

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-57

PROCEDURAL HISTORY

On August 6, 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 Northshore School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On August 7, 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 August 29, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on August 30, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On September 9, 2019, the Parent requested an extension of time to reply to the District's response. OSPI granted this request and asked the Parent to submit her reply by September 18, 2019.

On September 17, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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

ISSUE

1. Did the District follow procedures for providing the Student special education transportation to his extended school year (ESY) services during the summer of 2019 or did the District follow procedures for amending the Student's individualized education program (IEP) to remove special education transportation?

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. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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).

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

FINDINGS OF FACT

1. During the 2018-2019 school year, the Student attended a District placement at a nonpublic agency (NPA) and was eligible for special education services under the category developmental delay.
2. The Student's January 2019 individualized education program (IEP) included annual goals and specially designed instruction in social emotional, behavior, and written language. The IEP also included motor skills goals for occupational therapy (related service). The IEP provided the Student with "special" transportation.

The Student's January 2019 IEP also included an extended school year (ESY) services addendum. The IEP noted the Student would be provided "special" transportation for ESY.

3. The District stated, in its response to this complaint, during the 2018-2019 school year, it contracted with American Logistics Company (ALC) to provide special education transportation. The Student and one other student were transported together to the NPA by an ALC driver.
4. On June 24, 2019, the District's 2018-2019 school year ended.
5. The District stated, in its response, that for ESY services, the District's transportation collective bargaining agreement (CBA) stated routes would be offered to available District drivers before

contracting with an outside agency. The District stated, "for the summer 18-19 ESY program at [NPA], a district driver accepted the route so we did not contract with an outside agency."¹

6. Sometime, between July 1 and 3, 2019, the District's ESY driver (driver) called the Parent and left a voicemail to introduce himself and discuss pick-up times and locations. According to the District's response, the pick-up location was the corner near the Student's house, which was "also the location that ALC was supposed to use as a pick-up location during the regular school year."
7. On July 4 or 5, 2019, according to the Parent's complaint, the District's "bus" driver called the Parent and informed her the Student's transportation would be "changed to a regular bus pick up down the street for the following Monday July 8th." The Parent stated in her complaint that the District "changed his transportation from a special education van pick up at the door, to down the street with a regular school bus pick up without the flexibility of the special ed pick up."

In her reply to the District's response, the Parent stated she felt there was a "lack of timely notification of the driver for [ESY], with no ability to resolve issues."

8. In her complaint, the Parent stated the Student struggles with transitions and safety was a concern. She stated, "because of his flight risk, my son has a need for a special education van picking him up at the door" and that it was "necessary for my son to be picked up by the same driver, in the same van, and by the same company, in the same place each day." The Parent stated during the school year the Student would "shut down" and refuse to ride if there was a substitute driver, and a "regular transportation bus is inflexible with rushing the schedule, where the special ed bus was flexible with waiting 5 to 10 minutes if [Student] was struggling."

The Parent also included, in her reply to the District's response, a page from the Student's January 2018 evaluation, which noted the Student "'often' gets upset when routines change..." and that the Student was "developing behavioral skills at a rate that is significantly behind his same-aged peers."

9. On Saturday, July 6, 2019, the Parent called and left a voicemail regarding transportation for the District's elementary special education director (elementary director). According to the Parent's complaint, in the voicemail, she stated, "we needed the same special education pick up, and that [Student] was refusing to go down the street to use the regular bus." In her reply to the District's response, the Parent stated she shared the "problems during the regular school year with substitute drivers and details why it was too much of a reach for [the Student]" and stated the Student's "IEP needs are not being accommodated." The Parent stated she would drive the Student to ESY on July 8, 2019, because "there is not time to resolve this."

¹ In her reply to the District's response, the Parent stated she believed the District prioritized the collective bargaining agreement (CBA) over the needs of the Student and that the District changed the Student's transportation based on the CBA. The Parent stated these changes were "disruptive to the point that [Student] was not able to access his education."

