

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-28**

### **PROCEDURAL HISTORY**

On February 26, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Lake Washington 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 February 26, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on February 27, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On March 14, 2024, the District requested an extension of time to respond to the complaint. OSPI granted the extension to March 22, 2024.

On March 22, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on March 25, 2024. OSPI invited the Parent to reply.

On April 5, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on April 8, 2024.

On April 12, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on April 16, 2024. OSPI forwarded the information to the Parent on April 17, 2024.

On April 18, 2024, the OSPI investigator consulted with a special education division program supervisor with expertise in 18-21 transition services.

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

### **ISSUES**

1. Whether, since February 27, 2023, the Student's individualized education program (IEP) team has developed an appropriate transition plan and transition services, based on the Student's unique disability related needs?
2. Whether, during the 2023-24 school year, the District has implemented an appropriate placement in the Student's least restrictive environment for the Student?
3. Whether, during the 2023-24 school year, the District has implemented the transportation services in the Student's IEP?

### **LEGAL STANDARDS**

IEP Development: When developing each child's 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).

Transition Requirements for IEPs: Beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, the student's IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; the transition services including courses of study needed to assist the student in reaching those goals; and a description of how the postsecondary goals and transition services align with the high school and beyond plan. 34 CFR §300.320(b); WAC 392-172A-03090(1)(k).

Transition Services: Transition services means a coordinated set of activities for a student eligible for special education that: is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation, and is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes: instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. Transition services for students eligible for special education may be special education, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education to benefit from special education. 34 CFR §300.43(a); WAC 392-172A-01190.

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also 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 [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

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). 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).

## **FINDINGS OF FACT**

### **2022–23 School Year**

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of multiple disabilities and lived and attended school in a different state. The Student was in the 12th grade.
2. In February 2023, the Student enrolled in the District and began attending a District school in March 2023. At that time, the Student's October 2022 IEP, which had been developed in another state, was in effect.

The October 2022 IEP placed the Student in a self-contained special education program with plans to work on adult transition goals and receive transition services the following school year. The IEP identified the Student was being "ambulatory, with access to a wheelchair or walker at times" and identified a need for specialized transportation including air conditioning and a buckle guard on the school bus.

The District stated it began providing comparable services to the October 2022 IEP while completing a reevaluation.

3. According to the District, the Parent agreed to initially transport the Student to and from school.
4. In April 2023, the District provided the Parent with some information about the District's transition academy in advance of IEP team discussions.
5. On March 20, 2023, the District began providing special transportation for the Student.
6. On May 5, 2023, the District completed a reevaluation of the Student. The Student was found to be eligible for special education services under the multiple disabilities category. The evaluation identified that the Student also met the eligibility criteria under other health impairment, intellectual disability, and orthopedic impairment. The evaluation recommended the Student receive specially designed instruction in functional academics (reading, writing, and math) and adaptive skills. The evaluation also recommend the Student receive speech and occupational therapy as related services and physical therapy as a supplementary aid and service.

The evaluation documented the Student's medical-physical needs and medical diagnoses. The physical therapist's (PT's) gross motor assessment of the Student found the Student could walk using her AFOs for support, and for longer distances and PE use her reverse walker. The Student was found to walk at a "slightly slower speed", which may have been due to "distractibility." The evaluation described varying levels of support the Student required but did not identify that the Student was physically unable to walk certain distances, "so long as Student was provided adult assistance and use of her...AFOs." The evaluation noted the Student could take off her AFOs, but required assistance to put them back on properly. The evaluation indicated that a PT would collaborate with and train staff on "appropriate gross motor tasks...assist with activity planning in PE and on outings, manage equipment, and adapt the school environment to facilitate safety and participation." The evaluation also included age-appropriate transition assessments.

7. The Parent stated, in her reply to the District's response, that the PT did not assess whether the Student could walk any specific distance or determine if the Student "was able to safely walk long distances...required by [the transition academy]."
8. On May 23, 2023, the Student's IEP team met and developed her IEP. The IEP included information about the Student's medical-physical needs, including allergies, asthma, seizure disorder, a skin disorder, use of "special shoes/braces", and vision concerns. The IEP noted the Student "requires a bus with air conditioning and a seat belt with a buckle guard for safety. The bus must be air conditioned due to overheating can trigger her seizures. A letter from her [previous doctor] was provided stating need for air-conditioned bus and is attached to IEP." The IEP noted that health plans were attached (seizure, allergy, and generic individual health plans).

The IEP noted that during the 2022–23 school year, the Student was receiving education support through the transition center at the high school and attended a general education physical education (PE) class.

The IEP included annual goals in adaptive (multi step tasks, requesting), reading (functional reading), writing (functional writing), and math (functional math), with progress reporting at the quarter. Each of the Student’s annual goals was marked as supporting the Student’s identified postsecondary goals.

The IEP included a transition plan that documented the Student’s needs, strengths, preferences, and interests. The IEP included postsecondary goals and transition services in the areas of:

- Education/training: “Upon leaving public school [Student] will receive on the job training in an area of interest.”
  - Transition services: Specially designed instruction in adaptive skill training to support centered training program.
- Employment: “Upon leaving public school [Student] will work in a supported employment or volunteer position.”
  - Transition services: Specially designed instruction in functional academics to increase skills in employment position.
- Independent living skills: “Upon leaving public school [Student] will participate in age-appropriate community-based outings two times a week.”
  - Transition services: Specially designed instruction in daily living skills, including using public transportation and school van/bus to increase skills out in the community.”

The IEP provided the Student with specially designed instruction and related services in a *special education setting* from May 29 through July 31, 2023, and the specially designed instruction and related services from August 1, 2023 through May 22, 2024:

- Adaptive Skills: 30 minutes, 4 times a week (to be provided by a special education teacher, in a special education setting)
- Adaptive Skills: 30 minutes, 4 times a week (to be provided by a special education teacher, in a general education setting)
- Functional Academics-Math: 30 minutes, 4 times a week (to be provided by a special education teacher, in a special education setting)
- Functional Academics-Math: 30 minutes, 4 times a week (to be provided by a special education teacher, in a general education setting)
- Functional Academics-Reading: 30 minutes, 4 times a week (to be provided by a special education teacher, in a special education setting)
- Functional Academics-Reading: 30 minutes, 4 times a week (to be provided by a special education teacher, in a general education setting)
- Functional Academics-Writing: 30 minutes, 4 times a week (to be provided by a special education teacher, in a special education setting)
- Functional Academics-Writing: 30 minutes, 4 times a week (to be provided by a special education teacher, in a general education setting)
- Speech and Language Therapy: 180 minutes monthly (provided by a speech language pathologist (SLP))
- Occupational Therapy: 80 minutes monthly (provided by an occupational therapist (OT))

The IEP indicated the Student would spend approximately 62% of her time in a general education setting. The IEP also included 45 minutes per quarter of physical therapy provided by a PT in a special education setting as a supplementary aid and service.

