

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-29

PROCEDURAL HISTORY

On April 16, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Mount Baker 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 April 17, 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 April 23, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District the same day.

On May 6, 2019, the District requested an extension of time for the submission of its response to the Parent's complaint. OSPI granted the request and requested the District submit its response no later than May 16, 2019.

On May 8, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on May 9, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On May 20, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on May 21, 2019.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period which began on April 17, 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.

ISSUE

1. Did the District consider the Student's transportation needs and provide the Student with transportation consistent with the requirements in WAC 392-172A-02095 from April 17, 2018 – April 16, 2019?

LEGAL STANDARDS

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's individualized education program (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). 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). Methods of transportation may include (in the following sequence): (a) a scheduled school bus, (b) contracted transportation (including public transportation), (c) and other transportation arrangements, including that provided by parents. WAC 392-172A-02095.

FINDINGS OF FACT

Background: 2012-2013 School Year

1. Prior to the commencement of the 2012 school year, the Student was initially determined to be eligible for special education services under the category of autism. The Student's individualized education program (IEP) team additionally determined the Student would attend an Intensive Learning Center (ILC), which was located at a District school that was not the neighborhood school the Student would have otherwise attended.
2. On June 15, 2012, the Parent emailed the director of special education after meeting the IEP team for the first time:

It was great meeting with you and your team today. I called one of the [Student's] Dr. at children's hospital on the way home from our meeting today and he is going to do a little more research into what we can do to help [Student] and his motion sickness. I asked about the patch and blacking out the windows and he wants us to try blacking out the windows this weekend and see if it helps. Could be messy but worth the try, LOL, He said it will be a guessing game for awhile but was confident that we will be able to come up with some way to get him to school [. . .]. I will contact you and the nurse on Tuesday with hopefully some ideas to help with this from his Dr.
3. During the summer of 2012, the IEP team developed an initial IEP for the Student, which included specialized transportation.

4. In its response, the District explained that “[b]ecause the District is over 604 square miles in size,” the Student “ha[d] a longer bus ride to and from school.” The District further stated that the “District experienced ‘limitations with transportation each year that result[ed] in [it] offering a few parents, [including the Student’s Parents], in lieu agreements to transport students [a]ccording to WAC 392-172A-02095.’”¹
5. The 2012-2013 school year began on September 4, 2012, and ended on June 14, 2013. The Parent provided transportation of the Student to and from school during the 2012-2013 school year.
6. The District reimbursed the Parent for transportation provided during the 2012-2013 school year according to its in lieu contract agreement.

2013-2014 School Year

7. During the 2013-2014 school year, the Student was eligible for special education services under the category of autism. The Student was in the first grade and attended an ILC in the District at a school outside of his neighborhood school.
8. The 2013-2014 school year began on September 3, 2013, and ended on June 16, 2014.² The Parent provided transportation of the Student to and from school during the 2013-2014 school year.
9. During the 2013-2014 school year, the District continued its in lieu transportation agreement with the Parent and reimbursed the Parent for transportation provided according to the terms of their contract.

2014-2015 School Year

10. During the 2014-2015 school year, the Student was eligible for special education services under the category of autism. The Student was in second grade and attended an ILC in the District.

¹ According to the District’s response, “[I]n 2012, the IEP team met and discussed transportation concerns raised by the parent regarding their reports of the Student’s motion sickness. At that time the [District] sought to offer specialized transportation with a bus or alternative vehicle, but opted to seek in lieu of services with the Student’s parent due to limitations in the bus fleet and available bus drivers at the time. It did not determine that the Student’s health condition required parent-provided transportation. Rather, the decision to provide in lieu transportation was reached in agreement with the family due to the availability of the District transportation at the time. The District continued to reimburse that parent to transporting the Student from 2012 until the spring of 2018.”

² Dates provided for first and last days of school for 2012-2015 may have been affected by snow days and may be off by a few days. Dates provided were the dates included on the school calendar at the beginning of that school year.

