

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-82**

### **PROCEDURAL HISTORY**

On July 1, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the father (Father) of a student (Student) attending the [REDACTED] School District (District). The Father alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On July 6, 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 July 13, 2022, OSPI received additional information from the Father. OSPI forwarded a copy of that information to the District on July 14, 2022.

On July 27, 2022, OSPI received the District's response to the complaint and forwarded it to the Father on August 1, 2022. OSPI invited the Father to reply.

On August 12, 2022, OSPI received the Father's reply. OSPI forwarded that reply to the District on August 15, 2022.

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

### **SCOPE OF INVESTIGATION**

Any information included from events prior to the 2021–2022 school year is mentioned for informative, background purposes only.

### **ISSUES**

1. During the 2021–2022 school year, did the District properly implement those portions of the Student's individualized education program (IEP) that related to transportation?
2. Regarding the specific determinations made on or about June 8, 2022, did the District follow proper IEP development procedures in determining the Student's transportation needs resulting from the Student's disability, including consideration of the least restrictive environment appropriate for the Student?
3. In determining the Student should be educated at School 1, did the District properly consider the requirements of WAC 392-172A-02060(3)?

### **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. 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. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 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 [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments 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).

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 by parents. WAC 392-172A-02095(1). Wherever reasonably possible, no student should be required to ride more than sixty minutes on way. WAC 392-172A-02095(5).

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.

LRE in Nonacademic Settings: In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, each public agency must ensure that each student eligible for special education services participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the

needs of that student. The public agency must ensure that each student eligible for special education services has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings. WAC 392-172A-02070.

Location of School: Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home. WAC 392-172A-02060(3).

## FINDINGS OF FACT

### 2020–2021 School Year

1. At the start of the 2020–2021 school year, the Student was eligible for special education services under the category of autism, was in the first grade, and attended a District elementary school (school 1).
2. The Student's January 2021 IEP noted: the Student required special transportation; school 1 "is the school closest to Student's home address listed in PowerSchool that had Access program capacity"; and the Student required the following accommodation: "Transportation – Special: Booster Seat for Safety: Twice Daily: Bus." The January 2021 IEP read, in part:
  - General Education Teacher Report**...Student is a delightful first grade student who attends class regularly and participates enthusiastically in online learning. She often logs in early for class and visits with other students before school each morning which is a pleasure to see. She enjoys sharing things from home with her classmates including books she has written, pictures she has drawn.
  - ...
  - Adverse Impact Summary**...Student's qualifying area of social/behavior affects her ability to sustain her participation in play with peers, join groups of peers to play, respond to non-verbal social cues, and follow directions the first time.
  - ...
  - Communication**...Student is a very friendly and sociable girl. Student can present with echolalic speech, where she may repeat scripted phrases. Family is hoping that Student can engage in more social time where she can practice engaging with others, while being supported to expand her social expressions and creative language which ultimately will enrich her conversations.
  - ...
  - Social/Behavior**...Student continues to thrive when she has a predictable and consistent schedule.

### Summer 2021

3. On August 11, 2021, the District's transportation specialist emailed the Father to determine whether the Student would need a car service from his address to school 1 in the upcoming school year. The Father responded on August 14, 2021 that at least due in part to COVID

infection numbers in the community, the Father had requested enrollment “in the online pilot program.”

4. On August 30, 2021, an arbitration decision was entered concerning various disagreements between the Father and Mother under a family law order. The August 2021 arbitration decision read, in part:

[A previous family law order reads] as follows: ‘the parties have ongoing conflicts [and] disagreements regarding education choices for the minor child...The provision at issue here is not new and is found in the...2017 Parenting Plan which states: ‘School placement for the 2018/2019 school year and following years are subject to joint decision-making.’

After considering the submissions and arguments of the parties, with specific attention to the language in [the foregoing] provision, this arbitrator cannot find the provision is intended to be interpreted for the parents to engage in decision-making every year regarding the school student will attend. Such an interpretation is contrary to the basic tenet of the Parenting Act that a parenting plan is altered only to the extent necessary to protect the child from physical, mental, or emotional harm.