The IEP identified that the Student would attend the District's "Transition Academy" the following school year. The IEP included special transportation, which included a lift bus, seatbelt with buckle guard, and climate control.

9. The Student's health plans addressed the Student's heat sensitivity, food allergies, seizures, and mobility/AFOs. The health plan stated that she:
  - Uses a walker at school. For smaller classrooms staff may park the walker and allow [her] to walk in the class. Walker is used [f]or longer distances such as between classes and wheelchair for long-distance activities and off campus trips that involve a lot of walking. Allow rest breaks as needed. [Student] must wear her AFOs when walking. If [Student] removes her shoes/AFOs while sitting, allow her a break. Please see attached sheet with specific directions for AFOs. [Student] has balance, coordination, fine motor skill issues...
10. A May 29, 2023 prior written notice, documenting the IEP meeting noted, in part, that "a lift equipped bus is needed because there are times when [the Student] may need to use a wheelchair at school (tired, field trips)."
11. The District stated in its response that, "To the extent Parents are alleging that the District failed to provide Student a van or other District transportation during the school day, the District denies that such service was required by Student's May 2023 reevaluation or her May 2023 IEP." (Emphasis in original.)

Regarding the provision in the Student's transition services that referenced daily living skills and community outings, the District stated:

Daily living skills include a variety of skills that student[s] may need to learn to be as independent as possible at daily home life (learning how to access activities/jobs in the community, meal preparation, task completion, functional communication skills using communication device, organizing items, gardening, keeping track of money, working with others, etc.) In Student's case – developing daily living skills include outings in the community (where she can learn how to access transportation, navigate to different places in the community, order meals and pay for them in a restaurant, obey traffic signs and travel safely), and receiving specially-designed instruction in the program [included]:

- Outings: walking to lunch outings and volunteer work sites, and daily movement breaks.
- In program: money skills, folding clothes, sweeping, self-care, reading weather report, making a shopping list, tracking appointments on a calendar.
- Transportation for outings are based on distance and student's accessibility needs. For example, Student's work site is across the street, the lunch outings are within walking distance, and recreational activities such as bowling and swimming have district transportation provided.

Services provided include: specially-designed instruction for new skill development and individual support and coaching within community settings to practice and further develop independence.

12. The Parent, in her complaint, stated that at this time, she “incorrectly believed that the [transition academy] was an appropriate and viable placement and location option.” In her reply to the District’s response, the Parent stated she agreed to the May 2023 IEP under “false pretenses” and that the District misrepresented the transition academy.
13. Between March and June 2023, the Parent stated the Student was transported via bus or van to and from destinations off campus and therefore, the Parent believed a school bus or van would be provided to her at the transition academy. The Parent stated, “I approved a wheelchair to be used only in specific cases such as periodic field trips, and only during activities involving long distances. I did NOT approve use of a wheelchair as transportation to and from destinations off campus.” (Emphasis in original.)
14. The District’s school year ended on June 23, 2023.

### **2023–24 School Year**

15. At the start of the 2023–24 school year, the Student continued to be eligible for special education services and attended the District’s transition academy.
16. The District’s 2023–24 school year began on September 5, 2023. Although the District noted that due to a family vacation, the Student started school on September 18, 2023.
17. The District provided information about transition services in the District, including information about transition services general and IEP team decision making with respect to the Student:

[The] Transition Academy is a district program that services students 18-21 years old. The Academy provides opportunities for students to access IEP services after they exit the high school setting. Services are focused on the students’ IEP Transition Plan goals...Discussion [regarding whether the transition academy is appropriate for a student begin] in the high school years, especially during the student's 12<sup>th</sup> grade year. In Student's case, she moved into the district in February of her 12<sup>th</sup> grade year, so it was discussed at that Initial [District] IEP meeting. The district typically considers what type of program will best support a student’s post-secondary goals as part of their IEP transition plan and those conversations occur throughout their high-school years. When it receives new transfer students, the team reviews the student’s last evaluation report, has discussions with the family and/or student, and considers program options at their initial district IEP meeting...[There are] students who have stayed at their high school through age 21. We consider a student’s strengths and needs, and their post-secondary goals and determine if it is appropriate to move towards a community-based program or remain in a more academic setting at their high school. In Student’s case, the IEP team felt that she was a strong candidate for supported employment and to access community activities and as a result, recommended the transition program.
18. The District stated it provided the Student’s special transportation, as identified in the IEP, to and from the transition academy.
19. On September 18, 2023, the Parent visited the transition academy, spoke with staff, and showed staff how to “properly put on and remove her [AFOs].”

20. On September 18, 2023, according to the District's response and supported by contemporaneous notes from the case manager, the Student's case manager observed the Student removing her AFOs. That day on a walk around the neighborhood, the Student did well but needed some breaks.

The case manager emailed the Parent regarding the Student's mobility needs, stating, "We do a lot of walking and am wondering if you think she should bring her wheelchair to school...We will also be taking the bus and might be using a van occasionally. For the walking activities do you think she will be okay with just her walker?" In further emails, the case manager requested the Parent send the Student's wheelchair, asked if the Student had a card to ride the bus, and notified the Parent that the transition academy did not have a van.

The Parent responded that the Student could "walk around a store, a neighborhood, or a small park. For longer walks, she uses her wheelchair, but the school would need to talk to me in advance if the school needed her wheelchair, and the wheelchair would need to come home at the end of the day."

21. On September 19, 2023, according to the Parent, the Student was injured "due to a long walk for a school outing, which was preceded by a walk the previous day."

According to the complaint and similarly documented in an October 3, 2023 email from the Parent to the District, the Parent:

Asked school staff who ride the bus with my daughter about what happened during the walk the previous day, as I had not yet heard the full account. Apparently, the outing on Sept. 19, 2023, took about 15 minutes one way at a regular/average pace for most students and staff members. However, it took my daughter about 30 minutes to walk to the designated location from the school, and 45 minutes to walk back to the school. On the way back, my daughter kept dropping to the ground in the middle of the...to try to take off her shoes and AFOs. My daughter is nonverbal, and she didn't have her communication device with her at the time. Dropping to the ground or sitting down is how my daughter communicates that she is tired, and/or her feet hurt, and she doesn't want to walk any farther. It was challenging to keep my daughter going. The Transition Academy did NOT provide an alternative form of transport to my daughter at this time in order to help alleviate the situation. My daughter eventually returned to the school by foot, but the result of this outing was a large, painful blister on her right heel, which rubbed against her socks and AFOs.

22. According to the District's response and supported by contemporaneous notes from the case manager, on September 19, 2023, the class went on a community outing for lunch and prior to that, the Student had been taking her AFOs off. On the outing, the paraeducator reported that the Student stopped in an intersection and refused to move, and the Paraeducator had to physically push the Student in her walker to get across the intersection. On the walk back, the Student took a lot of breaks, "which [staff] assumed was because she was tired. She did not display any signs of being in pain."