11. The 2014-2015 school year began on September 2, 2014, and ended on June 15, 2015. The Parent provided transportation of the Student to and from school during the 2014-2015 school year.
12. During the 2014-2015 school year, the District continued its in lieu transportation agreement with the Parent and reimbursed the Parent for transportation provided according to the terms of their contract.

2015-2016 School Year

13. During the 2015-2016 school year, the Student was eligible for special education services under the category of autism. The Student was in third grade and attended an ILC in the District.
14. The 2015-2016 school year began on September 3, 2015, and ended on June 16, 2016. The Parent provided transportation of the Student to and from school during the 2015-2016 school year.
15. During the 2015-2016 school year, the District continued its in lieu transportation agreement with the Parent and reimbursed the Parent for transportation provided according to the terms of their contract.

2016-2017 School Year

16. During the 2016-2017 school year, the Student was eligible for special education services under the category of autism. The Student was in fourth grade and attended an ILC in the District.
17. The 2016-2017 school year began on September 1, 2016, and ended on June 15, 2017. The Parent provided transportation of the Student to and from school during the 2016-2017 school year.
18. During the 2016-2017 school year, the District continued its in lieu transportation agreement with the Parent and reimbursed the Parent for transportation provided according to the terms of their contract.

2017-2018 school year

19. During the 2017-2018 school year, the Student was eligible for special education services under the category of autism. The Student was in fifth grade and attended an ILC in the District.
20. The 2017-2018 school year began on August 31, 2017.
21. The in lieu contract whereby the District agreed to reimburse the Parent for transportation provided to the Student was in place at the commencement of the 2017-2018 school year. At

the beginning of the school year until the spring of 2018, the Parent provided the Student with transportation to and from school.

22. On February 9, 2018, the District sent an invitation to the Parents to attend an IEP meeting on March 8, 2018, to develop the Student's annual IEP.
23. On March 8, 2018, the Student's IEP team convened to develop the Student's annual IEP. At the annual review, the IEP team discussed the Student's transportation needs. At the meeting, the District informed the Parents of its intention to begin providing transportation to the Student according to the Student's IEP and of its intention to end its in lieu transportation contract. Meeting notes from the March 8, 2018 meeting stated that the Parent had agreed to send paperwork to the District regarding the Student's "anxiety/motion sickness" as well as a release of information to the Student's medical provider. It further stated that the District's special programs director agreed to send home updated prior written notice (PWN).

The IEP developed at the March 8, 2018 meeting indicated the Student required special transportation. The IEP did not further define the Student's special transportation needs.

24. On March 8, 2018, the District sent PWN to the Parents that it was proposing to initiate an IEP for the Student.
25. On March 14, 2018, the Student's nurse practitioner wrote a letter on behalf of the Student to the District, which stated:

[Student] struggles with motion sickness while riding the school bus; he feels dizzy and vomits. When this occurs, [Student's] anxiety level increases. This in turn increases [Student's] perseverative, repetitive behaviors that continue when he gets to school and negatively impacts his ability to be successful in his classroom environment. Because of this snowball effect, [Student's] parents have been driving him to and from school. I support this decision and recommend that it continue, as it alleviates [Student's] motion sickness, mitigates his anxiety, and reduces perseverative behavior.
26. On March 15, 2018, the District provided the Parent with updated PWN, documenting its intention to end its transportation contract and to begin providing transportation. The PWN stated:

Currently, the [District] has established and maintained in lieu of transportation with parents in order to get [Student] to and from school. At the recent IEP meeting the district expressed intent to end the in lieu of contract, and take over transporting [Student] to and from school. Parents have provided consent to obtain records to determine [Student's] medical needs that would need to be addressed when in school vehicles. As per the contract, the district is required to give five days' notice of the district's intent to transport.
27. On March 30, 2018, the District sent the Parents an invitation to attend an IEP meeting on April 13, 2018, to discuss the Student's transportation needs.