...

Here, student has attended [school 1] since 2019. Student is autistic and has an IEP in place to meet her educational needs. By the reports provided, Student likes her teachers and she is making friends. She had a difficult year last year with remote learning due to COVID... Neither parent submitted a recommendation from Student’s pediatrician or another one of her providers, that she should change to a different school. [Additionally], neither parent submitted a recommendation [from] one of Student’s teachers that Student [should go] to a different school...This arbitrator finds it is in Student’s best interest to continue attending [school 1], where Student has established a relationship with the teacher and students...A vital benefit to remaining in a [particular] school long-term is the consistency and stability child has from knowing the teachers, making long-term friendships and relationships, and having a sense of belonging, of safety and family. Therefore, Student will continue attending [school 1] and will do so in-person.

However, given the current status of all teachers not yet being fully vaccinated, if both the District and [school 1] agree, Student may do remote learning from father’s home during his residential weeks through October 29, 2021, while Student attends in-person from others home on her residential weeks. Thereafter, Student will attend [school 1] during father’s residential weeks. If both the District and [school 1] do not agree to this short-term arrangement, Student shall attend in person from both homes beginning September 1, 2021.

### **2021–2022 School Year**

5. The District’s first day of school was September 1, 2021.
6. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services under the category of autism, was in the second grade, and attended school 1. At that time, the Student’s January 2021 IEP was in effect.

The address for the Student’s elementary school was: [REDACTED]

7. The District’s response included the following information on the Student’s attendance during the 2021–2022 school year.

SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Overall
57.1%	80.0%	86.7%	100%	78.9%	100%	87.0%	75.0%	90.5%	76.9%	82.4%

In September 2021, the Student had nine unexcused absences.

8. According to the Father’s complaint request:

The Student’s parents are unmarried and share joint custody of Student. Under the current parenting plan dated November 22, 2017, the Student resides equally, 50% of the time with each of her parents.<sup>1 2</sup>

Her father resides at [REDACTED].<sup>3</sup>

Her mother resides at [REDACTED]

The Student’s January 2021 IEP provided for special transportation via bus. During [the 2021-2022 school year], despite multiple requests from the Father, the District refused to provide Student with bus transportation to and from [the Student’s elementary school] on Father’s custodial days...result[ing] in Student being unable to access her special education services on several occasions.

9. The Father’s residence is approximately 10.3 miles away from school 1. The mother’s residence is approximately 5 miles away from school 1.

10. The District’s response read, in part:

It is the [our] understanding that Parent objected to a car service [during the 2021-2022 school year] because he did not want Student alone with an adult, but that would be the case should she ride a bus – should a bus have been provided, Student would have been the only student on it.

...

[The] issue [of providing transportation to Student during the 2021-2022 school year was] even more compounded by the nationwide school bus driver shortage impacting school districts during [that time period].

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<sup>1</sup> The District’s response included a Parenting Plan signed by both parties and a judge, dated November 22, 2017. The Parent stated this is the current Parenting Plan. The 2017 Parenting Plan stated, in part: both mother and father have joint responsibility for educational decision-making; “the child is scheduled to reside half the time with each parent”; and “both parents are designated the custodian of the child solely for purposes of all other state and federal statues which require a designation or determination of custody.”

<sup>2</sup> The District’s response stated, during the school year, the Student switches between the parents’ respective residences on a weekly basis.

<sup>3</sup> According to emails, though, at least as of the start of the 2021–2022 school year, it appears the Father’s address was: [REDACTED]

11. On September 3, 2021, an attorney for the District emailed the Father, stating, in part, "The District is not offering a remote learning model at school 1 for the 2021–2022 school year. The only option available to students at school 1 is an in-person instructional model. As result, the District is unable to agree to have Student do remote learning from your home."

