Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
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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.)