

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-125

PROCEDURAL HISTORY

On October 10, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On October 10, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On October 21, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply. The Parent did not reply.

On November 14, 2022, OSPI requested that the District provide additional information, and the District provided the requested information on November 15, 2022. OSPI forwarded the information to the Parent the same day.

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

ISSUE

1. Did the District appropriately consider the Parent's request for special education transportation and the Student's potential disability-related need for special education transportation for the 2022–2023 school year?

LEGAL STANDARDS

IEP Development: When developing each child's individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

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. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School District*, 36 IDELR 289 (WA SEA 2002).

FINDINGS OF FACT

1. At the start of the 2022–2023 school year, the Student was eligible for special education services under the category of developmental delay and was in kindergarten. The Student was previously evaluated in September 2020, and the evaluation report recommended the Student receive specially designed instruction in communication and fine motor.
2. On August 31, 2022, the Parent, kindergarten teachers, occupational therapist, speech therapist, and special education director (director) met to discuss the Parent's concerns prior to the start of the school year.

At the meeting, the Parent asked about the kindergarten schedule, safety in the building, and what the Student's day would look like. The Parent also shared that she believed the Student required specialized transportation because she was concerned about safety.

3. The District stated in its response that because school had not yet started, as of August 31, 2022, it did not have any data to determine whether the Student needed special education transportation. The District stated the group agreed it would look at data after the Student had ridden the bus for two weeks.
4. The District's first day of school for kindergarteners was September 6, 2022.
5. In her complaint, the Parent stated that the concerns she raised at the August 31, 2022 meeting were "quickly backed up by the kindergarten teachers and therapists saying in the 3 previous days they had [Student] in class they had seen some behaviors that would not be safe while in a bus, such as failure to follow commands."
6. On September 7 and 8, 2022, according to observations by District staff of the Student on the bus:
[Student] began his ride in his seat by the fourth stop he was laying on the seat with his feet across the aisle. He sat up in the seat and allowed a peer to sit with him. Within about 20 minutes he slid to the floor and had his head and shoulders on the seat. Then he laid on his backpack under the seat with his legs stretched across the aisle the duration of the trip.

When he stopped at the elementary school [a District staff person] boarded the bus and was able to help him depart the bus.

...

This afternoon 09/07 [Student] laid down and fell asleep. His mom carried him off.

...

[September 8] [Student] laid down in the seat and rolled from the floor to the seat to laying on his back. At one point he lost a shoe so at my next stop I put it back on his foot.

7. According to an email from District staff, on September 8, 2022, the Student "took his shoes off and stood up in the aisle as soon as he saw his mom at the stop. I slowed way down and kept asking him to return to his seat, which he never did."
8. The Student did not attend school due to illness September 9–16, 2022.

The District noted this meant for the first two weeks of school, the Student only rode the bus three times, and "During those three rides, the Student didn't engage in any conduct that was alarming—especially considering that was his first week riding the bus."

9. On September 13, 2022, according to the Parent's complaint, the Student was "standing in the middle of the bus aisle, barefoot, before the bus had come to a complete stop." The Parent stated she called the director the next day, "to tell her what I had seen and that in my opinion that was not safe for [the Student] because of his hypotonia and poor balance." According to the Parent, the director stated that it was "not dangerous behavior that qualified him for riding the special Ed van and that it was normal kid behavior, and he would learn to follow bus rules."¹
10. Also, on September 13, 2022, the Student's IEP team met and developed the Student's annual IEP. The IEP included goals and corresponding special education services in the areas of communication (AAC/Expressive communication, verbal expressive language) and fine motor (pre-handwriting, feeding). The IEP indicated the Student would receive regular transportation.
11. On September 16, 2022, the Student's pediatrician wrote a letter to the District at the request of the Parent. The doctor noted the Student did not have "self protective skills" and was "less capable to communicate [sic] his needs and understand what is safe versus what is not." The doctor stated, "[the Student] is reported by his mother to get up and wander on the school bus" and recommended the Student have a "special needs bus with a seatbelt (if he qualifies), or a 1:1 aide to help keep him in his place and still allow him the the [sic] ability to attend education in the least restrictive environment."
12. The Student returned to school on September 19, 2022, after being out due to illness, and according to the District, "successfully rode the bus" that week.

¹ OSPI notes that the Parent's complaint stated this incident occurred on September 13, 2022. However, based on other documentation and the fact that the Student did not attend school September 9–16, 2022, this description likely refers to the bus ride on September 8, 2022, and not a separate occasion on September 13, 2022.