Separately, on September 3, 2021, the Father emailed the District's ombudsman, stating, in part:

On February 11, 2019, I complained...that the [taxi service] driver scared my daughter who did not want to get back in [that person's] car, upon [the driver] forcefully throwing a flat tire into the vehicle she was in. I will never put my child in a taxi again without a chaperone until she is at least 12 years of age.

12. According to the District, "On or about September 7, 2021, Father requested transportation for Student between his home and [school 1] beginning on November 1, 2021. It appears that the District's Transportation Department did not receive this request." (Emails in the District's response generally support this statement, in that, at least, the Father's request was not processed by the transportation department.)

13. According to emails: there was an IEP team meeting on September 20, 2021 to discuss, in part, the Father's concerns regarding transportation for the Student from his residence; this meeting ended before any decisions were reached due to a parental dispute concerning the import of the 2017 Parenting Plan and/or the August 2021 arbitration decision.

14. In October 2021, the Student had four excused absences.

15. According to emails, from October through early November 2021:

- Transportation department personnel communicated with each other and the Parents (both Father and Mother), in relation to setting up transportation for the Student from the Father's residence.
- The Father stated a private vehicle contractor was only appropriate if there was a chaperone present, but the District stated it did "not have monitors available."
- The District stated the Father's "address was far outside of the school 1 attendance area."
- The Father was informed by the District that the "car service drivers go through the same background checks as the yellow bus drivers."
- The District offered, as an alternative transportation method, to reimburse the Father if the Father would transport the Student to school 1.<sup>4</sup>
- Both Parents were informed the private car service would have a booster seat available for the Student's use, the District would contract with a private car service that was able to have the same individual consistently serve as the Student's driver, as well as a private car service that required its employees to be vaccinated against COVID-19, and "Student's father may ride with Student to school but he will need to find his own way home."<sup>5</sup>

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<sup>4</sup> In its response, the District noted, "It appears that Father did not accept the reimbursement offer."

<sup>5</sup> Based on an October 15, 2021 email from a special education teacher, it appears several of these clarifications and/or measures were taken in response to the Father's concerns regarding a private vehicle service.

- The private car service from the Father's residence to school 1 was scheduled to begin on October 22, 2021, and prior to this date, the private car service the District contracted with left a voicemail on the Father's phone concerning the October 22, 2021 start date for the transportation arrangement.
- On October 20, 2021, the arrangements for a private car service from the Father's resident to school 1 were cancelled; in an email, the transportation specialist wrote, "Father is uncomfortable with a car service."
- On November 4, 2021, the private car service put the Student's transportation from the Father's residence "on hold [because] it does not look like Student [had] been riding." On November 5, 2021, the District confirmed putting the private car service from the Father's residence "on hold."

16. The District was on break November 25–26 and December 20–31, 2021.

17. According to the District's response, an attempt was made for the Student's IEP team to meet in January 2022 to create a new annual IEP for the Student, but this effort was delayed several months due, in part, to: parental dispute over "the parameters" under which both parties would attend the IEP meeting; parental involvement in an arbitration process "that included resolution of [at least some of the] issues related to Student's [needed] IEP meeting"—as well as a subsequent clarification of the arbitration ruling; parental and District exploration of the possibility of holding a facilitated IEP meeting; and the Father's inability to make a meeting scheduled for May 23, 2022.

18. On February 7, 2022, the Father emailed the admissions office of the District, stating, in part:  
I am attempting to propose a change in location for the next school year, so that both households can receive transportation going forward, rather than just the Mother as it currently stands...I would like to identify what school providing ACCESS services would [also] be able to provide bus transportation to both Parents' homes for the [2022-2023] school year.

19. On April 2, 2022, an arbitration decision was entered concerning various disagreements between the Father and Mother under a family law order. The April 2022 arbitration decision read, in part:

**School Selection.** This issue was addressed [the] Arbitration Decision dated August 30, 2021 and confirmed by commissioner 1 (now judge 1) on October 1, 2021.