28. According to the District's response, in April 2018, the District determined it was able to provide District transportation and sought to terminate its in lieu contract with the Parent according to WAC 392-172A-02095.
29. On April 13, 2018, an IEP meeting was convened to discuss the Student's need for special transportation. The meeting was attended by the Parent, principal, speech and language pathologist, licensed speech therapist, occupational therapist, licensed practical nurse, and director of special education. At the IEP meeting, the IEP team decided that the "[District] will begin transportation of [Student] to and from school, starting April 23, [2018]."
30. In her complaint, the Parent alleged that at the IEP meeting held on April 13, 2018, "the District failed to consider the recommendations of outside sources in making its decision," including the recommendations from the Student's medical provider. The Parent further alleged that the District nurse recommended the Parent give medication to the Student to help him get to and from school without getting sick and that the Student's medical provider determined this was unsafe. The complaint further stated that the change to the Student's transportation was made without any evidence of there being a change in the Student's condition showing a need to change the transportation service that had been in place since 2012, and that the PWN offered by the District did not reflect what had been discussed and agreed to at the meeting.
31. Meeting notes from the April 13, 2018 IEP meeting stated that the IEP team discussed a letter from "[hospital] Re: request to allow parents to drive [Student] to and from school due to concerns re: anxiety." The notes further indicated that the Parent expressed concerns about the forty-five-minute drive to and from school," that the "[Student] still gets sick. Some days he gets sick on the way home, refuses to eat dinner," and that according to the Parents, "[hospital] does not want [the District] getting him to and from school." The meeting notes also documented the school's position that in the last two years, the Student had not made any visits to the health room.³ The meeting notes additionally stated that the Parent had indicated that she had given the Student medication prior the Student riding the bus for any school events and that the District said it would provide "towels, ginger ale, bus to stop when needed" and an "aide on bus to assist [with] transition."

Complaint Investigation Timeline Began April 17, 2018

32. On April 17, 2018, the District sent the Parents PWN of its decision to initiate a change in transportation. The PWN stated that the District was proposing to begin transporting the Student because "[u]pon review of medical information, the IEP team concluded that [Student] is capable of riding a district vehicle." It was noted on the PWN that "[m]edical records did not provide conclusive evidence that [Student's] medical concerns (i.e., motion sickness) require specialized transportation that only parents can provided."

³ The Parent noted in her reply that for the last two years, the Student has been "largely non-verbal" and would have been unable to verbally communicate his health concerns even if he had visited the nurse. The Parent explained in her reply that she felt these concerns were not taken into consideration by the District.

The PWN stated that when making its determination, the District considered the following information: "medical records, school history of riding a school bus occasionally on field trips, no reports of nausea related to anxiety during the school day or motion sickness upon arriving to school, and no medical concerns reported at school for the past two years," as well as "parent report, medical file review, nurse report, teacher report, review of services, and/or review of previous evaluation information."

The PWN additionally stated that it considered information provided by the Parent and other members of the team to support the transition, including "bags for throwing up in if [Student] needs them, Ginger Ale to help sooth his stomach; towels; pulling the bus over when he appears to have motion sickness (e.g., [Student] will display concentrated breathing as a precursor to motion sickness); and allowing access to cool air by having a window open when needed." The District further "acknowledg[ed] that [the] [Student] has autism, and thus change in routine for riding the bus may be a struggle for him initially." The District stated it was "committed to supporting [Student] during this transition."