10. According to the District's response, the elementary director was on vacation and did not receive the Parent's July 6, 2019 voicemail until she returned on July 23, 2019.
11. The District's ESY programing began on July 8, 2019.
12. According to the District's response, on July 8, 2019, the District sent a bus to pick the Student up. The District stated the parent of the second student who rode to the NPA in the same car as the Student called the District's transportation department and asked if a car could be provided rather than a bus.
13. Beginning on July 9, 2019, the District sent a car instead of a bus, per the other parent's request.
14. According to the District's response, the District sent transportation on July 8, 9, and 10, 2019 to pick up the Student, but that the "Parent never availed the Student to ride to the ESY program. They did not call transportation to discuss the issue."
15. According to the documentation in the complaint, the Parent drove the Student to ESY on July 8, 9, 10, and 12, 2019. The Student was absent on July 11, 2019.
16. On July 10, 2019, the District's transportation office manager called the Parent and left a voicemail, indicating that if the Parent wanted transportation to ESY, she would need to call the District to restart transportation services. The District stated it did not receive a call from the Parent, although transportation did receive several calls from the parent of the second student who rode in the same car.

According to the Parent's reply to the District's response, the Parent "did not want to start [transportation] up again, so call back was not needed."

17. On July 11, 2019, according to the Parent's phone log provided with her reply, the Parent called the District's transportation office twice, "trying to get a number to resolve transportation issue." And, according to the Parent, the transportation office stated the only number they had was for the elementary director.
18. At some point between July 8 and 12, 2019², the NPA director spoke with the Parent about transportation. The director stated the Parent was "unhappy that [Student] didn't have the same driver he had during the school year" and the director told the Parent, "the issue of transportation was not something I could change, but urged her to give [Student] a chance to get to know his new driver, and that while changes were hard for him, having a different driver from time to time was inevitable." The director stated he reminded the Parent, "district drivers

² The NPA director recounted his conversations with the Parent in an August 16, 2019 email to the District's elementary director. The NPA director's email did not specify when the conversation occurred, but the fact that he spoke with the Parent in-person indicates it occurred one of the days the Parent drove the Student to the NPA for ESY.

had training and experience and that I felt [Student] would adapt to the change since he had demonstrated an ability with us to adapt to changes when supported.”

The director also stated he spoke to the Parent on the phone a few days after their in-person conversation.³

19. On July 15 or 16, 2019,⁴ according to an email from the NPA director to the elementary director, the Parent called a teacher at the NPA and left a voicemail, stating the Student’s absences were due to “issues with transportation.” According to the teacher, during a subsequent phone conversation, the following was discussed:

...[Parent] relayed [Student’s] troubles with unfamiliar vehicles, and his refusal to attend ESY. My impression was that she was annoyed and confused as to why he could not have his regular school year driver (contracted company...). I let her know that the district’s responsibility is to provide transportation; not specific vehicles or drivers. I asked her if she had contacted the [District] transportation department, she replied with ‘I can’t get anyone to call me back.’ I offered to give her the number to the transportation department for the district, she declined, simply repeating ‘I can’t get anyone to call me back.’ She called to excuse [Student’s] absences until July 18th.

20. The Student’s attendance record noted he was absent on July 15 and 16, 2019. The Student attended ESY services on July 17, 2019, and was absent July 18 through August 8, 2019.

21. On or about July 23 or 24, 2019⁵, the Parent called the District several times. The following calls and communication occurred, summarized, in part:

- Parent called the transportation director, left a voicemail, and stated she was trying to get ahold of the elementary director. Parent’s voicemail stated the Student had not been provided transportation since July 8, 2019.
- Called the elementary director (no voicemail left).
- Called the District receptionist, left voicemail, and stated she was trying to get ahold of the elementary director. Parent’s voicemail stated the Student had not been provided transportation since July 8, 2019.
- Called another District staff person, left a voicemail, and repeated statements in previous voicemails.
- Called the secondary director, left a voicemail, and repeated statements in previous voicemails.
- Called the elementary director’s assistant, left a voicemail, and repeated statements in previous voicemails.
- The secondary director called the Parent back and left a voicemail.

³ Based on the Parent’s phone log, she called the NPA on July 14 and 16 (twice), 2019; and, she spoke with the NPA director by phone on July 16, 2019.

⁴ The District’s response is not clear whether this call occurred on July 15 or on July 16, 2019.