The September 19, 2023 emails show:

- The school emailed the Parent and stated the Student needed breaks and rest on the way back from the outing. The school stated, "We have outings every day that is why I am asking if you can send the wheelchair every day. If you don't use the wheelchair during the week at home, you could send it in on Monday leave it here and we could send it home on Thursday. Let me know what works better for you." The case manager explained that they would use the Student's walker for shorter distances and only use the wheelchair if the Student got tired.
- The Parent responded with questions about the use of the walker and wheelchair, and stated she did not want the Student to spend a lot of time in the wheelchair and proposed transporting the Student to outings and once there, the Student could use her walker.

The Parent's complaint indicated that she agreed they could use the wheelchair until the blister healed.

23. In her notes, the case manager also stated that the previous year during PE class, the Student would walk from the classroom down to the track and at least one lap around the track with breaks. The case manager stated, "I let since she was able to do that walk at the [high school], she could make the walk to [lunch outing spot]. It would be about a 15-minute walk...I let [paraeducator] know to give her breaks."
24. The District stated that staff used the wheelchair with the Student on September 20, 2023, to assist the Student in participating in a school outing. Notes from the case manager show the Student took off her AFOs and it appeared she was in pain and that staff attempted to address the blister with band-aids. The case manager noted they called the Parent and left a voicemail and spoke with the nurse. The case manager and Parent spoke later in the day, and the case manager noted the Parent was upset by the walk and blister. The case manager also sent a follow-up email, describing what occurred that day.
25. On September 21, 2023, the Parent emailed the school and stated the Student was not coming to school that day as the Parent was taking the Student to the doctor. Later in the day, the school nurse called the Parent and in the discussion the Parent asked for a "copy of the incident report"; however, according to the Parent, the "nurse said that there was only a medical log, and no incident report."
26. A September 22, 2023 "nursing progress note" documents that the nurse was notified about the Student's blister on September 20, 2023, and was informed that the Parent was taking the Student to the doctor. The nurse documented a follow up call to the Parent, who "Stated that the...area is not infected." The Parent shared the Student was in pain and she was going to keep the Student home.
27. On September 24, 2023, the Parent emailed the case manager, stating the Student would attend school on September 25, 2023, and that she would need to use her wheelchair for transitions as the Student's blister had not healed. The Parent also requested an IEP meeting to discuss and address concerns.

28. On September 25, 2023, the case manager emailed families in the transition academy, reminding them that they go out into the community every day, "rain or shine, and to dress appropriately for the weather."

29. In fall 2023, the Parent stated she started to believe that the transition academy was an inappropriate program for the Student, due to the following:

- Transition academy does not meet the Student's needs, including physical disabilities and health, medical, and safety needs. This includes the Student's challenges with mobility and stamina. The Parent stated the Student would not be able to participate in the daily walking portion of the transition academy, in community outings to restaurants due to food allergies. The Parent stated that because walking is a large portion of the transition academy's program, this does not align with the Student's individual needs.
- Did not provide the Parent with the information needed about the transition academy for her to participate in decision making about the Student's placement.
- The Student was unable to access the transition academy because the District did not accommodate the Student's physical disabilities, or health and medical needs.
- The Student needs and the transition academy does not provide five days a week of instruction. The Parent stated that the four day a week schedule had a negative impact on the Student.

The Parent stated that in the spring of 2023 when they were considering placement, the District was aware of the Student's needs and should have disclosed information about the transition academy as the following conflicted with both the Student's health/safety needs and her IEP:

- That the transition academy did not have a bus or van to provide transportation to and from destinations off campus.
- That the Student would be required to walk to programming and activities and spend "several hours a week walking long distances outside, including in inclement weather."
- That the Student would "be required to be restricted to a wheelchair as transportation several hours a week in order to participate" if she was unable to walk.
- That the Student would "spend several hours a week" going to restaurants and that she was unable to participate in that as she could potentially be exposed to allergens.
- That "several hours a week" of transition services would just be "transit on foot (or in a wheelchair)" to and from destination.
- The job sites and job activities could negatively impact the Student's health and safety, for example "wiping up tables in a lunchroom...where she may have been exposed to potential allergens."

30. The Parent alleged the District failed to implement the transition portion of the Student's IEP when it failed to provide a "school bus or van to transport her to and from destinations off campus" for job trainings and community outings. Instead, the Parent stated the Student had to walk on community outings and was injured. Then, in response, the Parent stated the District inappropriately restricted the Student by having her use a "wheelchair on a regular basis for several hours a week after she was injured" and after she was healed, to access transition services, programs, and activities.

The Parent stated she had shared with the District that she did not want the Student to spend too much time in her wheelchair because the Student becomes dependent on the wheelchair and will stop walking.

The Parent also stated that the amount of walking the Student was required to do and the lack of bus or van transportation between September and November 2023 was a "misuse of the Student's transition service hours", as the Student had to "spend several hours a week just in transit on foot or in her case after her injury, being pushed in a wheelchair, traveling to and from off-campus destinations. This was a minimum of four (4) hours a week (two larger outings a week, with each spent in transit for approximately 60 minutes both ways), plus other time spent walking to lunch, etc."

31. On October 3 and 4, 2023, the Parent and District PT exchanged emails about the Student's needs, Parent concerns, walking, and the Student's AFOs.

32. On October 6, 2023, the Student's IEP team met.

According to notes from the meeting, the team discussed what occurred on September 18, 19, and 20, 2023; the Student's needs around walking and desire to prioritize walking, AFOs, and blisters; the option of using a wheelchair for outings; the Parent's desire that the Student attend five days of school and that the Parent felt she was not provided enough information about the transition academy; and concerns around time spent on outing travel versus IEP goals and skills.

In the notes, the staff explained that "walking and navigating the bus line is part of the [transition academy]" and that placement in the transition academy versus at the high school was an IEP team decision.

According to the prior written notice sent to the Parent on October 13, 2023, the team discussed the Parent's concerns regarding the transition academy, including the amount of walking involved with daily community outings. The notice indicated the Parent was questioning whether the transition academy was the correct placement and if the Student had the option of returning to the high school. The notice documented that the Parent was not aware that the transition academy did not have a van, that getting a van was being discussed, and that currently the transition academy can borrow a van from other programs.

The prior written notice also documented, in part:

- That the Parent requested an "incident report" for the Student's blister and the nurse stated she provided a copy of her notes. The Parent disagreed with the assessment from the nurse and that the blister was an injury the Student sustained due to a lack of transportation and insistence the Student walk farther than she was able to.
- That the Parent's priority was for the Student to work on communication skills and the team shared how the Student worked on communication skills throughout the day.
- The Parent felt the Student was missing out on instructional minutes by participating in community outings.

