

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-01**

### **PROCEDURAL HISTORY**

On January 2, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from an attorney (Complainant) representing the parent (Parent) of a student (Student) attending the Clover Park School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On January 2, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on January 4, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On January 26, 2024, 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.

On January 29, 2024, the Parent provided OSPI with a signed release, permitting OSPI to share personally identifiable information on the Student with the attorney, as needed for investigative purposes.

On February 12, 2024, OSPI requested the Complainant provide clarifying information, and the Complainant responded on February 16, 2024. OSPI provided the District a copy of the same on February 16, 2024.

On February 12, 2024, OSPI requested the District provide clarifying information. OSPI did not receive a response to this inquiry.

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

### **ISSUES**

1. Did the Student's individualized education program (IEP) team appropriately document the Student's transportation and related nursing services being provided to the Student in the May 2023 IEP?
2. Whether the District provided the Parent with reimbursement for transportation as ordered in SECC 22-134?

### **LEGAL STANDARDS**

IEP Definition: An IEP must contain, in part, a statement of the special education services, related services, and supplementary aids to be provided to the student. WAC 392-172A-03090.

Corrective Action Deadlines in Community Complaint Decisions: Corrective actions ordered by OSPI as part of a community complaint decision must be completed within the timelines established in the written decision. WAC 392-172A-05030(9).

## FINDINGS OF FACT

1. The Student at issue in the instant community complaint investigation—SECC 24-01—was also the subject of a prior community complaint investigation, SECC 22-134.

OSPI issued its decision in SECC 22-134 on January 10, 2023. The period relevant to the investigation in SECC 22-134 was the 2022–23 school year.

OSPI's decision in SECC 22-134 read, in part:

Statement of Facts...On August 29, 2022, the District updated the Student's 'Care Plan for Seizure.' The plan addressed field trips, disaster planning, and transportation. The transportation plan, which was most relevant to this complaint, stated the following:  
Nurse will ride the bus with student to and from school and carry seizure medication.

Bus drivers are trained in CPR and First Aid.

If student has a seizure on the bus and becomes ghost white and unconscious: Driver will stop the bus and call 911; Diazepam will be available on the bus with and administered by Nurse; and, Nurse will call parent and remain with student until parent's arrival.

...

Conclusions...Regarding transportation, the Student's September 2022 IEP provided regular transportation despite the need for a nurse to accompany the Student on the bus. The related service of transportation includes transportation to and from school. If the IEP team determines that supports or modifications are needed to transport a student so the student can receive FAPE, the IEP must identify the need for special transportation as a related service and describe the supports that are needed. The special education regulations do not define "special transportation" as only being the use of a "special education bus." In this case, the Student's IEP provided regular transportation, which was inconsistent with the Student's need for a nurse on the school bus. The District was providing a service—the nurse on the bus—related to the Student's disability and that allows him to access transportation and his education. Thus, this should have been included on the IEP as a related service or possibly an accommodation.

...

Thus, a violation is found. The District is required to conduct an IEP meeting to discuss transportation services that are consistent with the Student's needs and abilities and amend the Student's IEP as needed.

2. According to the complaint request in this complaint, SECC 24-01, though:

The District waited until May 10, 2023 to update Student's IEP. But once again the transportation documented in the IEP was identified as regular and not special transportation...On May 10, 2023, the District listed on the accommodation page that the Student would have 'access' to a nurse enroute to/from school and at school. The Parent objected that the service should be described as 1:1 nursing support during transport...The District ignored the Parent's objection.

...

Currently, the Student rides a special education bus to and from school, accompanied by a nurse. [At some point during the 2023-2024 school year], the nurse shared [with Parent] that District approached nurse in spring 2023 about the possibility she would be assigned

to monitor more than one student during transportation. The District never approached the Parent about this and it was never discussed during the May 2023 IEP meeting.

In additional clarifying information provided by the Complainant, the Complainant explained:

One of the seizure accommodations the Student requires is transportation on an air conditioned bus. The Parent's understanding is that the only buses in the District that are air conditioned are those used to transport special education students. But to affirmatively answer this question for the OSPI, the Parent asked the bus driver directly. The driver confirmed the Student is riding special education transportation.

3. OSPI's decision in SECC 22-134 also included the following corrective action:

Reimbursement

By January 20, 2023, the District must offer to reimburse the Parent for the days the Parent transported the Student to and from school. The District and the Parent shall determine the number of days the Parent transported the Student and offer reimbursement at the District's privately-owned vehicle rate. The District will provide OSPI with documentation of compliance with this requirement by January 27, 2023.

According to the complaint request in SECC 24-01, though, as of January 2, 2024, the District had still not reimbursed the Parent "for [the] approximate 15 trips she made, including transporting the nurse along with Student before the District arranged for transportation." And, during the course of this investigation, the Complainant submitted certain documentation stating the Parent drove a total of 384 miles in transporting the Student between August 31, 2022 and May 30, 2023.

4. The Student's IEP team developed a new IEP for the Student on May 9, 2023.

The May 2023 IEP read, in part:

Student has... nasal spray as a seizure emergency medication, to be administered as on the package label and corresponding school medication form in the event of a prolonged seizure of greater or equal to 3 minutes duration.