⁵ According to the Parent’s complaint, she called the District and spoke with the District’s secondary special education director (secondary director) on July 26, 2019; according to the District’s response, this phone call occurred on July 23, 2019; and according to the Parent’s reply, this happened on July 24, 2019. It is unclear which specific day this communication occurred.

- The Parent called the secondary director back and spoke with her regarding her concerns about transportation.

The Parent also called the NPA (twice) and ALC (twice) on July 24, 2019.

The District stated, in its response to this complaint, that the secondary director shared the Parent's concerns with the elementary director, who called the Parent back and left a voicemail. The Parent's phone log, included in her reply, indicated the elementary director called her but did not leave a voicemail.

22. On July 23, 2019, the elementary director spoke with the transportation department regarding the Parent's concerns. Transportation relayed the following:
- ...the district did send a bus on day 1 and changed to a car on day 2 of ESY due to a complaint from the parent of the other student...[Transportation] explained the issue with the [CBA]...[Transportation] said that the other parent was on board but [Parent] did not have her student at the stop...Transportation attempted to call the Parent, no return call ever happened. After 3 days of no show the driver stopped going to the pick-up location.

23. On August 6, 2019, after a few voicemails back and forth, the Parent and the elementary director discussed transportation.⁶ The Parent stated the Student had missed ESY services because of the "situation caused by transportation change." The Parent wanted the District to contract with ALC, send the same driver as the previous school year, and pick the Student up at their home. The Parent stated she was having trouble getting him ready in the morning. The Parent also stated she had been told the same thing about District drivers in previous years (regarding the CBA), and that the District had always contracted with ALC after she complained.⁷

During the phone call, the elementary director asked if the location of the stop was an issue and the Parent said no. The Parent stated she wanted the same ALC driver as the previous year and because the District was sending a bus, it would not work for the Student.

The elementary director also offered to reimburse the Parent for transportation if she wanted to drive the Student to ESY while the elementary director investigated the matter further. According to the District, the Parent declined.

24. Also, on August 6, 2019, the Parent filed this complaint.

25. On August 7, 2019, the elementary director spoke with transportation and discovered the District had been sending a car on the route since July 8, 2019, except for the bus on the first

⁶ The District's response and phone log indicate the Parent and the elementary director spoke on August 6, 2019; however, the Parent's phone log indicates that only voicemails were left. It is unclear if a phone conversation actually occurred on August 6, 2019. The Parent did not dispute that the District offered to reimburse her for the cost of transporting the Student and that she declined.

⁷ The District noted in its response that it did contract with ALC the previous summer.

day.⁸ Transportation shared information about the drivers, including: ALC drivers are supposed to pick students up at the assigned stop, but sometimes “they do door to door and don’t tell the district of this plan;” and, District drivers have “training in special needs and have background checks.”

26. On August 8, 2019, the elementary director called the Parent and left a voicemail. Subsequently, several phone calls were made and the following discussions occurred, summarized in part:

- The elementary director spoke with the Parent, and the Parent indicated she was willing to compromise and allow a different driver. The director stated door-to-door pick up could start on August 9, 2019. According to the District, the Parent said, “she would discuss the transportation with her son and ‘run the idea by him.’ She said that if the student agreed, we would need a meet and greet which could be done today with a start date of the 9th for the regular schedule. Parent wanted someone who was flexible.”
- The elementary director called the transportation supervisor to follow up.
- The Parent called the elementary director and stated the Student wanted to know the color of the car and if the Student’s friend was going to be in the car.
- The elementary director called transportation regarding the car color. The elementary director asked transportation to contact the Parent.
- The transportation supervisor called the Parent to set up a meeting with the driver. The Parent expressed concern about the driver, concern the Student would not get into the car, and concern about the location and the driver waiting. The supervisor stated the Parent also requested advanced notice and a meeting anytime there was a substitute driver. According to the District, transportation agreed to do that for the summer, “as they knew the driver was going to be absent on 8/23/19,” but that transportation could not commit to “always knowing when an absence would occur and could not provide a meet and greet on every absence.”

27. Later, on August 8, 2019, the District driver met the Student and the Parent at their home. In the Parent’s reply, she noted that when the Student met the driver, he “quickly went from I don’t know to yeah I really like this driver.”