- The Parent was concerned that the program was only four days a week and that this was having a negative impact on the Student. The team shared they could provide activities or materials for Fridays.
- That the Parent preferred the Student use her walker and the wheelchair is only used as needed, "usually for longer distances or when [Student] is tired."
- The Parent asked what the Student's schedule would look like if she did not attend the daily community outings and the team shared that the schedule would need to be revised. The team shared it would be beneficial for the Student to participate with other students in community outings. The special education teacher shared that she felt the Student was "happier, more focused and engaged in tasks/activities."

According to the Parent, the staff indicated that the only other option for transportation to and from off-campus destinations was to use the Student's personal wheelchair. The Parent stated she did not want the Student to use the wheelchair on a daily basis and that "minimizing use of a wheelchair was a decision made in consultation with her medical team." According to the Parent, she stated at the IEP meeting that she "would allow her to **TEMPORARILY** use her wheelchair for transport to and from destinations." (Emphasis in original).

33. On October 6, 7, and 17, 2023, the Parent emailed to case manager her notes from the IEP meeting. In the emails, the Parent asked questions about the meeting procedures, provided information around why they had requested the meeting, asked questions around the skills and IEP goals that were being targeted in instruction with the Student, concerns around the Student's schedule and time spent on travel to community outings, and clarified a statement around the Student's blisters and her AFOs, and emphasized that while it was important to prioritize the Student walking and ensuring her health needs were met.

The District responded to the Parent's emails, indicating items that would be included in the prior written notice and suggesting that a further IEP meeting was needed to discuss other questions.

34. On October 13, 2023, the District emailed the Parent a copy of the prior written notice, which attached the Parent's October 3 and 6, 2023 emails. The District also sent the nurse's notes and notes from the IEP meeting, which the District indicated would also be attached to the prior written notice.

In a separate email the same day, the District sent the Parent a copy of the May 2023 IEP and prior written notice, documenting the IEP team's decision to have the Student attend the transition academy.

35. On October 27, 2023, the Parent sent the District a letter regarding concerns and requesting that the Student be transferred out of the transition academy to the high school or another District transition program. The letter also requested that changes be made to the Student's IEP and specifically outlined statements the Parent wanted added to the Student's IEP, including removing goals that required the Student to go out into the community and "remove any requirements for her to work and train at job sites off-campus and in the community." The Parent also wanted to modify or add IEP goals related to communication

and behavior. The Parent's letter included concerns about the transition academy, that the transition academy was not being responsive to the Student's health and safety needs (September 19, 2023 incident, walking/community outings, exposure to allergens, not taking weather into account), that the Student's related service of transportation was not being provided, that the travel to community outings was not an appropriate use of the Student's school time and not in alignment with the Student's needs, and overuse of the Student's wheelchair. The Parent explained why they felt the Student attending the high school was a better placement for transition services, including that the high school was five days instead of four days and that the high school would provide services in the Student's least restrictive environment.

36. On November 2, 2023, the District's special services director (director) emailed the Parent in advance of the IEP meeting and addressed, in part, the Parent's request to have the Student attend the high school. The District stated that "our high school programs are designed for students to work towards and complete credits and other requirements as part of their graduation pathway" and that students who have completed their credit requirements may receive transition services at the transition academy, based on IEP team decision making. The director stated, "families can also choose to not participate in the Transition Academy." The director stated the IEP team could address concerns around programming and goals while at the transition academy, including concerns around community outings.

The Parent responded, stating she was aware that the high school "also has a transition center program that provides transition services to students ages 18-21."

37. On November 3, 2023, the Student's IEP team met to further discuss the Parent's concerns and the Parent's request to have the Student transferred from the transition academy back to the high school or another District transition program.

According to the prior written notice, the Parents wanted the Student to attend the high school and felt the transition academy's vocational track was not appropriate for the Student. The Parents stated there were concerns with the Student's current job site and that they were not concerned about the community portion of the transition academy as the family provides the Student opportunities to be out in the community.

The District's director overseeing transition services (transition director) shared that once students have met credit requirements and are at the transition academy, they do not typically transfer back to a high school setting, and that the Student has met all her high school credits. The District shared that it felt it could meet the Student's needs at the transition academy. The case manager shared that the Student seemed "more focused and engaged in activities/tasks at the [transition academy]...displays less behaviors at the [transition academy]...[and] there has been a significant decrease in the frequency of AFO removal."

The Parents raised concerns that the program was only four days a week and the transition director shared information about a program the Student could potentially attend on Fridays.

According to the Parent, at this meeting, "it was agreed upon that [Student] would stop participating in the job trainings and regular community outings." According to the prior written notice, the Parent asked that the Student no longer go to the job site or on community outings. The Parents stated they would no longer send the Student's wheelchair, starting November 13, 2023.

38. Regarding the October 6 and November 3, 2023 IEP meetings, the Parent alleged that:

- No one took notes at the October 6 meeting;
- The October 6 prior written notice did not include "important information and details," including the Parent's request that the Student be transferred back to the high school and the Parent's question of whether there was another transition program; and,
- That not all IEP team members gave input at the November 3 meeting, that the IEP team did not "vote" on the Parent's requests, and that one member of the IEP team "Attempted to represent and vote on behalf of other IEP team members."

The Parent stated:

If these details from the IEP meeting were officially recorded in the meeting notes for the [prior written notice], then the Transition Academy would have been legally obligated to gather and provide this information, and to tell me whether there was space at [high school] or another school. The [prior written notice] would also have officially recorded the fact that they stated my daughter could transfer back to [high school] or another high school with a similar program if there was enough space.

39. Following the November 3, 2023 IEP meeting, the District stated in its response that it "ended up accepting a number of requests from Parent to limit Student's participation in school outings and job site training."

40. On November 6, 2023, the Parent emailed the IEP team, requesting a hard copy of the Student's IEP, prior written notice, and copies of certain District policies. The Parent also reiterated her concerns and stated they ran out of time during the meeting to discuss all concerns, necessitating a further IEP meeting. The Parent stated she felt the team did not reach consensus regarding the Student's placement.

41. On November 8 and 9, 2023, the Parent and OT, PT, and SLP emailed regarding the Student's needs and planning around therapies.

42. On November 13, 2023, the Parent stated the Student "began focusing her special education and transition services on school curriculum, lessons and activities that target her IEP goals, communications, and provide therapeutic-related benefits that are most appropriate for her."

In her complaint, the Parent stated, however, the transition academy was not the Student's least restrictive environment now because she "no longer partakes in the main distinctive parts of the Transition Academy's programming" and the Student:

Now spends LESS time with her teacher and classmates with disabilities, and practically no time with other people without disabilities besides the teaching staff. She's isolated on a small campus (with a few rooms) in a corner wing of [the building], with a small, fenced-off yard that she sometimes goes out to with an aide, when the weather is nice enough.