Student also has a predisposition to seizures and syncope/pre-syncope (fainting). Student's seizures and syncope/presyncope have been heat sensitive and it is recommended that he be transported on an air-conditioned bus to minimize the risk of seizures or syncope. A staff member (preferably nurse) who can administer a seizure emergency medication (in pouch of his service dog) accompany him on the bus to administer the seizure medication and attend to him should he experience a seizure, pre-syncope, or syncope.

The May 2023 IEP also included, in part, the following accommodation: access to nurse enroute to/from school and at school.

The May 2023 IEP also included the following related service specific to transportation: 575 minutes a week of nursing services in the *general education setting*, to be monitored by the transportation department.

The May 2023 IEP stated the Student required general transportation.

5. The District's response read, in part:

Student's access to nursing is different from a 1:1 nurse, as a 1:1 nurse would be an overly restrictive accommodation that would go against the LRE [for this] Student. The nurse access is more appropriate as the Student needs someone to administer medication should he experience a seizure, but he does not need a nurse constantly monitoring his health.
6. In regard to the issue of reimbursing the Parent for certain transportation costs, detailed in 22-134, the District stated the process for transportation reimbursement is for the transportation department to send certain paperwork to the Parent, for the Parent to fill out; in this case, "due to staffing shortages, the transportation department failed to create the appropriate paperwork to send to the Parent," and the special education department is "currently working with the transportation department [to develop] the [reimbursement] paperwork [that will be sent to] Parents."
7. At the start of the 2023–24 school year, the Student was eligible for special education services, was in the seventh grade, attended a District middle school, and the Student's May 2023 IEP was in effect.

## CONCLUSIONS

**Issue 1: Transportation** – The Complainant alleged the May 2023 IEP did not accurately reflect the transportation nursing services being provided to the Student. Specifically, the Complainant stated said services "should be described as 1:1 nursing support during transport."

An IEP must contain, in part, a statement of the special education services, related services, and supplementary aids to be provided to the student.

Here, the Student had a seizure disorder. In part, the Student required he be administered medication if he had a seizure lasting three minutes or longer. To account for this need, the May 2023 IEP provided the Student with the following services: an accommodation of "access to nurse enroute to/from school and at school," and related services of 575 minutes a week of nursing services in the *general education setting*, to be monitored by the transportation department.<sup>1</sup>

OSPI finds the foregoing accommodation and related service to accurately reflect the nursing services being provided to the Student, and does not find a violation on this score.

The foregoing services, though—as noted in OSPI's decision in SECC 22-134—does not reflect "regular transportation." If the IEP team determines that supports or modifications are needed to transport a student so the student can receive FAPE, the IEP must identify the need for special transportation as a related service and describe the supports that are needed. The special education regulations do not define "special transportation" as only being the use of a "special education bus." In this case, the Student's IEP continued to state regular transportation, which was inconsistent with the Student's need for a nurse on the school bus. The District was providing a

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<sup>1</sup> Additionally, the May 2023 IEP also provided the Student with 1,740 minutes a week of nursing services in the academic setting.

service—the nurse on the bus—related to the Student’s disability and that allows him to access transportation and his education. Thus, OSPI notes it would be more accurate for the IEP to identify that the Student receives special transportation services and provide a description, e.g., “Student rides [special education bus or regular bus] but receives the special education services of a nurse on the bus...”

Additionally, the Complainant’s complaint request detailed that the Parent believes, based on a conversation she has had with the school bus driver, that the Student is being transported on a special education bus. (One of the seizure accommodations the Student requires is transportation on an air-conditioned bus. The Parent’s understanding is that the only buses in the District that are air conditioned are those used to transport special education students.) This further supports that the IEP inaccurately documents the transportation arrangements. The relevant documentation suggests the Student requires special transportation as a related service in order to access FAPE. Accordingly, the fact the May 2023 IEP states the Student only requires regular transportation does represent a violation of the IDEA. The District will be required to provide OSPI with an amended IEP that states the Student requires special transportation. And, in this specific instance, an IEP team meeting is not needed to make this IEP amendment.

**Issue 2: Reimbursement** – The Complainant alleged the District had not reimbursed the Parent for certain transportation costs, as was ordered in SECC 22-134.

Corrective actions ordered by OSPI as part of a community complaint decision must be completed within the timelines established in the written decision. Here, transportation reimbursement was to be completed by January 27, 2023. The fact it has not yet been completed represents a violation of the IDEA, and new deadlines will be established.

### **CORRECTIVE ACTIONS**

By or before **March 8, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Amended IEP**

By or before **March 8, 2024**, the District will provide OSPI with an amended IEP that states the Student requires special transportation and describes the transportation arrangements. In this specific instance, an IEP team meeting is not needed to make this amendment.

##### **Reimbursement**

By or before **March 8, 2024**, the District will provide OSPI with documentation it has reimbursed the Parent for the transportation matters at issue in SECC 22-134.<sup>2</sup>

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<sup>2</sup> During the course of this investigation, the Complainant submitted certain documentation, stating the Parent drove a total of 384 miles in transporting the Student between August 31, 2022 and May 30, 2023.

**DISTRICT SPECIFIC:**

None.

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 28th day of February, 2024

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.)