28. On August 9, 2019, the Student began riding to ESY in District provided transportation. In her reply, the Parent noted that the Student was, “a little nervous but did well.”

29. Also, on August 9, 2019, the elementary director emailed transportation and asked how transporting the Student went that day. The director stated, “also for the fall, we will need to do a meet and greet with the driver...prior to day 1 to help with the transition...” Transportation responded the Student went to his ESY services and “all is well.”

30. On August 16, 2019, the NPA director emailed the elementary director regarding the Student’s ESY attendance and reported the Student “has been back with us there [sic] last few weeks and is doing splendidly and has apparently adapted to his new driver.”

⁸ OSPI notes the District sent a vehicle on the *route* starting on July 8, 2019 and continued to provide transportation on the route for the other student; however, the vehicle was only sent to the Student’s stop the first three days and after that, transportation was paused for the Student’s pick-up location until the Parent notified the District she wanted transportation to resume.

The NPA director's email also included additional information provided by the Student's ESY teacher, which stated: "[Student] arrived at school on that Friday, in district-provided transportation. There have been no issues arriving at or leaving school in regard to the driver or the vehicle provided by [District]."

31. On August 21, 2019, the Parent called the elementary director and requested the ESY driver be the Student's driver in the fall. According to the phone log, the director and Parent discussed some options for the Student's IEP, including: adding door-to-door transportation and a meeting for transitions (e.g., summer and start of school year). The District's response noted an IEP meeting would be planned for after the start of the school year to discuss these changes to the IEP.
32. The District's ESY programming ended on August 23, 2019. The District's response stated the "Student attended ESY with district transportation for the remainder of the program."
33. The District's response included a progress report from the Student's time at ESY, which stated:
...[Student] was absent for 19 days between July 15th and August 8th, impacting his ability to maintain progress on his IEP goals. While at school, [Student] exhibited social problem-solving skills when participating with his peers...[Student] did however maintain progress with maintaining a 'safe body' with his peers and using graphic organizers to develop 5-sentence paragraphs.

CONCLUSION

Issue: ESY Transportation – The Parent alleged the District failed to provide the Student transportation to his extended school year (ESY) services and thus disrupted the Student's education. A district is required to implement a student's individualized education program (IEP) and provide all services in the IEP, consistent with the student's needs as described in the IEP. This includes transportation, if it is part of a student's IEP. If transportation is included in an IEP as a related service, a school district must ensure the transportation is provided at public expense. ESY services are services provided to students eligible for special education beyond the normal school year, in accordance with the student's IEP, at no cost to the parents of the student.

Change to Transportation Arrangement

Here, the Student's IEP provided him with ESY (scheduled from July 8-August 23, 2019) and special transportation, which was not defined further. During the school year, the District contracted with a company to provide transportation for the Student to the nonpublic agency (NPA) he attended. According to the District, the company was supposed to pick the Student up at the corner near the Student's house, but sometimes would do door-to-door without notifying the District of the change. During the summer, the District planned to transport the Student using a District driver and vehicle.

Between July 1 and 3, 2019, the driver left the Parent a voicemail to introduce himself and discuss transportation. According to the Parent, the District informed her transportation would be "changed to a regular bus pick up down the street for the following Monday July 8th." The Parent

maintained this change to the transportation arrangements was not made with enough time to resolve concerns and the Student's disability necessitated he be picked up in the same car, by the same person/company, and in the same place each day. The Parent stated she felt the Student's "IEP needs" were not being accommodated.

The documentation does indicate the Student's disability resulted in some behaviors that impacted his learning and he struggled with changes to routine. However, his evaluation did not specifically discuss transportation needs and his IEP did not include or specify details of the transportation arrangements.

Based on the documentation in this complaint, the District did not change the Student's transportation from "special education" transportation to "regular" transportation. The District did change from a contract company to a District driver, and provided a bus on the first day instead of a car, but thereafter provided a car per the request made by the other parent of the other student who rode to ESY services with the Student. Details such as the type of vehicle or the specific driver were not in the Student's IEP. As such, because the Student's IEP did not detail the transportation arrangements, the District did not make a change that substantially altered the provision of transportation or that required an IEP amendment.

