

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-71

PROCEDURAL HISTORY

On September 27, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) related to a student (Student) attending the Vancouver School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On September 30, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On October 6, 2019, OSPI received an "authorization for release of records," signed by the Parent, allowing OSPI to release the Student's records and District response to the Complainant.

On October 22, 2019, OSPI received the District's response to the complaint and forwarded it to the Complainant on the same day. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On November 1, 2019, OSPI requested clarifying information from the District, and the District provided the requested information on November 8, 2019. OSPI forwarded the information to the Complainant the same day.

On November 3, 2019, OSPI received the Complainant's reply.¹ OSPI forwarded that reply to the District on November 4, 2019.

On November 8, 2019, OSPI requested clarifying information from the District, and the District provided the requested information the same day. OSPI forwarded the information to the Complainant on November 12, 2019.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on September 28, 2018. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

¹ The Complainant emailed her reply as a Google document on November 3, 2019. Because Google docs can be altered, OSPI saved a pdf copy at 4:49 pm on November 3, 2019, which it reviewed as part of this investigation.

ISSUE

1. Did the District properly implement the Student's individualized education program (IEP) transportation provisions; and, as a result, did the District improperly shorten the Student's school day?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments impact the student's need for transportation. Included in this consideration is whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or from getting to school in the same manner as nondisabled students. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School District*, 36 IDELR 289 (WA SEA 2002).

FAPE and Shortened School Day: Students eligible for special education services should attend school for the same amount of time as students without disabilities, unless the IEP team decides that a shortened school day is necessary to ensure access to a free appropriate public education (FAPE). See *Shoreline School District No. 412*, 55 IDELR 178 (OCR 2010) (Finding that a student with a disability has the right to the same length school day as a nondisabled student).

FINDINGS OF FACT

2018-2019 School Year

1. During the 2018-2019 school year, the Student attended a District elementary school and was eligible for special education services under the category autism.
2. The District's 2018-2019 school year began on August 29, 2018.
3. The school the Student attended started the school day at 8:30 am and ended at 2:50 pm.
4. On September 27, 2018, the Student's individualized education program (IEP) team—including the Parent, via phone—met. The Student's IEP noted the Student's diagnoses, that he is nonverbal, and that he "has some very unsafe behaviors, including running away, hitting,

throwing objects, screaming...his running is extremely dangerous and he must be closely monitored at all times..." The Student's IEP provided the Student with "special" transportation and the prior written notice stated the team, "discussed [Student's] transportation to school and looking into having him ride the bus again as opposed to the safety car."

The Student's IEP included annual goals and he received specially designed instruction in multiple areas, including adaptive skills. One of the Student's adaptive goals related to transitioning independently from one activity to another. The Student's IEP provided he would spend 1750 minutes² per week in school between September 28, 2018 and June 28, 2019—5.14% of his time in the general education setting.

5. Also, on September 27, 2018, the Student's IEP team updated his behavioral intervention plan (BIP), which targeted behaviors of "escape/avoidance" and "social attention seeking from adults." In the BIP, under "contributing factors," it noted the Student "has really great attendance, although he leaves one hour early every day to ride in a safety car."
6. The investigation timeline for this complaint began on September 28, 2018.
7. The District, in its response, explained the District transported the Student to and from school in a "safe-car." The District's information indicated the Student was picked up at home at 7:40 am and arrived at school by 8:00 am.
8. On October 10, 2018, the District issued the Parent a prior written notice, stating it proposed a change to the Student's IEP. The notice stated, "school is released early every Monday. The total time students in school have changed (1710 elementary, 1760 middle school, 1785 high school). This time change will go into effect immediately." The notice further stated the change was due to a change in teacher contracts and that school would be shortened on Mondays by 40 minutes.
9. Between September and December 2018, staff who worked with the Student reported he was picked up at 2:00 pm, 50 minutes prior to the end of school.
10. On May 16, 2019, the Student's IEP team—including the Parent—met and developed a new IEP for the Student. The May 2019 IEP continued to include an adaptive skills goal focused on independent transitions between activities. The IEP continued to provide the Student with special transportation.

The Student's IEP provided he would spend 1710 minutes per week in school between May 17 and June 18, 2019—10.82% of his time in the general education setting—and 1760 minutes per week in school between June 19, 2019 and May 16, 2020—10.51% in the general education setting.

² In additional information provided by the District, the Student's teacher reported that the number of minutes may have been a typographical error. The teacher stated the intent was that the Student would attend a full day of school.