**Decision.** The child shall continue to attend [school 1] absent a modification. This arbitrator cannot change commissioner 1's (now judge 1's) order. The father had remedies to appeal that order. I am not aware of any revision order entered that addressed the school choice.

20. The Student's IEP team developed a new IEP for the Student on June 8, 2022. The June 2022 IEP noted, in part: the Student requires special transportation; school 1 "is the school closest to Student's home address listed in PowerSchool that had Access program capacity"; and the Student required the following accommodation: "Transportation – Special: Booster Seat for Safety: Twice Daily: District-provided transportation."

The June 2022 IEP read, in part:

**General Education Teacher Report...** Socially Student has started to wander the playground watching other students and sometimes interjecting herself to become a part of what the students are doing. She used to wander on her own for a small moment and then line up and wait for the whistle to blow. Now she is spending more time on the play structure and being more interested in what others are doing. Student is definitely more interested in making friends than she ever has been.

...

**Adverse Impact Summary...** In her qualifying area of Adaptive/Life skills Student has challenges with managing transitions [and in] managing sensory overwhelm.

...

**Adaptive/Life Skills...** Student does well in environments that offer predictable structure and routines. However, changes in routine, or a transition from one activity to another, can interfere with her learning by causing her to become anxious and dysregulated.

In relation to transportation, the June 8, 2022 prior written notice read, in part:

The team had the following discussion around transportation:

Father and his Attorney shared that special education transportation is noted on the IEP, and that they want Student to have access to a bus. They do not feel safe using a car service. It has been shared that a car service has been offered and declined. A car service was offered instead of a bus due to the distance between the Father's home and the school location.

Mother did share that she is not opposed to accessing a bus, but does worry about the pick-up time that will be required. Next steps on transportation: [District staff] will connect with transportation and get more information on the guidelines and the options for the team to consider. This information will be given to all team members via email before the end of the week.

On Friday June 10 [District staff] received [the following communication] from transportation: 'Yes, the IEP agreed to special transportation. They cannot guarantee a 'bus' and most likely would use an alternate mode of transportation b/c they would not send a 'bus' for one student. However, they also need to finish the bargaining for transportation and they would have to look at the students who are slotted for [school 1] to determine if the student could get on a route.'

According to the Father's complaint request, the foregoing prior written notice does not adequately inform him: why transportation was changed from "bus" in the January 2021 IEP to "District-provided" in the June 2022 IEP; and what is actually being proposed as the transportation method for the 2022–2023 school year. For example, the Father's complaint request read, in part:

This change however is ambiguous and does not describe the transportation arrangement to any degree of specificity. Under this language the district would have discretion to change Student's mode of transportation at will. The prior written notice issued after the meeting supports the offered transportation as being within the District's discretion as the type of transportation that will be made available to Student will vary depending on non-disability related factors such as district transportation policies, collective bargaining, and available routes from the Father's residence.

...

The regular education environment vis-a-vis transportation is a regularly scheduled school bus. Thus, when considering transportation the first consideration must be a regularly scheduled school bus.

[For Student], a private vehicle...is a more restrictive environment than a regular school bus and is not based on Student's individual needs or her personal history. There is nothing in Student's evaluation that precluded successful transportation via a regularly scheduled school bus like her typically developing peers. A regularly scheduled school bus is Student's LRE. In fact, all of Student's IEP have made provision for her to be transported via bus without exception until the June 2022 IEP...

Historically Student has been successful using bus transportation available to her typically developing peers. Between March 2017 and June 2019 Student successfully took a regular school bus to preschool from the maternal grandmother's residence. Student loves taking the school bus to school. She is excited to take the school bus. There is no reason to believe that her sensory profile has regressed since her preschool years to such an extent that it would preclude her from continued success on a school bus.

