

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-11

PROCEDURAL HISTORY

On January 25, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Edmonds School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On January 26, 2023, 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 February 3, 2023, the District requested an extension of time to submit its response. On the same day, OSPI granted that request. OSPI required the response to be submitted by February 15, 2023.

On February 15, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on February 16, 2023. OSPI invited the Parent to reply.

On February 16, 2023, OSPI's complaint investigator conducted a telephone interview with the Parent.

On February 17, 2023, OSPI requested additional information from the Parent. The Parent provided that information on the same day, and OSPI forwarded that information to the District on February 22, 2023.

On February 17 and 18, 2023, OSPI requested additional information from the District. The District provided that information on February 17 and 21, 2023, and OSPI forwarded that information to the Parent on February 22, 2023.

On February 23, 2023, OSPI requested additional information from the District. The District provided that information on February 24, 2023, and OSPI forwarded that information to the Parent on February 28, 2023.

OSPI considered all the information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during interviews.

ISSUES

1. Per WAC 392-172A-02095, is the District responsible for special education transportation for a preschool student whose only service, under the Student's individualized education program (IEP), is 1:1 speech therapy, and did the District consider the Student's need for special education transportation?

2. Did the Student's IEP team consider whether the Student required time in general education ("inclusion") preschool to receive a free appropriate public education (FAPE)?

LEGAL STANDARDS

Specialized Transportation as a Component in the IEP: As with other related services, a public agency must provide transportation as a related service if it is required to assist a student with a disability to benefit from special education. This includes transporting a preschool-aged child to the site at which the public agency provides special education and related services to the child, if that site is different from the site at which the child receives other preschool or day care services.

In determining whether to include transportation in a child's IEP, and whether the child needs to receive transportation as a related service, it would be appropriate to have at the IEP meeting a person with expertise in that area. In making this determination, the IEP team must consider how the child's disability affects the child's need for transportation, including determining whether the child's disability prevents the child from using the same transportation provided to nondisabled children, or from getting to school in the same manner as nondisabled children. It should be assumed that most children with disabilities receive the same transportation services as nondisabled children. For some children with disabilities, integrated transportation may be achieved by providing needed accommodations such as lifts and other equipment adaptations on regular school transportation vehicles. 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).

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. 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 [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Early Childhood Placements: The continuum of alternative placements a public agency providing special education and related services to a preschool child with a disability may include, but is not limited to, the following: Providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than school districts (such as head start or community-based child care); Enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; Locating classes for preschool children with disabilities in regular public elementary schools; and Providing services and instruction in the home.

FINDINGS OF FACT

2022–2023 School Year

1. On September 19, 2022, the District's inclusion preschool, which the Student attended, held its first day of instruction for the 2022–2023 school year.
2. In the past, the preschool program had been offered only to students eligible for special education. When enrollment expanded to students who were not eligible for special education, the Parent enrolled the Student as a tuition-based student. At that time, the Student was not eligible for special education services.
3. On September 20, 2022, the Student's teacher sent an internal District email that stated the Student's family would transport her to preschool.
4. On January 3, 2023, the District received consent to evaluate the Student for special education services in the area of communication.
5. On January 10, 2023, the Parent emailed the District, asking for transportation to the preschool for the Student because the Student had "recently qualified for education services."
6. On January 12, 2023, the Student's evaluation team met. Under the evaluation report's section "Significant Findings," it stated, "there are no concerns by the classroom teacher or parent in the areas of cognitive, language, fine, social, self-help, or gross motor skills...[Student] demonstrates a need for specially designed instruction (SDI) in speech skills."
7. On January 12, 2023, the Student's IEP team met, and the Student's initial IEP was drafted to provide the Student SDI as follows: 20 minutes/1 time weekly of SDI in communication (provided by speech language pathologist (SLP), in a special education setting).

Transportation was marked as regular, and the prior written notice (PWN) did not mention anything regarding transportation or whether it was necessary for the Student to be exposed to general education peers in order to benefit from the specially designed instruction being delivered.

8. On January 17, 2023, the principal sent an email to the Parent that stated in part:
It has not been a practice to provide transportation to students who qualify for 1:1 speech therapy services only. Your student is unique in that they are tuition-based in our inclusive...program...Since this is a new program this year, this issue may require revision. I will discuss this matter with the Student Services Leadership Team at our next meeting.
9. On January 18, 2023, at 1:51 pm, the Parent sent the assistant superintendent an email that stated in part:
We reached out to [the principal] about transportation for [Student] due to the challenge of drop off and pick up given [Parents'] schedules...