43. In response to the Parent's allegations around placement and LRE, the District stated:

Here, Student's IEP team agreed that Student should receive her educational services for the 2023-24 school year at the District's Transition Academy...As identified in Student's May 2023 IEP, the Transition Academy provided Student access to the community and functional opportunities to be with non-disabled members of the community in real life situations...Indeed, the Transition Academy provided Student more general education access than identified in her IEP addressing her services in [previous state] or at [high school]...Prior to the IEP team meeting, staff provided Parents information on the Transition Academy.

Despite Parents' agreement with the Transition Academy in May of 2023, the District convened Student's IEP team twice in the fall of 2023 to address Parents' concerns about the Transition Academy. The District staff and administrators identified multiple reasons why they believed Student was receiving her special education services in the appropriate setting...This included the staff observations about Student's improved focus, buy-in, engagement and opportunities for practical skill application at the Transition Academy...Accordingly, the IEP team did not agree to change Student's placement.

44. Between November 14 and 29, 2023, the Parent, case manager, and director emailed regarding questions about the Student's day, the Parent's concerns about the Student being isolated now that she was not attending the community outings, concerns about safety, the Student's behaviors and other needs, and paraeducator support.

45. November 29, 2023, the Parent spoke with a District transition academy representative on the phone, who informed her that there was an option to attend the transition academy Monday through Thursday, and the comprehensive high school building on Fridays. The Parent stated that:

the option came with a 'CAVEAT,' of which would require my daughter to return to community outings and job training, as she did before Nov. 3, 2023, when her IEP team met and agreed that she would stop participating in these program activities...

This CAVEAT would require that my daughter once again be RESTRICTED to her WHEELCHAIR in order TO ACCESS programming. The decision made by the Transition Academy and Special Services to come up with such a plan is CONTRARY to my daughter's IEP requirement for transportation, and her UNIQUE INDIVIDUAL NEEDS and SPECIAL CIRCUMSTANCES related to her need to limit use of a wheelchair, as attested to by a Letter of Medical Necessity...In addition, the proposed fifth day would likely be predicated on ME providing transportation to and from [high school]. This once again puts the burden of my daughter's [FAPE] on my family, and not the school system.

(Emphasis in original).

46. In a December 1, 2023 letter of concern the Parent included in her complaint, the Parent emphasized that she felt the IEP team did not come to a consensus on whether the Student should return to the high school. The Parent requested information on how to "appeal" the "denial for transfer to an alternative placement transition program." The Parent attached a document that reiterated her concerns about the transition academy.

47. On or around December 6, 2023, the District proposed going to mediation. Documentation indicates the Parent has so far declined to participate in mediation.
48. On December 12, 2023, the Parent emailed the District a "letter of medical necessity" from the Student's doctor. The letter included recommendations that the Student have "constant close supervision," that the Student would "benefit from 5 days of school...to provide an environment where she continues to learn social adaptive skills, refine learned skills, as well as preventing regression of newly learned skills." The doctor noted that the Student's physical disabilities should be accommodated for in all school activities, "as not to cause her bodily harm and for her personal safety," including "avoiding walking for long periods of time (she will develop blisters on her feet), or being exposed to potential allergens."
49. On December 15, 2023, the Parent emailed the District an updated "letter of medical necessity" from the Student's doctor. Along with the recommendations listed in the December 12 letter, the December 15, 2023 letter added:
- It is highly unlikely that [Student] will be employed in a job after she leaves school, due to barriers from her disabilities and health, that includes issues with communication, physical ability and behavior issues. [Student] should not participate in job skills training activities. Her transition services should focus on specialized instruction, including communications, and therapies (such as occupational therapy) and limited vocational skills (such as sorting to help with fine motor skills), which offer therapeutic rewards that impact her functioning in everyday life...
- [Avoid walking for long periods of time...] and being exposing to the elements outdoors. [sic] [Student] is susceptible to illness and asthma problems when she is too cold, and is at higher risk for potential...seizures when she is too hot...
- [Student] should only use a wheelchair as instructed by her family and legal guardians. Use of a wheelchair should be minimized in order to avoid dependence on it. [She] should be transported by vehicle to locations off-site. These vehicles (such as a bus or van) should include air conditioning, and a safety belt with a safety cap or buckle guard...A school aide should also accompany [Student] to ensure her personal safety while in transit. Decisions related to these issues should be made in consultation with her family and legal guardians.
50. The District responded in a January 18, 2024 prior written notice sent on January 22, 2024. The Parent stated the notice did not reflect the complete situation and was in opposition to the IEP's transportation requirements. The prior written notice stated, in part:
- To date mom has requested the following:
- 1) [Student] not participate in long community outings that require her to walk long distances as well as not relying on her wheelchair - We have accepted that.
  - 2) [Student] not participate in job skills training at local job sites out of concern for allergy exposure or other health related concerns - We have accepted that.
  - 3) [Student] return to [high school] for placement and programming 5 days a week focusing on IEP goals - This was refused at this time.
  - 4) Mom requested that her daughter not be placed at [site] for a work site - We have accepted that.

- 5) Mom raised concern about lack of transportation (walking) and public transportation as methods to and from locations as it was a health and safety concern and took away from her time focusing on IEP goals and did not want [her] to participate in activities that required this - We accepted that.
- 6) Parent provided an updated letter of medical necessity 12/15/2023 from [the doctor], outlining recommendations that [Student] requires close and constant supervision as she is not able to determine if situations are dangers or not, should not participate in job skills training but should focus on communication, OT and other therapy needs, her physical and medical needs should be accommodated for such as limiting exposure to allergens, avoid walking for long periods of time, providing safe transportations, and use of her wheelchair after consultation with family. We have accepted.

Regarding placement at the high school, the prior written notice indicated that the Student's transition plan was created in spring 2023 based on Parent input, transition assessments, and development of post-secondary goals and individualized services; and, as such, the IEP team proposed the transition program as the appropriate placement for transition services. The notice documented the family's disagreement with the programming in fall 2023 and outlined options discussed. These options included:

- Participating in the transition academy, four days a week, with supported community outings and join skill training.
- Attending the transition academy, four days a week, with no community outings or job skill training. Only focus will be IEP goals.
- Participating in the transition academy, four days a week, with supported community outings and join skill training. And attend high school on Fridays to focus on IEP goals and other opportunities.

The notice described that the IEP team, including the Parents, had met and communicated frequently throughout the fall to address concerns. And stated that the second option, outlined above, was the Student's current programming.

51. The District's response included progress reporting, dated July 28, 2023, November 14, 2023, and February 2, 2024. The progress reports indicated the Student was making progress on all her IEP goals, with some goals increasing from emerging skill to making progress. Only the Student's functional academics math goal remained at an emerging skill level.