11. Between January and June 2019, staff who worked with the Student reported he was picked up at 2:20 pm, 30 minutes prior to the end of school. According to the District, the Student arrived in a timely manner for school in the morning during the 2018-2019 school year. The Student's attendance record indicated the Student was not absent during the 2018-2019 school year and was tardy only once, in April 2019.
12. The District explained, in additional information, that during the 2018-2019 school year, the Student's team "continued to implement the transportation decision made prior to the time [the special education teacher] assumed the role of the Student's teacher." According to the District, the Parent was aware of, and in agreement with, the transportation decisions made, despite the impact on the Student's school day.

In December 2018, according to the District, the Student's special education teacher, "in consultation with the [P]arent, the special education manager, and the transportation department," attempted to lengthen the Student's school day by having him ride a bus. The Student required a "harness style seat belt to prevent him from self-harm." The District stated, that after several attempts with different styles of seat belts and harnesses, "it was apparent that the potential for self-harm continued" on the bus. Due to the need to keep the Student safe, the "team returned to the use of the safe car based on availability."

The District stated that while the Student's early release time was shortened starting in January 2019, the "team was unable to eliminate the need for the safe car because the methods they attempted to keep the Student safe on the bus, including a 'safety' vest were unsuccessful." While on the bus, the Student "was able to remove himself from the 'safety' vest multiple times and doing so placed the Student in danger." The safe car transportation was based on the Student's unique need, as the Student "is not able to travel to and from school in the same manner as other students." But the District acknowledged the Student's IEP did not capture this arrangement.

13. The District's 2018-2019 school year ended on June 13, 2019.
14. The District acknowledged the Student missed approximately 85 hours of school during the 2018-2019 school year due to being picked up between 30 and 50 minutes early. The District provided a detailed breakdown and plan for the provision of compensatory services for the Student. The District also proposed it would provide written guidance to transportation and special education staff.
15. The District also provided documentation of the Student's progress on his IEP annual goals. During the 2018-2019 school year, the Student made the following progress on his September 2018 IEP goals, generally:
 - Social-Emotional: Sufficient progress in December 2018 and no progress in March 2019;
 - Social-Emotional: Slow progress in December 2018 and no progress in March 2019;
 - Adaptive Skills: Slow progress in December 2018 and no progress in March 2019;
 - Adaptive Skills: Sufficient progress in December 2018 and no progress in March 2019;
 - Behavior: Slow progress in December 2018 and sufficient progress in March 2019;

- Behavior: Slow progress in December 2018 and March 2019;
- Reading: No progress in December 2018 and sufficient progress in March 2019;
- Math: Slow progress in December 2018 and sufficient progress in March 2019;
- Math: No progress in December 2018 and slow progress in March 2019;
- Writing: No progress in December 2018 and slow progress in March 2019;
- Writing: Slow progress in December 2018 and March 2019;
- Communication: Sufficient progress in December 2018 and slow progress in March 2019;
- Communication: Sufficient progress in December 2018 and slow progress in March 2019; and,
- Communication: Emerging skill in December 2018 and March 2019.

The Student's progress reporting also contained information on his progress during extended school year (ESY) services, which indicated he made slow progress on the May 2019 IEP goals that he worked on during ESY.

2019-2020 School Year

16. During the 2019-2020 school year, the Student attended a District middle school and continued to be eligible for special education services under the category autism. The Student's May 2019 IEP remained in place.

17. The District's 2019-2020 school year began on August 27, 2019.

18. The middle school the Student attended started school at 9:00 am and ended the school day at 3:30 pm. The Student's schedule was as follows:

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|-----------------------------------|-------------------------------|
| • 9:00-9:30 am – Breakfast | • 1:30-1:45 pm – Snack |
| • 9:30-10:00 am – Social Studies | • 1:45-2:05 pm – Writing |
| • 10:00-10:30 am – Work box | • 2:05-2:25 pm – Reading |
| • 10:30-11:00 am – Math | • 2:25-2:40 pm – Writing |
| • 11:00-11:30 am – Adaptive group | • 2:40-3:00 pm – Sensory room |
| • 11:30-12:00 pm – Lunch | • 3:00-3:15 pm – Reading |
| • 12:10-12:45 pm – Social group | • 3:15-3:30 pm – Car |
| • 12:45-1:30 pm – Leisure time | |

19. The District's response included documentation regarding the Student's transportation arrangements. The "special transportation" form noted the Student attended a "full day" and required a "Safety Car." The "special needs bus rider questionnaire" indicated the Student required a "safety vest," entertained himself with a cell phone in the car, and "music, youTube" help him remain calm.

