

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-27

PROCEDURAL HISTORY

On March 8, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from an attorney¹ (Complainant) representing the parent (Parent) of a student (Student) attending the Issaquah 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 March 8, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On March 21, 2022, the District requested an extension of time to respond to the complaint. OSPI granted the extension to April 1, 2022.

On March 28, 2022, OSPI received the District's response to the complaint and forwarded it to the Complainant the same day. OSPI invited the Complainant to reply.

On April 1, 2022, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

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

ISSUE

1. Does the transportation arrangement in the Student's December 2021 individualized education program (IEP)—and associated District transportation policy—provide or fail to provide the Student a free appropriate public education (FAPE)?

LEGAL STANDARDS

Specialized Transportation as a Component in the IEP: If transportation is included in the student's individualized education program (IEP) as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. 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).

Transportation: Transportation options for students eligible for special education services shall include the following categories and shall be exercised in the following sequence: a scheduled school bus, contracted transportation, other transportation arrangements, including that provided

¹ OSPI notes the Complainant provided a release of information signed by the Parents in the complaint, giving OSPI permission to share Student records with the Complainant.

by parents. WAC 392-172A-02095. A district shall contract with the parent, to pay the lesser of the following in lieu of transportation by the district: Mileage and tolls for home to school transportation (in whole or part) for not more than two necessary round trips per school day, unless additional trips are required due to the provisions of the student's individualized education program; or Mileage and tolls for home to school transportation for not more than five round trips per school year, plus room and board. The in lieu of transportation mileage which a district is hereby authorized to pay shall be computed as follows: by multiplying the actual road distance from home to school (or other location specified in the contract) with any type of transportation vehicle that is operated for the purpose of carrying one or more students by the maximum rate of reimbursement per mile that is authorized by law for state employees for the use of private motor vehicles in connection with state business. WAC 392-141-350.

FINDINGS OF FACT

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of other health impairment and was in middle school.
2. On December 10, 2021, the Student's individualized education program (IEP) met and developed an IEP. The Student's IEP team placed the Student at a nonpublic agency (NPA). In relevant part, the IEP included that the Student was to receive special transportation with both the "regular district transportation guidelines apply" box checked "no" and the "special transportation is required to and from schools and/or between schools" box checked "yes".

The IEP stated the transportation plan was as follows: "Transportation will be provided by parents in-lieu and will receive reimbursement from [District]. [District] will pay for 1 round trip to and from school per day. We only reimburse the distance during which the student is in the car, similar to a taxi service." The IEP implementation date was December 15, 2021.

3. According to the complaint and December 10, 2021 emails from the Parent, the Parents told the IEP team they believed the Student would do better in school if the Parents drove the Student due to his anxiety, rather than using District transportation. The team discussed transportation at the IEP meeting. The Complainant stated the District said it would reimburse the Parents for transporting the Student, but that the number of daily trips to be reimbursed was not discussed at the IEP meeting. The Complainant stated that the Parents first saw the language about the number of trips in the IEP when they received a copy of the finalized IEP after the December 10, 2021 meeting.
4. The Parent's complaint alleged that the District's policy to only reimburse one round trip to and from school per day was a denial of the Student's free appropriate public education (FAPE) and that the Parents should be reimbursed for two round trips per school day the Student attends the NPA.
5. Regarding transportation, the District stated in its response the following, summarized:
 - The District accepted responsibility for transportation as the NPA placement decision was an IEP team decision.

- District transportation was offered to the Parents, but the Parents asked if they could transport the Student as he has high anxiety and they “felt it would be best for the [S]tudent.”
- District agreed to “‘in-lieu’ transportation to reimburse parents mileage” and stated the District would “take over transportation” anytime.
- The District noted the Student has not participated in District transportation, and “as such we have no data on the level of anxiety or if this would be a barrier for us transporting.”
- The District was operating under OSPI general transportation guidelines to provide reimbursement for “parent transportation when agreed through IEP process or settlement for one round trip per day.”
- The District’s director of transportation recently learned from the OSPI regional transportation coordinator that “this rule has recently changed” and that the District “may reimburse both round trips to parents, effective immediately.”

The District stated it stands ready to reimburse the Parents for both round trips.

6. On December 13, 2021, following the Parent’s request for transportation reimbursement, the District’s special services secondary director (secondary director) emailed the Parents, stating that the District would email the Parents the “in-lieu of forms for transportation.”
7. Also, on December 13, 2021, the secondary director’s assistant emailed the Parents and sent them the mileage reimburse form, noting the form needed to be returned to the transportation department monthly.

The District’s mileage transportation form included the following statement on the form: “District] will pay for 1 round trip to and from school per day. We only reimburse the distance during which the student is in the car, similar to a taxi service.”

8. The District was on winter break from December 20–31, 2021.
9. On January 14, 2022, the special education teacher emailed the Parents a copy of the IEP that was developed at the December 2021 meeting.
10. According to the complaint, the Parents, through their attorney, explained to the school that they work from home and therefore need to leave home, drive to school, then return home twice each day, and they believe they should be reimbursed for two round trips each day.
11. On February 10, 2022, the Student’s IEP team met. According to the prior written notice, the team discussed the Student’s progress at the NPA and added a math class to the Student’s schedule. The prior written notice also included the language from the IEP related to transportation under “other factors that are relevant to the action,” stating:
 [District] offered to provide the student’s transportation. Parents have chosen to receive mileage reimbursement in-lieu of District transportation. Parents will provide transportation and will receive reimbursement from [District]. [District] will pay for 1 round trip to and from school per day. We only reimburse the distance during which the student is in the car, similar to a taxi service.