## **CONCLUSIONS**

**Issue One: Transition Plan/Services Development** – The Parent alleged that she initially "incorrectly believed that the [transition academy] was an appropriate and viable placement and location option" for the Student, that she agreed to the May 2023 IEP under "false pretenses," and that the District misrepresented the transition academy. The Parent generally alleged the transition academy and transition services did not take into account the Student's unique needs, including disability-related health and safety needs.

When developing each student's IEP, the IEP team must consider the strengths of the child, 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. 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 student.

Spring 2023: The Student began attending school in the District in March 2023, following a transfer from out of state. The Student was in the 12th grade, and following a reevaluation, was found to be eligible for special education services in Washington under the category multiple disabilities. The evaluation report recommended the Student receive specially designed instruction in functional academics (reading, writing, and math) and adaptive skills, along with speech and occupational therapy as related services and physical therapy as a supplementary aid and service.

Beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, the student's IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; the transition services including courses of study needed to assist the student in reaching those goals, and a description of how the postsecondary goals and transition services align with the high school and beyond plan. Here, the District, in May 2023, the Student's IEP team developed her annual IEP, which included a transition plan with postsecondary goals and transition services in education/training, employment, and independent living skills. The Student's independent living skills goal related to participation in community-based outings. The Student's IEP team determined the Student would attend the District's transition academy during the 2023–24 school year to receive transition services. The IEP team also considered and incorporated information into the IEP and health plans regarding the Student's medical-physical needs. At the time, the Parent did not disagree with the IEP or the fact that the Student would attend the transition academy.

While overall, the IEP team engaged in appropriate transition planning for the Student in spring 2023, OSPI notes that the Student's transition goals were insufficient, particularly the education/training and employment goals. The IEP included the following postsecondary goals:

- Education/training: "Upon leaving public school [Student] will receive on the job training in an area of interest."
- Employment: "Upon leaving public school [Student] will work in a supported employment or volunteer position."

These goals are insufficient as they were not specific as to what the education or employment would be and therefore the goal is not specific; nor did they appear to align with the Student's interests or disability-related needs. Appropriate postsecondary goals must be specific and reflect the Student's interests, postsecondary goals, and align with their needs—all of which are unclear in the education/training and employment goals. Thus, OSPI finds a violation related to these specific goals. However, OSPI finds that overall, the rest of the IEP development was appropriate in spring 2023 and that the IEP team did identify proper transition services and appropriately determined the transition academy would be the Student's placement the following year. To address the goals, the Student's IEP team will be required to meet.

2023–24 School Year: In the fall of 2023, the Parent began to disagree with the transition academy programming, stating that it was not appropriate for the Student nor meeting her unique, disability related needs.

The Parent raised concerns about the amount of walking the Student was required to do. The investigation shows the Student does have mobility challenges; however, the documentation and information regarding the Student's needs is mixed with respect to walking, use of the walker, and use of a wheelchair. For example:

- The Student's previous IEP indicated both that the Student walked and used a wheelchair (the IEP identified the Student as being "ambulatory, with access to a wheelchair or walker at times").
- The May 2023 evaluation included a PT gross motor assessment, which showed the Student could walk using her AFOs for support, and for longer distances and PE, use her reverse walker; although the Student was found to walk at a slower speed. And the evaluation indicated that a PT would collaborate with and train staff on "appropriate gross motor tasks...assist with activity planning in PE and on outings, manage equipment, and adapt the school environment to facilitate safety and participation."
- The Parent stated, regarding the evaluation, that the PT did not assess whether the Student could walk any specific distance, in particular long distances.
- The Student's health plan indicated she used a walker and a wheelchair—"Uses a walker at school. For smaller classrooms staff may park the walker and allow [her] to walk in the class. Walker is used [f]or longer distances such as between classes and wheelchair for long-distance activities and off campus trips that involve a lot of walking. Allow rest breaks as needed. [Student] must wear her AFOs when walking."
- The prior written notice documenting the May 2023 IEP meeting noted that "a lift equipped bus is needed because there are times when [the Student] may need to use a wheelchair at school (tired, field trips)."
- The Case manager provided information that in the previous year during PE class, the Student would walk from the classroom down to the track and at least one lap around the track with breaks. The case manager stated, "I let since she was able to do that walk at the [high school], she could make the walk to [lunch outing spot]. It would be about a 15-minute walk...I let [paraeducator] know to give her breaks."

It was not initially clear that the transition academy programming was inappropriate for the Student with respect to walking and mobility. And, while the Parent stated, "I approved a wheelchair to be used only in specific cases such as periodic field trips, and only during activities involving long distances. I did NOT approve use of a wheelchair as transportation to and from destinations off campus" (emphasis in original); OSPI finds that the IEP team could not have known at the time the IEP was developed and in the early fall that the Parent would object to the use of a wheelchair as proposed by the District to access the community outings.

In the fall, initially in response to inquiries and information from the case manager about walking to the daily outings, the Parent responded that the Student could "walk around a store, a neighborhood, or a small park." For longer walks, the Parent stated she uses her wheelchair. Following an incident on September 19, 2023, where the Student struggled to complete the walk to and from the daily outing, developed a painful blister, and stopped/"dropped to the ground" in an intersection, the Parent began raising concerns about the amount of walking required at the transition academy and whether that was appropriate for the Student.

The District attempted to problem solve by proposing the use of the Student's wheelchair to transport to and from community outings and/or if the Student got tired and using the Student's walker for shorter distance. However, while the Parent agreed that they could use the Student's wheelchair until the blister healed, the Parent objected to the ongoing or regular use of the wheelchair as the Student tended to become dependent and the wheelchair and would become resistant to walking.<sup>1</sup>

The Parent also raised concerns about the Student being exposed to allergens at community outings (e.g., at restaurants) and at the job site. In late October 2023, the Parent requested that the Student's IEP be amended to "remove any requirements for her to work and train at job sites off-campus and in the community." In November 2023, the Parent's expressed that the transition academy's vocational track was not appropriate for the Student. The Parent also provided the District with a doctor's letter in December 2023, stating:

It is highly unlikely that [Student] will be employed in a job after she leaves school, due to barriers from her disabilities and health, that includes issues with communication, physical ability and behavior issues. [Student] should not participate in job skills training activities. Her transition services should focus on specialized instruction, including communications, and therapies (such as occupational therapy) and limited vocational skills (such as sorting to help with fine motor skills), which offer therapeutic rewards that impact her functioning in everyday life...

The Parent additionally raised concerns and provided letters from the Student's doctor, indicating the Student would benefit from five days a week of instruction, versus the four day a week structure of the transition academy. For example, a letter from the doctor stated that the Student would "benefit from 5 days of school...to provide an environment where she continues to learn social adaptive skills, refine learned skills, as well as preventing regression of newly learned skills."