...Use of alternate transportation such as a taxi service/private car, in addition to being a more restrictive environment, is constrained by Student's impairment in social communication and adaptive skills as documented in her most recent District provided evaluation which [notes, in part, Student]: finds it difficult to 'pick up on nuanced social cues'; has difficulty managing her feelings of frustration; has difficulty following directions; has trouble 'communicating effectively with adults and peers'; and, is 'at risk in areas of social skills, functional communication, and activities of daily living.'

...

Nothing that we know about Student indicates it would be safe or prudent to put her in a taxi or car service alone without supervision. Allowing Student to enter any car without a known escort is simply appropriate given Student's unique profile. Using a taxi or car service will inadvertently model a pattern of entering cars with strangers which poses a danger to Student's social, emotional and physical wellbeing given her young age, social immaturity, and her enhanced vulnerability. In short, placing Student unsupervised into a car with strangers poses a risk to...Student.

According to the District, at the June 8, 2022 IEP meeting, "the District explained that a car service had been offered due to the distance between Father's home and school 1."

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

There is no disability related reason why Student cannot ride in a contracted car. The contracted car drivers undergo the same background checks as school bus drivers (who are also contractors) and are subject to the vaccine mandate...Even if the District could create a route with other students (which again is highly unlikely) that would likely result in a significant increase in the amount of time Student would be traveling each day and would still result in her spending most of her time on the bus alone.

22. In relation to the Student being educated at school 1 for the 2022–2023 school year, the Father's complaint request read, in part:

Because Student is a child with parents who share custody equally and who has two residences, the district should take this into consideration when [determining the appropriate school assignment under WAC 392-172A-02060(3)].

...

Based on the mother's address, Student's attendance area school would be [school 2] with a 4 minute drive time. This school does not have an ACCESS program.

Based on the father's address, Student's attendance area school would be [school 3], with a 3 minute drive time; this school also does not have an ACCESS program.

[School 1] is approximately 4.6 miles from the mother's residence and 9.1 miles from the father's residence.

The nearest elementary school to either of Student's homes which operates a program that meets her needs is not [school 1], but [school 4], which is only 1.7 miles from the father's residence.<sup>[6]</sup> The school most equidistant from both of Student's homes would be either [school 5] or [school 6], schools that both offer ACCESS services.<sup>[7]</sup>

...

The assignment [of Student to school 1 for the 2021-2022 school year] appears to be more based on the mother's employment as a special education teacher at school 1 than on providing Student with special education related services in her Least Restrictive Environment. It is of interest that Student receives special education services for social skills from her mother in her placement at school 1.

The District's response read, in part:

The District does not believe that during the 2021-2022 school year, it was in a position to assign her to a different school unless Parents jointly decided to request a different school, which did not occur. Should Parents later change their minds and jointly request a different school, or if there is a change to their parenting plan and arbitration decisions, the District would revisit Student's school assignment.

23. The last day of school was June 17, 2022.

## CONCLUSIONS

**Issue 1: Implementation of Transportation Provisions in 2021-2022 School Year** – The Father alleged the District did not implement those portions of the Student's IEPs that related to transportation during the 2021–2022 school year.

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

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<sup>6</sup> According to Google Maps, school 4 is approximately 1.7 miles from the Father's residence.

<sup>7</sup> According to Google Maps, school 5 is approximately 6.4 miles from the Father's residence and approximately 5.1 miles from the Mother's residence; and school 6 is approximately 8.6 miles from the Father's residence and approximately 4.7 miles from the Mother's residence.

failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

Here, both the January 2021 and June 2022 IEPs noted the Student required special transportation. As detailed above, it was not until September 3, 2021 that it was definitively established that the Student would be educated in-person at school 1 during the 2021–2022 school year; on September 7, 2021, the Father requested transportation for the Student between his residence and school 1, but this request was not acknowledged. In early October 2021, the District and the Father exchanged several communications regarding setting up transportation for the Student and a private car service was set to begin starting October 22, 2021. The Father does not appear to have made the Student available for the private car service beginning October 22, 2021, and shortly thereafter, it was canceled; and during the 2021–2022 school year, as best OSPI can tell, anytime the Student was transported from the Father’s residence to and from school 1, it was the result of the Father driving the Student.

