

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-65

PROCEDURAL HISTORY

On April 29, 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 Seattle 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 April 29, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 30, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On May 17, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

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

ISSUE

1. Whether the District implemented the Student's individualized education program (IEP) special education transportation to extracurricular activities since March 2024?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). "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 student'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).

Extracurricular Activities: Districts must ensure that students eligible for special education participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of each student. 34 CFR §300.117; WAC 392-172A-02065.

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments affect the student's need for transportation. Included in this consideration is whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or from getting to school in the same manner as nondisabled students. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the

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

FINDINGS OF FACT

1. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of hearing impairment, was in the seventh grade, and his December 2022 individualized education program (IEP) was in effect.

2. The December 2022 IEP included transportation.

The District stated, in its response, that the Student was provided transportation between school and home because he attends a school that is not his “attendance area school.”¹ The District stated it agreed that the Student requires transportation between home and school in order to access the special education services in his IEP.

3. The District’s 2023–24 school year began on September 6, 2023.

4. On December 5, 2023, the Student’s IEP team met and developed the Student’s annual IEP. The IEP continued to include transportation, per team agreement, due to his attendance at the school, which was not his “attendance area school.” The IEP indicated the Student “can participate in all non-academic and extracurricular activities.”

The prior written notice documenting the meeting stated that there was a no-contact agreement between another student and the Student and that “it is agreed that [Student] will participate in soccer while the other student will have basketball.”

5. The District stated that the IEP,

Does note that he can participate with general education peers for extracurricular activities, it does not include playing on the [school] soccer team as part of his offer of special education and related services. Finally, the prior written notice indicates the team discussed ensuring [Student] was not playing the same sport as another student; but, while soccer is mentioned, it is not in the context of [Student] needing to be on the soccer team as part of his special education program.

6. The Student rode the bus to school and home. The Student’s bus transported five students to the school, a mix of students eligible for special education services and students without IEPs.

7. On March 19, 2024, the Parent emailed the school athletic coordinator to sign the Student up for the school soccer team. The Parent asked about the days and times of soccer practice so that she could “arrange for transportation.” In a subsequent email to the District, the Parent requested the District set up transportation for the soccer season.

¹ The District stated, “[school] is an option school that students from various parts of the District attend. It is not considered an attendance area school where students are assigned based on their address.”

8. The District stated that soccer practices were held on Tuesdays and Fridays from 2:30 to 4 pm, at the school.
9. Also, on March 19, 2024, District staff discussed the transportation request, and a District transportation specialist stated the District does not provide extra bus trips for extracurricular activities. The specialist noted that transportation is provided for students who have certain after school or off campus services in their IEPs or if all students are also provided with transportation services.
10. Later, on March 19, 2024, the District emailed the Parent back and stated, “[District] is not able to provide transportation for [Student] for soccer since he is on a bus this year. They will not provide extra or special bus trips to accommodate for sports.”
11. The District was on spring break April 8 through 12, 2024.
12. On April 29, 2024, OSPI received the Parent’s complaint. In her complaint, the Parent stated the Student’s IEP stated he would have special education transportation and that, that included extracurricular activities. The Parent alleged the District failed to provide the Student transportation to an after school, school sponsored soccer team.

CONCLUSIONS

Issue: Provision of Transportation – The Parent alleged that the District failed to provide the Student transportation to an after school, school sponsored soccer team. The Parent stated in her complaint that the Student’s IEP included special education transportation and that, that meant transportation should be provided for extracurricular activities.

A district must materially implement students’ IEPs, including transportation if part of an IEP, and must ensure that students eligible for special education participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of each student. Regarding transportation, an 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.

Here, the Student’s IEP did include special transportation and the District explained the IEP team agreed the Student requires transportation between home and school in order to access the special education services in his IEP because the Student attended a school that is not his “attendance area school.”² The Student rode a bus between school and home, along with several other students on the same bus, both students with IEPs and students without IEPs.

² The District explained the Student’s “[school] is an option school that students from various parts of the District attend. It is not considered an attendance area school where students are assigned based on their address.”

On March 19, 2024, the Parent signed the Student up for the school soccer team and requested the District adjust the Student's transportation to account for soccer practice, which was on Tuesdays and Fridays from 2:30 to 4 pm. The District declined to provide transportation and informed the Parent of this, stating, "[District] is not able to provide transportation for [Student] for soccer since he is on a bus this year. They will not provide extra or special bus trips to accommodate for sports." The District and internal emails noted that the District does not provide extra bus trips for extracurricular activities. The transportation specialist noted that transportation is provided for students who have certain after school or off campus services in their IEPs or transportation is provided to extracurriculars for all students.

While the Student's IEP did note that the Student "can participate in all non-academic and extracurricular activities," it did not include any information that the IEP team had determined any particular extracurricular activity was part of the Student's FAPE. Rather, the Student was able to participate in extracurricular activities generally. Additionally, while the prior written notice issued after the December 2023 IEP meeting mentioned soccer, this was in the context of a no-contact agreement between another student and the Student, and the prior written notice stated that "it is agreed that [Student] will participate in soccer while the other student will have basketball." OSPI does not find that this is sufficient to show the IEP team agreed soccer was part of the offer of FAPE to the Student and that, thus, special transportation was needed. OSPI notes that if the Parent believes the Student's participation in soccer is part of FAPE and that special education transportation is required, the Parent should request an IEP team meeting and the IEP team should discuss. Overall, however, OSPI finds no violation based on the Student's current IEP.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 26th day of June, 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.)