13. On September 21, 2022, according to an email from a District staff person, on September 19, "in the afternoon [the Student] sat in his seat quietly and then laid down until his mom retrieved him."
14. On September 22 and 27, 2022, the Parent and the director emailed, discussing the concerns around transportation. The following was discussed:
 - Parent shared the letter from the pediatrician and stated she wanted to meet to discuss transportation further.
 - The director stated the bus driver reported that the Student was doing fine on the bus and the only issues were the Student taking his shoes off once and getting out of his seat once before the bus came to a complete stop. The director stated the "two incidents do not support having specialized transportation or a one on one with him on the bus" and that these were "typical kindergarten behaviors."
 - The Parent stated she felt like they were waiting for the Student to get hurt to realize he needed special transportation and that "while those might be typical behaviors for a kindergartener, [Student] is not typical."
 - The director responded, providing information about bus safety for all students and noted it was an important time for the Student "in terms of developing that independence" and stated that if the Student's behavior escalated to the "point where it is a safety concern for him, *that can't be handled by the driver*, that we will call a meeting and discuss a plan for the bus."
15. In its response, the District stated the Student continued to ride the bus without incident until October 3, 2022. On October 3, the Student "laid on the floor of the bus and wedged himself under the seat. He wasn't harmed, and no one was concerned for his safety."
16. On October 5, 2022, the director spoke with the transportation supervisor, and they assigned an older student to sit with the Student on the bus to help him learn and reinforce the bus rules.
17. On October 10, 2022, OSPI received and subsequently opened the Parent's complaint investigation request.

In her complaint, the Parent alleged the District denied the Student special education transportation despite a need. The Parent stated the Student is "autistic and non-verbal, and cannot communicate his needs" and the District "failed to take into account the IEP's [sic] team and doctors concerns about [the Student] riding the bus."

The Parent stated that "some of the behaviors seen on the bus...are fine for a kid his age, but not for a kid that has the problems he has."

18. On October 11, 2022, the director stated she spoke with the transportation supervisor regarding the Student. The transportation supervisor stated, "the Student climbs up and down the stairs independently now and appears to be proud of himself as he smiles coming up the stairs by himself. He is also beginning to engage with other students seated around him." The transportation supervisor also said, "I have seen a lot of growth from [the Student], and [he] is a typical kindergarten rider."

19. On October 19, 2022, the District completed a reevaluation of the Student and the Student's IEP team met to review the reevaluation. The reevaluation report indicated the Student continued to be eligible for special education services, although the eligibility category was changed to autism. The reevaluation report included recommendations that the Student receive specially designed instruction in pre-academics, adaptive, social/emotional, gross motor, communication, fine motor, and behavior.
20. On November 9, 2022, the Student's IEP team met to develop a new IEP for the Student.

According to additional information from the District, the director of transportation attended, and transportation was the first topic discussed. The District stated they discussed interventions the District had in place, including having an older student seated next to the Student and changing the bus route to pick the Student up last to minimize time on the bus.

The District stated the data continued to indicate that the Student did not require a 1:1 bus aide, and the District noted the Parent stated she had no more concerns and was pleased with how things were going.

CONCLUSIONS

Issue: Special Education Transportation – The Parent alleged the District failed to properly consider the Student's need for special education transportation. Specifically, the Parent stated the Student had a need for special transportation based on his disability, and while "some of the behaviors seen on the bus...are fine for a kid his age," they were not behaviors that were okay "for a kid that has the problems he has."

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. And, when developing a 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.

Here, the Student's IEPs included regular transportation. District staff met with the Parent to discuss her concerns prior to the start of the school year, but because the District did not have any data about the Student's need for special transportation, it proposed collecting and then looking at two weeks of bus riding data. OSPI finds this was an appropriate course of action because the IEP team would need Student-specific data indicating a need for special transportation in order to add this support the IEP.

The data collected indicated the Student had a couple incidents wherein he stood up on the bus or laid down on the floor of the bus or under the seat, and the Student had many days where he successfully rode the bus. Information from October 2022 indicated the Student appeared to be

a “typical kindergarten [bus] rider.” The Parent expressed concerns that the Student’s disability impacted his balance, ability to communicate needs, and ability to recognize what is safe and what is not. The District stated that the Student’s behaviors were being addressed by the bus driver and that they were typical behaviors seen in kindergarten students learning to ride the bus. The District stated the data did not warrant special education transportation or a 1:1 aide for the Student on the bus. However, in response to the Parent’s concerns, the District did assign an older student to sit near the Student on the bus to help him learn the bus rules and changed the Student’s bus route to minimize time on the bus. On November 9, 2022, the Student’s IEP team met, and the District reported the Student was doing well on the bus, the Parent no longer had concerns, and the Parent was happy with the additional supports and with how things were going.

Overall, the District appropriately considered the Parent’s concerns at IEPs meetings, collected data on the Student’s bus riding, and put in place some additional supports. The IEP team decided special education transportation was not warranted, nor was a 1:1 bus aide. OSPI finds the District’s actions appropriate and finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 23rd day of November, 2022

Dr. Tania May
Assistant Superintendent of Special Education
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THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)