The Student was picked up from his home at 8:45 am and arrived at school by 9:00 am. In the afternoon, the Student began transitioning to the car to go home around 3:15 pm.

20. On September 5 and 6, 2019, District staff discussed, by email, some challenges they were having getting the Student safely into the car at the end of the school day. Several options were discussed, including moving the pick-up location. The District, in emails, indicated it would be working to develop a plan to get the Student in the car smoothly.

21. On September 3, 4, 5, and 25, 2019, the Student's special education teacher reported the Student received extra instructional time, after school, for a total of 230 minutes, wherein he worked on his transition goals. The teacher stated the Student stayed late "due to a difficult transition at the end of the day."
22. According to the District, on September 20, 2019, the safe car driver and the Parent decided to adjust the Student's morning pick-up time by fifteen minutes—from 8:45 am to 9:00 am. The District stated this was done unilaterally by the driver, with the consent of the Parent, but unbeknownst to the District. The District stated this decision was made because "the Student became extremely agitated, including screaming and hitting the car windows, while waiting for another arriving student to exit a vehicle."

The District stated when it became aware of this change, "it immediately informed the driver that, despite good intentions, a safe-car driver does not have the authority to make a unilateral decision." The driver was directed to resume following the approved arrival schedule.

23. On October 1, 2019, the District's director of special services (director) emailed the transportation supervisor, stating:

It has come to my attention that the safe car driver made a unilateral decision to move the time of [the Student's] pick up to 9:00 am because it was taking up to 15 minutes to get a different student out of a car arriving before the safe car. Today, the teacher asked the driver to return to picking the student up at the original time (I believe it was 8:45 am) and she refused.

...

Please direct the driver to pick the student up at the original time to begin immediately. The staff at [school] was ready to remove him from the car at 9:05. This time will change as soon as the program is fully staffed, and the student in the safe car will need to arrive at the school no later than 9:00 am.

The transportation supervisor responded and apologized, although she noted the Parent was aware of the change. The transportation supervisor explained the Student was becoming very agitated "while waiting from removal from the car, a situation Mom was not pleased with either." The supervisor stated part of this was related to another student being dropped off and the Student would get "frustrated & agitated because he is ready/willing to get out but is not allowed to." She stated, "we got the issue resolved with him refusing to get in the car, thus now boarding on time in the PM; we don't want to go backward with that."

The transportation supervisor stated the driver would return to the original schedule and the Student would arrive by 9:00 am.

24. Also, on October 1, 2019, the director asked the Student's special education teacher to determine how much time the Student missed due to being late to school. The special education teacher responded the Student missed a total of 99 minutes:

- 9/20: 15 minutes
- 9/23: 15 minutes
- 9/24: 9 minutes
- 9/25: 11 minutes
- 9/26: 15 minutes
- 9/27: 10 minutes

- 9/30: 12 minutes

- 10/1: 12 minutes

The District's response stated that during the time missed, the Student generally arrived approximately half-way through breakfast time. The District stated, "even though no instructional time was missed" and the Student received additional services in September, the District offered and the Parent accepted 99 minutes of compensatory services.

25. On October 17, 2019, the Student received his compensatory services from 1:30 to 3:15 pm.³

CONCLUSIONS

Issue One: Transportation & Shortened School Day – The Complainant alleged the Student's school day was improperly shortened by a failure to properly implement the transportation provisions of the Student's individualized education program (IEP). Specifically, the Complainant identified that the Student's school day being shortened due to his transportation arrangements. A district must have in effect and implement an IEP for every student, in its jurisdiction, who is eligible for special education, including transportation provisions. Further, students eligible for special education services should attend school for the same amount of time as students without disabilities, unless the student's IEP team decides a shortened school day is necessary to ensure access to a free appropriate public education (FAPE).

2018-2019 School Year

During the 2018-2019 school year, the Student's September 2018 and May 2019 IEPs provided him with "special" transportation, and he rode to and from school in a "safe car." The Student attended a District elementary school, which started school at 8:30 am and ended the school day at 2:50 pm. The Student was scheduled to attend a full day of school; however, the documentation in this complaint indicates his transportation arrangements necessitated he leave school early, effectively shortening his school day. The Student was released at 2:00 pm (50 minutes early) between September and December 2018, and at 2:20 pm (30 minutes early) between January and June 2019. The District explained that, based on the Student's safety needs, after attempts to lengthen the Student's school day by having him ride the bus failed, the safe car was the best option for transporting the Student despite the impact on the Student's school day.