After reaching out to [principal] about transportation, we were surprised to find out that the school district is not providing transportation services for all student in the special education programs at [Student's preschool]. I pointed out to [the principal] that OSPI and the WAC actually require it and his response was that students with 'speech therapy services only' are not provided with transportation.

At 2:48 pm, the principal emailed the Parent, stating in part:

I talked with [the assistant superintendent]...It is the understanding of our directors in student services, with the council from our legal department, that transportation is a related service that is provided for eligible students, for example, student who attend the [school], to meet the needs in their IEP.

In looking at the IEP, the team has decided that the speech-only services do not need to be met in the classroom. Those services can also be provided at an elementary school nearer your home if preferred.

10. On January 25, 2023, the Parent filed special education community complaint (SECC) 23-11 with OSPI. The Parent's complaint alleged, in part, that the District failed to: (1) provide the Student special education transportation; and (2) include the Student in her preschool program as a full participant rather than as an integrated student.

11. On January 27, 2023, at 8:44 am, the Parent sent the teacher an email that stated in part: "Is there anything that I need to show [assistant superintendent] in terms of [Student's] status that would help."

At 8:55 am, the teacher responded in part:

I also think it's important to note that [Student's] LRE (least restrictive environment) is her preschool classroom. Which she needs transportation to. If they suggest moving her to your home school, please let them know that that is a more restrictive environment, as she would not have access to her peers during her therapy minutes.

12. On January 30, 2023, the Parent emailed the teacher with his notes from a meeting with the assistant superintendent. Those notes provided in part:

They will provide transportation for [Student's] 20 minutes of speech therapy. She mentioned that the District was obligated to provide her services free of charge, but that this did not change her status as a tuition-based student.

[Assistant superintendent] offered that [the Student] could receive her services at her assigned school...if we desired that, to which I responded that [the preschool] is actually closer and her Least Restrictive Environment.

...She tried to get me to commit to a day and time to have a bus pick [the Student] up, take her to school, and return her home out of her regular school hours. I did not commit.

13. On February 15, 2023, OSPI received the District's response to the complaint. Regarding the first issue, the District responded:

Here, special education transportation is not necessary unless there is an educational need for this transportation in order for Student to be present and benefit from her education.

Prior to her qualification for speech only special education services, Student was attending the District's inclusion preschool at Parent selection and on a tuition basis. Student is not yet of mandatory school age, and the District is not obligated to provide Student educational services other than the speech services for which Student now qualifies.

In the Complaint, it is unclear whether Parent is requesting that the District provide transportation to Student's preschool program each day Student attends regardless of whether she is accessing any special education services on those days. It is the District's position that this would not be appropriate under the definition of related service set forth above, as Parent has elected to send Student to...preschool. With respect to the one day a week when Student is to receive speech services, whether transportation is required depends on when and where Student is accessing the speech services. As set forth above, Student's schedule for the speech only services is still under discussion with Parent, who has not yet identified a preferred time for Student to access these services. To the extent these services are delivered outside Student's normal day at preschool, or at a location other than Student's preschool, the District has agreed to provide transportation to allow Student to access these services. To the extent these services are delivered during Student's normal day at preschool, the District is not obligated to provide transportation as Student is already attending the preschool program at Parent's choice.

As the District has agreed to provide appropriate transportation if Parent elects for Student to access the speech only services outside of her normal day at [the preschool], there is no violation of WAC 392-172A-02095.

Regarding the second issue, the District responded in part:

As indicated in the documents submitted with the Complaint, Student qualified for 1:1 speech articulation services for 20 minutes per week. At the IEP meeting held on January 12, 2023, the District SLP and Parents discussed the area of qualification. Given the nature of the services, the District did not address at the IEP meeting whether the Student required exposure to general education peers in order to benefit from the specially designed instruction being delivered, nor did Parent raise this issue at the IEP meeting. The SLP did not raise this issue based on the understanding that the appropriate service delivery method for Student's services was for Student to receive direct instruction from the SLP that would focus specifically on the articulation errors Student was demonstrating. As such, the District's SLP did not believe an explicit discussion of Student's attendance at [school] was necessary given the area of eligibility and nature of services for which Student qualified.

To remedy any issue, the District is proposing to reconvene Student's IEP team to discuss whether Student requires time in general education in order to receive a FAPE.