33. In her complaint, the Parent stated she felt the PWN sent to her on April 17, 2018 was inaccurate because it left out that the Student has only been on a bus once or twice for special field trips and that she or her husband rode with the Student and gave him medication, so he could attend. She also stated that she arrives at school fifteen to twenty minutes early so the Student can sit in the parking lot and rest before going inside and that she often pulls over and lets the Student walk around if needed. The Parent stated in her complaint that she was told during the meeting that whether buses could pull off the road to let a child walk around would "be a question for the Transportation Director" and that the transportation director had "never attended these meetings."
34. The Parent further alleged in her complaint that while the notes stated, "aide on bus to assist with transition," that when she signed the form, she did not believe "with transition" was on the form. The Parent wrote in her complaint that she "was told an aide would ride with him to and from school since [Student] is never left alone at school [. . .] however, [special education director] was only planning on having an aide on the bus for two weeks and then removing the aide." The Parent stated she was advised not to put the Student on the bus.
35. On April 17, 2018, the Parent emailed the special education director the following:

After our meeting on Friday, I contacted our advocate and [Student's] [medical provider] and they suggested we talk with [Student] and prepare him for this transportation change and see what he thinks. We tried to discuss this with him over the weekend and he was extremely upset and was so worried about it that he made himself sick. At this point, we don't feel that making this change is worth it, if this is going to cause him stress. I agree with you on the fact that these things are good for him to practice to prepare him for when he is an adult, however he is only 10. At this point it is not worth ruining his outlook regarding going to school [. . .]. We agree with the letter from his Dr. at [. . .] Hospital that at this point in time changing [Student's] routine wouldn't be a good idea. We would like to continue transporting him in the same manner that we have over the last 6 years. Reimbursing us for gas mileage seems like the cheaper and easier way to get him to school in a way that won't hinder learning. We have one more year at [school] for him and then

we will be switching to junior high. Maybe at that time we can work on switching him over to the bus.

36. On April 18, 2018, the special education director emailed the Parent to respond to her concerns:

Thanks for expressing your concerns about the upcoming change. It is without question that the transition to his new transportation setup will have challenges along the way. It is our hope that we will be able to work with you as we support your son through this change in routine. The IEP team decision last Friday moved forward with the district taking on the responsibility of transportation. We cannot retroactively change that decision. It is our intent to offer [Student] transportation to and from school starting Monday, April 23rd. You can decline the transportation offered by [District] if you would like. If you do that, it would be your responsibility to transport [Student] to and from school. Reimbursement would not be allowed. We feel this is an important step for [Student] to take, and are fully committed to supporting him during this transition.

37. On April 18, 2018, the Parent emailed the special education director to say that she "still [had not] gotten anything on whether [the District was] planning a bus or SUV, which aid[e] would be on there, etc." She added that she "[did not] recall ever signing the official documentation."

38. On April 19, 2018, the special education director emailed the Parent to inform her that he had mailed her the notes and PWN from the IEP meeting and that she should receive them that day or the next day. He added that the Student would be "riding on a bus, not a suburban," and that "an aide will be on the bus to assist him during the transition." The special education director further stated that he had included "the official documents from the transportation change" in the mail and told the Parent that the "transportation department" would connect with her regarding the route.

39. On April 19, 2018, the Parent responded to the special education director that she felt from the special education director's emails that she believed the District was "planning on putting an aid[e] on the bus during the Student's 'transition' and then removing them, "which she said was "not what we talked about." She confirmed that she did not agree with the transportation plan.

40. On April 19, 2018, the special education director emailed the Parent to confirm that she had declined transportation for the [Student] and that he had informed the transportation director that "contacting [her] [was] not necessary at this time." He informed her that she should "contact [the District] if [she] would like the district to resume the transportation plan," and asked for two days' notice "in order to make arrangements for an aide to be on the bus."

41. On April 20, 2018, the Parent emailed the Student's teacher to notify her that the Student would not be taking the bus the following Monday. She requested that an aide be outside to make sure the Student get to class. The Student's teacher responded by email:

Thanks for letting me know. I did hear this yesterday when [special education director] called to cancel the aide for the bus and I was quite surprised. Keep me in the loop if you reconsider – I think that riding the bus would have been a wonderful social opportunity for

[Student] to spend more time with his peers. Anyways, there will continue to be an adult out front in the mornings for [Student].