While OSPI recognizes it was not definitively established that the Student would be attending school 1 in-person until September 3, 2021, it is also true that WAC 392-172A-03105(1) requires a district have an IEP in effect at the beginning of the school year. And here, the January 2021 IEP included special transportation for the Student. Therefore, the period of time from September 3 through October 22, 2021, during which the Father had to transport the Student because the private car service was not yet established, represents a material failure to implement the IEP. Accordingly, as a corrective action, the District will be required to reimburse the Father for the round-trip mileage at the District’s privately-owned vehicle rate for those occasions between September 3 and October 22, 2021, wherein the Father transported the Student.

OSPI finds no violation in relation to the period of time after October 22, 2021, as the documentation shows the District was prepared to provide the Student with special transportation via a private car service from the Father’s residence, but the Father did not make the Student available for the same.

**Issue 2: Least Restrictive Environment Considerations for Transportation** – The Father alleged the District did not consider least restrictive environment (LRE) requirements in determining it would be permissible for the Student to be transported between the Father’s residence and school 1 during the 2022–2023 school year via private car service.

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. Additionally, LRE requirements do apply in nonacademic settings, such as transportation. Finally, WAC 392-172A-02095 states, in part: 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 by parents.

Here, the Father believes that a private car service—consisting of just the driver and the Student—for the 2022–2023 school year is inappropriate because: WAC 392-172A-02095 states a scheduled school bus is the least restrictive environment on the continuum of alternative placements for transportation; the Student had prior success with regular bus transportation (between March 2017 and June 2019); and the Student’s needs resulting from her disability make it difficult for her “to pick up on nuanced social cues [and] communicate effectively with adults.”

The Father is correct that WAC 392-172A-02095 requires that a scheduled school bus should be the starting point for a determination of LRE for transportation for any particular student. The situation here, though, is unique: the Father’s residence is approximately 10.3 miles from school 1, a distance the District stated is “far outside of the school 1 attendance area.” According to the District, this means:

Even if the District could create a route with other students (which again is highly unlikely) that would likely result in a significant increase in the amount of time Student would be traveling each day and would still result in her spending most of her time on the bus alone.

In other words, regardless of whether the Student was transported via a school bus or a private car service during the 2022–2023 school year, the only individuals present would be the driver and the Student, and consequently, the LRE (no interaction with general education students), would be the same in either scenario.

In determining whether the IEP team’s June 8, 2022 determination that it would be permissible for the Student to be transported between the Father’s residence and school 1 during the 2022–2023 school year via private car service, it is also important to note that the District was responsive to the Father’s concerns. For example: the District assured the Father the private care service driver would be subject to the same background checks required by school bus drivers; the District contracted with a private car service that was able to reliably provide the same individual as the driver—in at least partial response to the Student’s needs resulting from the Student’s disability; and, the District assured the Father that relevant IEP accommodations (for example, a booster seat for safety) would be provided by the private car service.

Accordingly, in this specific instance, the June 8, 2022 decision does not represent a violation of WAC 392-172A-02095(1), in large part, because the LRE would likely be the same regardless of whether a bus or car service transported the Student. OSPI finds no violation.

However, for the 2022–2023 school year, the District should explore whether it is possible to have a scheduled general education bus pick up the Student and other students, and transport them to school 1. But, if this is not possible—either because no other students live near the transportation route for the Student and the LRE would therefore be the same regardless of the mode of transportation, or because adding the Student to any pre-existing route would result in

the Student being on the bus for more than 60 minutes in any one direction<sup>8</sup>—then it is permissible for the Student to be transported via private car service during the 2022–2023 school year.