The District provided information that in general, the "our high school programs are designed for students to work towards and complete credits and other requirements as part of their graduation pathway" and that students who have completed their credit requirements may receive transition services at the transition academy, based on IEP team decision making. The District provided information that there are students in the District who stay at the high school through age 21 and that the District considers "a student's strengths and needs, and their post-secondary goals and determine if it is appropriate to move towards a community-based program or remain in a more academic setting at their high school." Additionally, OSPI notes that there is no requirement that 18-21 transition services programming be a full day of instruction or necessarily modeled on a typical high school schedule. Transition services are individualized based on the needs of the student, with some students participating in full day programming, some students participating in only job coaching, etc. In the Student's case, the Student had met her credit requirements and the

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<sup>1</sup> The Parent obtained a letter from the Student's doctor in December 2023, which in part stated the Student should avoid walking for long periods of time, avoid exposure to "the elements outdoors," and that the Student should "only use a wheelchair as instructed by her family and legal guardians. Use of a wheelchair should be minimized in order to avoid dependence on it. [She] should be transported by vehicle to locations off-site."

IEP team “felt that she was a strong candidate for supported employment and to access community activities and as a result, recommended the transition program.”

Once the Parent raised the above concerns, the IEP team should have and did convene to discuss and attempt to address those concerns. The Student’s IEP team met on October 6, 2023, and based on this IEP meeting, no changes were made to the IEP or the Student’s programming. The IEP team explored what the Student’s day would look like if she did not attend community outings. Although, the District staff shared that it was beneficial for the Student to participate with other students in the outings and that the Student seemed “happier, more focused and engaged in tasks/activities.” Following the meeting, the Parent continued to raise concerns and ask questions, and another IEP meeting was scheduled. On November 3, 2023, the Student’s IEP team met again to discuss the Parent’s concerns and the Parent’s request to have the Student attend a District high school instead of the transition academy. District staff again shared that the Student seemed “more focused and engaged in activities/tasks at the [transition academy]...displays less behaviors...[and] there has been a significant decrease in the frequency of AFO removal.”

Overall, the investigation shows that the Parent continues to have concerns and that there is not necessarily consensus between the Parent and District members of the IEP team. The District maintains that the full transition academy programming is available to the Student, is the appropriate setting for the Student, and provides the Student with a free appropriate public education (FAPE). The District proposed holding a mediation, but to date, the Parent has not agreed to participate in the mediation. The Student’s annual IEP is due in May 2024, meaning another IEP meeting to develop the annual IEP will need to be held in the next month.

OSPI finds that the transition services were appropriate when the IEP was developed in spring of 2023. While legitimate concerns were raised by the Parent in the fall of 2023, the District has appropriately responded, holding multiple IEP meetings, and offering several ideas for solutions, such as utilizing the Student’s wheelchair to facilitate participation in outings. Ultimately, the District agreed to many of the Parent’s requests, discussed below, but did not agree to change the location of the Student’s services to the high school. OSPI finds no violation with respect to the development of the IEP.

OSPI does note that the Student’s IEP team does need to continue discussing the concerns to see if there is a collaborative solution that can be reached and highly recommends the consideration of the following for the Student’s annual IEP meeting. This is especially important given that while the IEP team accepted many of the Parent’s requests, as discussed below, this has limited the programming the Student is able to participate in. First, some of the statements in the doctor’s letter do not align with earlier information that indicated the Student went for walks outdoors and that periodic use of the wheelchair did occur. OSPI finds this information should be treated as new information about the Student’s needs and should be considered by the IEP team. OSPI believes the IEP team could still consider whether there are other creative solutions—for example, could the team explore provision of SDI through a different work site that limits exposure to allergens; can the team explore a compromise or combination of methods of transportation to facilitate participation in outings, and if dependence on the wheelchair is a concern, does the Student required additional instruction in support in behavior or skills to help her determine when

the wheelchair or walker is the appropriate support; and with the new information, would the Student be better served at the high school?

Procedural Concerns: The Parent also raised allegations related to IEP development procedures; for example, the Parent raised concerns that no one took notes at the IEP meetings and that this resulted in the prior written notices not being sufficiently detailed. While taking meeting minutes or notes is a best practice, there is no requirement in Washington special education regulations to take notes. And the District provided sufficiently detailed prior written notices, attaching, at the Parent's request, copies of her emails and the District included additional items raised by the Parent in the prior written notice.

The Parent also alleged that the IEP team did not "vote" on the Parent's requests, and that one member of the IEP team "attempted to represent and vote on behalf of other IEP team members." OSPI notes that while the IEP team should work toward consensus, the district has ultimate responsibility to ensure that the IEP includes the services that the student needs to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." However, in the event a team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

Overall, OSPI finds the District followed procedures with respect to holding IEP meetings and documenting the meetings in prior written notices.

**Issue Two: IEP Implementation in the LRE** – The Parent alleged that following a November 2023 change in the Student's programming at the transition academy, that the transition academy was not the Student's least restrictive environment (LRE) now because she "no longer partakes in the main distinctive parts of the Transition Academy's programming" and the Student:

Now spends LESS time with her teacher and classmates with disabilities, and practically no time with other people without disabilities besides the teaching staff. She's isolated on a small campus (with a few rooms) in a corner wing of [the building], with a small, fenced-off yard that she sometimes goes out to with an aide, when the weather is nice enough.

School districts shall ensure that the provision of services to each student eligible for special education, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Here, the Student's IEP indicated she would spend approximately 62% of her time in a general education setting. However, after the Parent raised concerns about the Student's transition services at the transition academy, the Parent requested the Student not participate in the job training and community outing portions of the programming. According to the Parent, these requests were agreed to. A January 18, 2024 prior written notice documented that the Parent

requested and the District agreed to the Student not participating in community outings that require her to walk long distances (due to mobility concerns, walking, and use of public transportation), not rely on the wheelchair, and not participate in job skills trainings or worksite (concern around allergy exposure). Around November 13, 2023, the Student, according to the Parent, "began focusing her special education and transition services on school curriculum, lessons and activities that target her IEP goals, communications, and provide therapeutic-related benefits that are most appropriate for her." This necessitated reorganizing the Student's schedule and meant she was not longer accessing the community, which provided the general education setting and access to nondisabled individuals.

The District maintained that the transition academy's full programming provides the Student:  
access to the community and functional opportunities to be with non-disabled members of the community in real life situations...Indeed, the Transition Academy provided Student more general education access than identified in her IEP addressing her services in [previous state] or at [high school]...

Agreeing to the Parent's requests thus puts the District in a challenging position—on the one hand, the District has held multiple IEP meetings with the Parent to discuss and try to address concerns and has prioritized the Parent's requests in the interest of the Student's health and safety needs. On the other hand, the Student's new schedule does mean she is more isolated and that her IEP is not being implemented as written, as the IEP continues to call for the Student to be in a general education setting around 62% of the time and has a transition plan with employment and community access goals.