The District acknowledged that, due to the implementation of the Student's IEP transportation provisions, the Student's school day was improperly shortened. While this was, according to the District, done with the agreement of the Parent, this decision was not made in the context of an IEP meeting and was based on the ability to provide transportation, not the Student's unique needs. The documentation indicates the Student missed approximately 85 hours of school during the 2018-2019 school year. The District proposed compensatory services, among other corrective actions. Given the significant number of hours missed and the fact that the Student made no

³ October 17, 2019 was an early release day in the District; thus, the compensatory services occurred after the school day was over.

progress or "slow progress" on many of his IEP goals, OSPI accepts the District's proposed corrective actions with the below added reporting deadlines.

While OSPI finds the District did implement the Student's IEP transportation provisions, doing so improperly shortened the Student's school day. OSPI finds the District in violation.

2019-2020 School Year

During the 2019-2020 school year, the Student continued to ride to and from school in the safe car. He was scheduled to arrive at school at 9:00 am and depart school at 3:30 pm (although he began transitioning to the car and received instruction on transitions at 3:15 pm). On September 20, 2019, the Student's driver decided, and the Parent agreed, to adjust the time the Student was picked up from home in the morning by 15 minutes (from 8:45 to 9:00 am), meaning the Student arrived at school around 9:15 am. The District, when it became aware of the change, acknowledged this decision was made unilaterally by the driver and was improper. The District informed the driver to follow the approved arrival schedule and the Student resumed arriving at 9:00 am. The documentation in this complaint indicates the Student was late to school on eight (8) days due to this transportation change and missed a total of 99 minutes. The District offered, the Parent accepted, and the Student already received 99 minutes of compensatory services to make up the missed time.

Overall, OSPI agrees with the District's admission that the change to the Student's transportation schedule was improper. Any change to a student's school day should be made by the IEP team and based on the student's unique needs. Here the District acknowledged the violation, and offered and completed corrective actions. While OSPI finds the District in violation, no further corrective actions are warranted.

CORRECTIVE ACTIONS

By or before **December 2, 2019, December 16, 2019, January 17, 2020, January 31, 2020, April 30, 2020, June 30, 2020, and September 4, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Services

By **November 29, 2019**, the District will coordinate with the Parent to develop a schedule for a total of 85 hours of compensatory services. Compensatory services should be provided in all of the Student's areas of service, but the Parent and District may determine the distribution of hours. Services will occur in a one-on-one setting and instruction will occur outside of the District's school day and may be accessed over District breaks. The District will provide OSPI with documentation of the schedule for services by or before **December 2, 2019**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with

at least 24 hours' notice of the absence, the District does not need to reschedule. Regardless of any rescheduling, the services must be completed no later than **August 30, 2020**.

The District must provide OSPI with updates on the amount of compensatory services provided to the Student by providing documentation on **January 31, 2020, April 30, 2020, and June 30, 2020** of the compensatory services provided to the Student at those points. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. By or before **September 4, 2020**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburse the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation related to transportation or reimbursement by **September 4, 2020**.

IEP Review

By **November 29, 2019**, the current staff working with the Student will review the Student's current IEP to ensure it accurately reflects the transportation services being provided and allows for the appropriate minutes of general and special education services. The Student should be accessing a full school day. If the school staff determine it necessary, the District will invite the Parent to an IEP meet to make any necessary changes.

By **December 2, 2019**, the District will provide OSPI with documentation of this review and proposed next steps, including—if necessary—a copy of the IEP meeting invitation.

DISTRICT SPECIFIC:

Written Guidance

By **December 16, 2019**, the District will draft written guidance on the importance of considering each student's need for transportation as the primary determining factor, how to document transportation as a related service, best practices for describing the nature of the transportation in the IEP, and how to ensure the transportation is provided as described consistent with each student's IEP. The District will provide OSPI with the draft guidance and a list of the staff in the transportation department and special education department who it believes should review the guidance by **December 16, 2019**. OSPI will approve or provide feedback by December 23, 2019.

By **January 10, 2020**, the District will provide the written guidance to the required staff in the transportation department and special education staff and ensure staff have the opportunity to review the guidance and ask questions. By **January 17, 2020**, the District will provide OSPI with documentation that the staff has reviewed the written guidance. The documentation will include

an official human resources roster of the required staff, so OSPI can cross-reference the list with the actual recipients.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of November, 2019

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