Provision of Transportation

The District provided a bus to transport the Student to ESY services on July 8, 2019 and then changed to a car, which it sent to the Student's pick-up location on July 9 and 10, 2019. The Student declined to access or utilize the provided transportation on those days (instead, the Parent drove the Student). Following three days of the Student not accessing provided transportation, on July 10, 2019, the District's transportation manager called the Parent and left a voicemail. The District indicated it would no longer send the car, and if the Parent wanted to restart transportation, she would need to call. The Parent also drove the Student to ESY on July 12, 2019, and the Student was absent July 11, July 15-16, and July 18-August 8, 2019.

Prior to the start of ESY, on July 6, 2019, the Parent called and left a voicemail for the District's elementary special education director (director) (the director was on vacation and did not receive the voicemail until July 23, 2019). On July 11, 2019, according to the Parent's phone log, she called the District's transportation office twice in an attempt to connect with the elementary director.⁹ It is not clear why the Parent did not discuss or attempt to resolve her concerns directly with the transportation office at this time. Further, the Parent stated in her reply, that she "did not want to start [transportation] up again, so call back was not needed" (following the District's July 10, 2019 call regarding restarting transportation).

The Parent did discuss her concerns about transportation with the NPA director and ESY teacher, who both let the Parent know the District's responsibility was to provide transportation—not

⁹ The District noted the District's transportation office does not have a record that the Parent called and none of the staff recall speaking with the Parent. The transportation office did have a record that it spoke with the other parent of the other student in the car several times about concerns.

specific vehicles or drivers—and offered to provide the Parent with the transportation department’s contact information. The Parent declined.

On July 23 or 24, 2019, the Parent contacted the District and her concerns were communicated to the director. The director began looking into the situation and spoke with the transportation department. Between July 23 and August 8, 2019, the District attempted to resolve the Parent’s transportation concerns. The Parent wanted the District to contract with the same company and send the same driver as the previous school year, and pick the Student up at his home. Ultimately, the Parent agreed to allow a different (i.e., District) driver, and the District agreed to pick the Student up at his home beginning on August 9, 2019.

The District initially provided transportation, as required in the Student’s IEP, which the Parent declined to access. While the Parent did contact the District several times, she does not seem to have accessed the provided avenue to get transportation—namely, contacting the transportation office and letting them know she wished to restart transportation. Had she done so, it is possible the transportation issues would have been worked out sooner. For example, as late as August 6, 2019, the Parent believed the District was sending a bus (which she stated was not appropriate for the Student); however, if she had spoken with transportation, they could have let her know that, after the first day, they began sending a car.

While the Parent may have had concerns regarding the specific arrangements, the District either made transportation available or provided an avenue for the Parent to restart and access transportation. Unfortunately, this seems to be a situation where summer staff schedules and playing “phone tag” delayed resolution of the Parent’s concerns. While this is not ideal, once the elementary director returned from vacation, she investigated and worked with the Parent to resolve the transportation concerns, including offering to reimburse the Parent if she drove the Student to ESY. The Parent declined reimbursement. Finally, transportation resumed and the Student attended ESY from August 9-23, 2019 with no reported concerns.

Overall, OSPI finds that while there were periods transportation was not accessed by the Student, the District provided transportation or provided the Parent with information on how to restart transportation should she want to access District provided transportation. The District did not materially alter the provision of special transportation or refuse to provide the Student transportation. Further, the documentation indicates the Student, despite concerns, did adjust to having a new driver and, according to the NPA, maintained progress on several of his annual goals. Thus, OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

The District indicated an IEP meeting would be scheduled after the start of the school year to discuss transportation. Further, the Parent indicated throughout the complaint investigation that she felt the Student's IEP did not reflect the disability-based needs related to transportation. OSPI recommends the District schedule and hold an IEP meeting, and ensure the Student's transportation needs are discussed and suggests including more detail in the Student's IEP—e.g., "door-to-door" or "meet and greet before transition times of the year"—if it would be appropriate to help ensure an understanding of what transportation services the Student is entitled to receive.

Dated this ____ day of October, 2019

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