The Parent requested that the Student attend the District high school and receive transition services there, instead of the transition academy, and that this would be the Student's LRE. However, it is not clear that this is necessarily the case. When the Student transferred into the District and attended the high school in spring 2023, she was placed in self-contained special education program, with less access to a general education setting (the Student only accessed a general education PE class in spring 2023). Additionally, given the transition services in the Student's current IEP, it is not clear if it would be appropriate to provide such services in the high school setting. OSPI believes that the transition academy may continue to be appropriate, potentially with modifications or accommodations around transportation to mitigate concerns around walking and mobility and consideration of other job skills opportunities or job sites to mitigate concerns around allergens.

Thus, while the Student's IEP is not currently being implemented in the LRE written in the IEP, this is largely due to the Parent's requests and OSPI does not fault the District for continuing to try to work with the Parent and address concerns. The Parent and District continue to disagree about the best location to provide the Student her transition services; however, disagreement does not necessarily indicate there has been a violation of special education law. Given that it is not clear providing services in the high school setting is more appropriate than the transition academy, OSPI does not find an IEP implementation or LRE violation. That being said, the current IEP, the transition academy programming, and the Student's needs may no longer align. Thus, the District must address this at the Student's upcoming annual IEP meeting.

**Issue Three: Transportation** – The Parent alleged the District failed to implement the transition portion of the Student’s IEP when it failed to provide a “school bus or van to transport her to and from destinations off campus” for job trainings and community outings. Instead, the Parent stated the Student had to walk on community outings and was injured.<sup>2</sup>

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.

According to the Parent, between March and June 2023, the Student was transported via bus or van to and from destinations off campus and therefore, the Parent believed a school bus or van would be provided to her at the transition academy. And the Student’s IEP included the following as part of her transition plan: “Upon leaving public school [Student] will participate in age-appropriate community-based outings two times a week...Specially designed instruction in daily living skills including using public transportation and school van/bus to increase skills out in the community.” The Parent stated this meant the District should have provided transportation for all daily outings.

The documentation and investigation show that as part of the transition academy, students went on daily, local community outings. In general, the students walked to these outings. Other documentation shows that for field trips to locations further away, students would use public transportation. The District stated in its response that, “To the extent Parents are alleging that the District failed to provide Student a van or other District transportation during the school day, the District denies that such service was required by Student’s May 2023 reevaluation or her May 2023 IEP.” (Emphasis in original.) The District clarified that daily living skills generally include a variety of skills that students need to learn to be as independent as possible. In the Student’s case, the District stated that daily living skills included:

[O]utings in the community (where she can learn how to access transportation, navigate to different places in the community, order meals and pay for them in a restaurant, obey traffic signs and travel safely), and receiving specially-designed instruction in the program [including the following]:

- Outings: walking to lunch outings and volunteer work sites, and daily movement breaks.
- In program: money skills, folding clothes, sweeping, self-care, reading weather report, making a shopping list, tracking appointments on a calendar.
- Transportation for outings are based on distance and student's accessibility needs. For example, Student's work site is across the street, the lunch outings are within walking distance, and recreational activities such as bowling and swimming have district transportation provided.

Services provided include: specially-designed instruction for new skill development and individual support and coaching within community settings to practice and further develop independence.

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<sup>2</sup> The Student’s IEP also contained other transportation provision, including special transportation to and from school, which included a lift bus, seatbelt with buckle guard, and climate control. The Parent did not make allegations with respect to the implementation of these provisions.

With respect to the Student's participation in community outings, the case manager stated on or around September 18, 2023, "We do a lot of walking and am wondering if you think she should bring her wheelchair to school...We will also be taking the bus and might be using a van occasionally. For the walking activities do you think she will be okay with just her walker?" The District did not have a van at the transition academy, and notes from the October 6, 2023 IEP meeting indicate that "walking and navigating the bus line is part of the [transition academy]."

Thus, to address implementation, it is necessary to determine what this provision of the Student's IEP meant: "Specially designed instruction in daily living skills including using public transportation and school van/bus to increase skills out in the community." 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 student with a disability and those required by the IEP.

OSPI finds that this part of the Student's transition services did not indicate that a District van or bus would be used for every single outing, but rather that instruction would be provided to the Student to help her learn how to navigate different means of transportation to access the community. This portion of the IEP implies that a school van or bus would be used at times, which appears to have only occurred with an occasional field trip. In part, this was because, as the District noted, daily outings were within walking distance and the Student's job site was across the street. At the same time, the provision in the IEP was broader than learning transportation skills—the IEP states daily living skills, including using transportation, which implies the daily living skills were broader than and not limited just to transportation—and the investigation shows that overall instruction in daily living skills has been provided and the Student has the opportunity to continue working on learning skills around navigating transportation as the school year continues.

Overall, OSPI finds that the Student's IEP did not require daily bus or van transportation for every single outing; instead, it required the District to provide specially designed instruction in daily living skills, part of which was around using and navigating transportation. And the District provided instruction in daily living skills. OSPI finds no violation.

That being said, the District members of the IEP team and the Parent have a different understanding about what the Student's transition plan goals and services mean. OSPI strongly recommends that the team further discuss the Student's transition plan, goals, and services at her annual IEP meeting in May 2024 with the goal of arriving at a shared understanding of what the goals mean and what associated services should be provided. Additionally, the IEP team should explore whether the IEP should specify whether transportation is needed to facilitate the Student's participation in daily outings in future. OSPI notes that the term "transportation" as defined includes travel in and around school buildings, if required to provide special transportation for students eligible to receive special education services. 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.

## **CORRECTIVE ACTION**

By or before **June 7, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

### **STUDENT SPECIFIC:**

#### **IEP Meeting**

By or before **May 31, 2024**, the Student's IEP team, including the Parent, will meet. At the meeting, the IEP team must address the Student's postsecondary goals and amend the goals to ensure they are specific, reflect the Student's interests, and align with the Student's needs.

By or before **June 7, 2024**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) the Student's IEP; and d) any other relevant documentation.

OSPI also strongly recommends the IEP team consider the following at the Student's annual IEP meeting:

- Consider the information in the December 2023 doctor's letters and how it aligns with other Student-specific information.
- Explore creative solutions; for example, could the team explore provision of SDI through a different work site that limits exposure to allergens; can the team explore a compromise or combination of methods of transportation to facilitate participation in outings, and if dependence on the wheelchair is a concern, does the Student require additional instruction in support in behavior or skills to help her determine when the wheelchair or walker is the appropriate support; and with the new information, would the Student be better served at the high school?
- Further discuss the Student's transition plan, goals, and services with the goal of arriving at a shared understanding of what the goals mean and what associated services should be provided.
- Explore whether the IEP should specify whether transportation is needed to facilitate the Student's participation in daily outings in future.

### **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 26th day of April, 2024

Dr. Tania May  
Assistant Superintendent of 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.)