42. On April 24, 2018, the special education director emailed the Parent:

I have met with my special education and transportation directors regarding the transportation situation with [Student]. It is my understanding that we did not have drivers or buses available when you agreed to drive [Student] to and from school with reimbursement from the district. As of last spring, this changed. A bus was set up with a specific route to meet [Student's] needs including an assistant. You also provided helpful items such as food, soda, and bags to prevent or deal with sickness. The assistant was on a trial basis only to determine the need. If it was determined the assistant was needed all of the time, the assistant would remain. Perhaps there was a misunderstanding regarding the assistant. It is also my understanding that you decided not to try the bus and opted to transport [Student] yourself. A route was again set up for this school year, but you opted to transport [Student] yourself for this school year.

Your concerns regarding putting [Student] on a bus were clear in your email. As an educator who has supervised an autism program and worked extensively with parents, I empathize with your concerns. That said, I know that I don't live with the challenges and joys that you face every day as [Student's] parent. Clearly, he is blessed to have such involved and caring parents to advocate for his needs.

I do believe that it is [District's] responsibility to transport [Student] to and from school. This includes providing whatever supports are needed to make it happen. It seems that this was put in place but never tried, so I can't commit to paying you to transport him when we had supports in place [. . .] If you would like to initiate transportation while we are waiting for an outcome, the District is happy to re-establish a route with an assistant on board to meet [Student's] needs.

43. In the Parent's reply, the Parent expressed concern that she had not had a chance to meet directly with the transportation director, and explained that not having met directly with the transportation director at this point contributed to a breakdown in trust regarding the transportation plan.

44. On May 1, 2018, the Parent emailed the special education director to again confirm that she "reject[ed] [the District's] proposal to change [Student's] transportation. We will continue to follow the agreement that was made for the 2017-2018 school year, until we can meet again with the IEP team and discuss."

45. On May 29, 2018, the Parent emailed the special education director: "We haven't received any response to the email below⁴ so we are going to assume that [District] is not planning on setting up a meeting with us to discuss [Student's] transportation."

46. On May 30, 2018, the special education director responded to the Parent that, "[r]ejecting the IEP team's recommendation via email does not change the decisions made at that previous IEP team meeting. This district will continue to offer and provide transportation. We will

⁴ Referring to the email, dated May 1, 2018, that the Parent sent the special education director.

convene a meeting asap to discuss your concerns. I will have the IEP case manager reach out to you about possible dates.”

47. On June 1, 2018, the District sent the Parents an invitation to attend an IEP meeting on June 8, 2018, to discuss the Student’s transportation needs.
48. On June 8, 2018, the IEP team convened to discuss the Student’s special transportation needs. At the meeting, the IEP team recommended the District provide the Student’s transportation. The Parents disagreed with the recommendation of the IEP team.
49. On June 14, 2018, the District provided the Parent PWN, indicating that as of June 9, 2018, the Parent disagreed with the District’s proposal to begin providing transportation to the Student instead of having the Parent provide transportation and then get reimbursed. The PWN stated that the “support will be provided for as long as the IEP team deems it necessary. A team meeting [will] be scheduled to discuss this support if evidence suggested an aide was not required.”
50. On July 23, 2018, the Parent wrote a letter to the District to inform it that the “[Student] will not be riding the school bus to and from [school] during the 2018-2019 school year,” and that she and “[her] husband [. . .] will continue to transport him to and from school.”

2018-2019 School Year

51. During the 2018-2019 school year, the Student continued to be eligible for special education services under the category of autism. The Student was in sixth grade and attended an ILC in the District.
52. The 2018-2019 school year began on August 30, 2018.
53. On October 8, 2018, the IEP team convened to discuss the Parent’s concerns with transportation. The meeting was attended by the Parent, occupational therapist, licensed speech therapist, principal, district nurse, school psychologist, and special education director.