The transportation section of the February 2022 IEP was the same as the transportation section of the December 2021 IEP.

According to the complaint, the Parents tried to explain that the Student could not take District transportation due to "extreme anxiety issues" and that the District's special services director of District programs (director) attended the meeting and stated they could not discuss transportation as she is not the "decision maker" on transportation. According to the complaint, the director stated the District attorney would work with the Parent's attorney regarding the transportation concern.

12. On March 25, 2022, the District's director of transportation emailed the District's executive director of special services the following information from the Washington Administrative Code (WAC), in relevant part:

WAC 392-141-350. Authorization and limitation on district payments for individual and in lieu transportation arrangements.

Districts may commit to individual transportation or in lieu arrangements subject to approval by the educational service district superintendent or his or her designee. The following arrangements and limitations apply:

(1) A district shall contract with the custodial parent, parents, guardian(s), person(s) in loco parentis, or adult student(s) to pay the lesser of the following in lieu of transportation by the district:

(a) Mileage and tolls for home to school transportation (in whole or part) for not more than two necessary round trips per school day, unless additional trips are required due to the provisions of the student's individualized education program; or

...

(2) The in lieu of transportation mileage, tolls and board and room rates of reimbursement which a district is hereby authorized to pay shall be computed as follows:

(a) Mileage reimbursement shall be computed by multiplying the actual road distance from home to school (or other location specified in the contract) with any type of transportation vehicle that is operated for the purpose of carrying one or more students by the maximum rate of reimbursement per mile that is authorized by law for state employees for the use of private motor vehicles in connection with state business...

CONCLUSIONS

Issue: Transportation – The Complainant alleged the District's policy to only reimburse one round trip to and from school per day was a denial of the Student's free appropriate public education (FAPE) and that the Parents should be reimbursed for two round trips per school day the Student attends the nonpublic agency (NPA).

If transportation is included in the student's individualized education program (IEP) as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. Transportation can include agreements to reimburse a parent for mileage in lieu of district provided transportation.

Here, there is no dispute that the Student's IEP team agreed to place the Student at an NPA, agreed the Student required special transportation, and that the District was ultimately responsible for transporting the Student to the NPA placement. There is also no disagreement over the fact that the Parents requested to drive the Student due to their belief that this would be better for the Student due to his anxiety, and that the District agreed to reimburse the Parents for mileage in lieu of District provided transportation.

The disagreement here comes down to the amount of the reimbursement. The District's policy, as evidenced by statements in the December 2021 IEP, mileage reimbursement form, and February 2022 IEP and prior written notice was as follows: "[District] will pay for 1 round trip to and from school per day. We only reimburse the distance during which the student is in the car, similar to a taxi service." The District stated that its policy was based on OSPI transportation fiscal guidance, but that the District had learned recently that the rule has changed, and that districts may reimburse both round trips.

While OSPI does not directly enforce WAC 392-141-350 through the complaint process, given that the IEP team agreed to reimburse the Parents for transportation, it is necessary to address this WAC as it directly relates to the situation. The WAC expressly allows the District to reimburse "two necessary round trips per school day" or additional trips if they are "required due to the provisions of the students [IEP]." Further, if special transportation is included in an IEP as a related service, the District must ensure the transportation is provided at public expense and at no cost to the parents. The Student's IEP obligated the District to provide transportation at no cost, which here, because the Parents had to make two round trips, would have been to reimburse for both trips regardless of whether the Student was in the car as otherwise the Student would not have been able to access his educational placement. Given that FAPE must be provided at public expense and the relevant transportation WAC, OSPI finds a violation. The District will be required to update its reimbursement policy and associate materials based on WAC 392-141-350, amend the Student's IEP, and provide reimbursement (including retroactive) to the Parents. The District will also be required to identify any other families of students with IEPs this impacts and determine if additional reimbursement is needed.

CORRECTIVE ACTIONS

By or before **May 6, 2022, May 20, 2022, and June 17, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Reimbursement

By or before **May 6, 2022**, the District will notify the Parents that they will be reimbursed for both round trips moving forward and provide the Parents with any forms or materials the Parents need to fill out for a retroactive reimbursement from January 2022 until present/any one trip reimbursements. The District will copy OSPI on this communication.

By or before **June 17, 2022**, the District will provide OSPI with confirmation that the Parents have been provided the retroactive reimbursement. This could be documentation from the District's business office or a copy of the check.

IEP Amendment

By or before **May 16, 2022**, the District will amend the language in the Student's IEP regarding the transportation plan and reimbursement so that it reflects the arrangement to reimburse for two round trips. If the Parents agree, this amendment could occur without a meeting. However, if the Parents want a meeting, the IEP team should meet.

By or before **May 20, 2022**, the District will provide OSPI with a copy of the amended IEP and associated prior written notice.

DISTRICT SPECIFIC:

Reimbursement Policy & Materials

By or before **June 10, 2022**, the District will update the District's reimbursement policy and will identify and update any necessary materials that refer to the District's reimbursement policy, including the District's mileage reimbursement form.

By or before **June 17, 2022**, the District will send OSPI the updated policy, updated mileage reimbursement form, and examples of any other materials that were updated.

Identify Other Impact Families

By or before **May 6, 2022**, the District will identify whether any other families are impacted in the change in policy around parent reimbursement in lieu of transportation. The District will identify next steps for these families, for example, whether retroactive reimbursement is needed or whether the families need to be notified of the change.

By or before **May 20, 2022**, the District will provide OSPI with a list of impacted families and the identified next steps.

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 ____ day of April, 2022

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