**Issue 3: Location of School for 2022–2023 Academic Year** – The Father alleged the District did not give proper consideration to WAC 392-172A-02060(c) in determining where the Student would be educated at school during the 2022-2023 school year.

Under WAC 392-172A-02060(c), unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home. The WAC does not directly address determination of school location for a student that has two divorced parents that share custody and educational decision-making rights for the student.

Here, it is true that school 1 is closer to the Mother's residence than the Father's residence, and there are elementary schools in the District with ACCESS programs that are located more equidistantly from the Father and Mother's respective residences.

For two reasons, though, OSPI does not find a violation in relation to determination of the Student's school location for the 2022–2023 school year.

First, this question has been repeatedly answered by arbitrators acting pursuant to court-approved family law orders. Both an August 2021 and April 2022 arbitration order found that the Student should continue attending school 1 and that attending school 1 was in the Student's best interest.

While Chapter 392-172A WAC does not explicitly state whether OSPI is bound by the decisions made by an arbitrator acting pursuant to a court-family law order in a subsequent community complaint filing on that same issue, OSPI finds this situation analogous to the following portion of WAC 392-172A-05025(2): "If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties: the hearing decision is binding." And, WAC 392-172A-05035(1) is also analogous, stating, in part, "If a written complaint is received that is also the subject of a due process hearing...OSPI must set aside any part of the complaint that is [to be] addressed in the due process hearing." In conclusion, OSPI determines the District is bound by the August 2021 and April 2022 arbitration decisions and the special education regulations do not require OSPI to set aside a binding arbitration decision.

Second, and most important for IDEA purposes, in determining the location of the Student's school for the 2021–2022 academic year, the August 2021 arbitrator gave significant consideration to the Student's needs resulting from the Student's disability. For example, the August 2021 arbitration order read, in part:

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<sup>8</sup> WAC 392-172A-02095(5) reads, in part, "Wherever reasonably possible, no student should be required to ride more than sixty minutes one way."

By the reports provided, Student likes her teachers and she is making friends. She had a difficult year last year with promote learning due to COVID, which is a challenge for many students but more so for the students with special needs. Neither parent submitted a recommendation from Student's pediatrician or another one of her providers, that she should change to a different school. [Additionally], neither parent submitted a recommendation [from] one of Student's teachers that Student [should go] to a different school...Student has established a relationship with the teacher and students [at school 1]...A vital benefit to remaining in a [particular] school long-term is the consistency and stability child has from knowing the teachers, making long-term friendships and relationships, and having a sense of belonging, of safety and family.

And, the arbitrator's August 2021 finding on the Student's needs resulting from the Student's disability is also supported by the documentation provided to OSPI during this complaint, including, in part, the Student's January 2021 IEP, which read, in part, "Student continues to thrive when she has a predictable and consistent schedule." For this additional reason, OSPI does not find a violation of WAC 392-172A-0260(3).

### **CORRECTIVE ACTIONS**

By or before **September 9, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Reimbursement for Transportation Provided by Father between September 3 and October 22, 2021**

The District will be required to reimburse the Father for each day the Father transported the Student to and/or from school 1 between September 3 and October 22, 2021. The District must provide reimbursement for mileage at the District's privately-owned vehicle rate and will provide reimbursement for the Father's round trip mileage. This corrective action covers the Father's return to his residence without the Student in the morning after dropping the Student off and the Father's drive to school 1 to pick up the Student in the afternoon, where applicable.

The District must provide OSPI with documentation of compliance with this requirement by **September 9, 2022**. Said submission will delineate how many occasions between September 3 and October 22, 2021 the Father transported the Student. Said submission will also state the address of the Father's residence during this period.<sup>9</sup>

#### **DISTRICT SPECIFIC:**

None.

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<sup>9</sup> As of the date he filed this complaint with OSPI, the Father's address was [REDACTED]. According to emails, though, at least as of the start of the 2021-2022 school year, it appears the Father's address was [REDACTED].

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 August, 2022

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.)