According to notes from the meeting, the Parent expressed concerns with the Student riding the bus without an aide to monitor the Student’s motion sickness and did not believe the younger brother should be monitoring the Student.⁵

The meeting notes additionally indicated that the IEP team reviewed the letter from [. . .] hospital, discussed the Parent’s and schools observations and concerns about the Student’s anxious and preservative behaviors, discussed the current state of the Student’s motion sickness as understood by the Parent and District, reviewed school nurse logs, discussed the

⁵ The documentation provided by the District showed the IEP team recommended an aide; however, the Parent stated she was concerned the District would decide to remove the aide after the first couple weeks. The District asserted in its response that the decision to remove the aide would be made by the IEP team only if it decided the Student no longer required an aide.

Student's experience using the school bus during school field trips with use of medication and the Parent accompanying the Student, and reviewed meeting notes from the previous IEP meeting. It was further noted that the "PWN indicates medical records did not provide conclusive evidence that [Student's] needs only [could be] met by parent transportation" and that "parent disagrees."

The meeting notes stated that the IEP team concluded the following:

- "[W]hen on bus, [Student] requires aide;"
- "District would like to provide transportation – District is to offer transportation to [and] from school;"
- "Aide will be on bus to [and] from school;"
- "Accommodations indicated on prior notes would still apply (ginger ale, towels, etc.)."

The Parent refused to sign the attendance sheet.

54. On November 15, 2018, the District sent the PWN to inform the Parent that the IEP team had reviewed the Student's special education file, along with the Student's classroom performance, and had determined that the Student continued to be eligible for special education services under the category of autism.
55. On December 3, 2018, the District received consent from the Parent to evaluate the Student in the following areas: academic achievement, social/emotional/behavioral development, speech/language development, and motor development.
56. On January 16, 2019, the Student's IEP team convened to discuss the Student's reevaluation. The notes from the IEP meeting do not included discussion of issues involving transportation.
57. On February 6, 2019, the District sent the Parents an invitation to attend an IEP meeting on March 7, 2019, to develop the Student's annual IEP.
58. On March 7, 2019, the Student's IEP team convened to develop the Student's annual IEP. The IEP indicates the Student required special transportation but does not specify what required special transportation means for the Student.
59. On March 7, 2019, the District sent the Parents PWN that it was proposing to initiate an IEP for the Student. The PWN did not mention changes to the Student's special transportation.
60. On April 16, 2019, the Parent filed a citizen complaint with OSPI, seeking reimbursement for transportation she provided the Student from April 17, 2018 – April 16, 2019.

CONCLUSIONS

Transportation: The issue was whether the District considered the Student's transportation needs and provided the Student with transportation consistent with the requirements in WAC 392-172A-02095 from April 17, 2018 – April 16, 2019. If transportation is included in the student's individualized education program (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. Methods of transportation may include (in the following sequence): (a) a scheduled school bus; (b) contracted transportation (including public transportation); (c) and other transportation arrangements, including that provided by parents. WAC 392-172A-02095.

Here, the Student's IEP indicated that he required special transportation. The Student's IEP did not specify why the Student required specialized transportation or include additional information regarding what transportation accommodations the Student required. However, documentation included with the District's response, including IEP meeting notes, a medical provider letter, and email communications between the Parent and District indicated that the Student required specialized transportation because of his motion sickness and autism.

In April 2018, the IEP team met and recommended that the District end its in lieu contract with the Parent to compensate the Parent for providing transportation to and from school, and that the District begin providing the Student with special transportation by bus on April 23, 2018. On April 17, 2018, the District provided the Parent prior written notice (PWN) of its decision to begin providing transportation, gave the requisite five days' notice that it would be ending its in lieu transportation contract, and noted the Parent's disagreement in the PWN. Notes from the IEP meeting and PWN both stated that an aide would accompany the Student. The PWN additionally included specific accommodations the Student would receive during transportation as agreed to by the IEP team, which were developed with input from the Parent. The documentation provided by the District showed the IEP team considered a letter provided by the Student's medical provider when determining what transportation services and accommodations to offer the Student, including that the bus would pull over and stop as necessary. The PWN showed that the IEP team ultimately did not find the medical provider's recommendation that the Parent continue to transport the Student to and from school compelling. The IEP team must consider all relevant information, including information from outside evaluators provided to it by the parent; however, it is not required to adopt the decision of an outside evaluator or opinion of the parent. OSPI acknowledges the genuine substantive disagreement between the Parent and IEP team regarding the Student's transportation needs, but concludes that the documentation submitted with the District's response, including IEP meeting notes and PWN, showed the IEP team followed procedures for considering all relevant information provided to it, including information submitted by the Parent from the Student's medical provider.

OSPI notes, however, that the student's specific special transportation needs as determined by the IEP team, including that the bus route take into consideration the Student's motion sickness, that the Student receive an aide on the bus, and that the bus make stops and the Student be allowed to get off as necessary, were not clearly documented in the Student's IEP, even though they were in the PWN and in IEP meeting notes. Instead, the IEP only included special transportation as a related service. The lack of specificity in the IEP may have contributed to confusion over what transportation accommodations and supplementary aids and services were being offered by the District. This appears to have especially been true in light of discussions during previous years about a "trial aide" and because the Parent did not have an opportunity to

speak to the transportation director to confirm that what was agreed to at the IEP meeting and provided in the PWN were feasible.

The Parent further wrote in her reply that she had been told that documentation other than the IEP, including PWN and IEP meeting notes, were not "official." The PWN is an official document which includes information about what the IEP team has agreed the Student requires to receive a free and appropriate public education (FAPE). The PWN provided by the District appropriately included the transportation accommodations and services agreed to at the IEP meeting. OSPI acknowledges that the lack of detail on the IEP relative to the PWN may have contributed to a breakdown in communication between the Parent and District; however, this alone did not rise to a violation because the Parent was still provided with sufficient PWN and the District clearly indicated it was prepared to provide the accommodations and services listed in the PWN to fulfil its obligation to provide the Student with special transportation as related service. Moving forward, OSPI recommends the District consider providing more detail on the IEP when it includes "special transportation" as a related service in order to help prevent similar miscommunications and/or misunderstandings.

In her complaint, the Parent additionally alleged that the District failed to show that there had been "a change in the Student's condition showing a need to change the transportation service that had been in place since 2012." A district is obligated to provide transportation according to the following sequence: "(a) a scheduled school bus, (b) contracted transportation (including public transportation), (c) and other transportation arrangements, including that provided by parents." Upon becoming able to provide transportation in April 2018, the District held an IEP meeting at which it determined the Student's transportation needs included special transportation by bus with accommodations and other supports. At that point, as the District asserted in its response, under WAC 392-172A-02095, the District was obligated to first attempt to provide transportation by bus or by contracted transportation prior to utilizing "other transportation arrangements, including that provided by parents." The District was correct in its interpretation of WAC 392-172A-02095. While the District may choose to use other transportation arrangements, including contracting with the Parent to compensate for transportation provided, the decision to do so is at the discretion of the District so long as it makes transportation available to the Student free of charge to the Parent and in accordance with the Student's IEP. Here, as of April 20, 2018, the District chose to provide transportation to the Student in accordance with the Student's IEP as developed by the IEP team. The Parent refused the services out of disagreement with the recommendation of the IEP team and unilaterally chose to transport the Student to and from school herself. The Parent had a right to do so; however, no violation is found, and no compensation is required.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATIONS

OSPI recommends that in the future, the District clearly indicate in an IEP what it means by "special transportation," and that it includes in the IEP any accommodations and supplementary aids and services required by a student during transportation. OSPI further recommends that in cases involving complex transportation situations, that the transportation director be invited to participate in the IEP meeting in some way, including by phone, or that there be a mechanism for better answering parent's transportation questions.

Dated this ____ day of June, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

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.)