14. On February 17, 2023, OSPI emailed the Parent several questions. In response to the following question, "Have you agreed to a time and place for the speech services yet?", the Parent responded:

We expressed to the District that our preference is for [the Student] to receive her services in her Least Restrictive Environment (LRE), which is her current [pre]school...and during her normal school hours...District maintains that they will provide transportation services to and from the 20 minute speech therapy session that [Student's] Individual Education Plan (IEP) requires. It makes no sense for [Student] to attend [pre]school, go home, get picked up by a bus, attend her speech therapy session, get back on a bus and come home.

In response to, "It is my understanding that your child is scheduled to receive one twenty-minute session of speech services one time per week based on the child's IEP. Is that correct? Additionally, based on that speech service, you are requesting special education transportation every day she attends her pre-school?", the Parent responded:

We would like to utilize the transportation services for which she is eligible. If the school district is required to provide transportation for my daughter regardless of what day/time she receives her speech therapy session, then we will enroll her. However, if my daughter is only eligible for transportation on the day that she receives her speech services, then we will schedule her in that way.

My understanding is that the day and time within that day that my daughter receives her speech therapy session is not consistent. There has been a great deal of contention between the school and the District's SLP, [occupational therapist] and other therapists. This has caused many scheduling difficulties, so I am not confident that selecting one specific day would work out in that regard. Maybe that is too much information, but it is certainly a factor that has affected this whole situation.

In response to, "What do you mean by the phrase 'full participant rather than an integrated student'?" The parent responded:

I do not know the formal or appropriate title for my daughter's student status. I have heard students like my daughter referred to as 'integrated,' 'tuition-based,' or 'inclusive' students. She began attending [school] as an 'integrated' student, which is to say that she was considered a 'typically developing' child, and was attending preschool as an opportunity to learn, grow, and engage with her peers. For this type of student, the District charges [tuition].

OSPI also sent a similar question to the District. The District responded, in part, "The District is not sure precisely what the Parent is referring to in the Complaint as the distinction between an 'integrated' and 'full participant'."

15. On February 24, 2023, OSPI sent the District four questions. The District responded as follows:

1. Does every [preschool] student receive daily transportation to [the preschool]?
No. Special education students with transportation as a related service and students who qualify for the District's free low-income preschool program (Early Childhood Education and Assistance Program or ECEAP) are eligible for transportation at the preschool level. Tuition-based preschool students are not eligible for transportation.
2. If not, does every child who has an IEP receive transportation to the pre-school?
No, not all students who have an IEP receive transportation as a related service.
3. If not, how does a student become eligible for transportation to [the preschool]?
Students whose IEP teams have recommended placement in the inclusive...Preschool classroom as the least restrictive environment necessary to provide a FAPE are offered transportation as a related service. Students who qualify for ECEAP also receive transportation. Students whose qualifying category is specific language impairment (SLI), or 'speech-only,' have IEPs. However, the speech-only services can be provided regardless of whether a student attends a District preschool, can be provided before or after the preschool session (if the student attends preschool) or outside of the school day. Speech-only services also can be delivered during the preschool school day and, in the case of tuition-based students, parents are responsible for transportation.

4. Are there any fees for the transportation?

There are no fees for transportation for students who qualify for such services in their IEPs or for students who qualify for ECEAP preschool.

CONCLUSIONS

Issue One: Special Education Transportation – The Parent initially alleged that the District failed to provide special education transportation to the Student. On January 12, 2023, the Student’s evaluation team met and expressed in the evaluation report that the Student “demonstrates a need for specially designed instruction (SDI) in speech skills.” In the Student’s January 12, 2023 IEP, transportation is marked as regular, and the PWN does not mention that the parties discussed transportation.

In the present matter, OSPI sent the Parent two questions to help clarify the present issue. The first question was, “Have you agreed to a time and place for the speech services yet?” The Parent responded, “We expressed to the District that our preference is for [the Student] to receive her services in her Least Restrictive Environment (LRE), which is her current [pre]school...and during her normal school hours...”

The second question was, “...based on that speech service, you are requesting special education transportation every day she attends her pre-school?” The Parent responded:

We would like to utilize the transportation services for which she is eligible. If the school district is required to provide transportation for my daughter regardless of what day/time she receives her speech therapy session, then we will enroll her. However, if my daughter is only eligible for transportation on the day that she receives her speech services, then we will schedule her in that way.

The District responded that not every child attending the Student’s preschool receives transportation, nor does every student receiving SDI who is attending the Student’s preschool receive transportation as a related service; but that students eligible for special education who need transportation as a related service receive transportation.

Related services include transportation and are supportive services as are required to assist a student eligible for special education services to benefit from special education services. The appendices to the IDEA provide:

As with other related services, a public agency must provide transportation as a related service if it is required to assist the disabled child to benefit from special education. (This includes transporting a preschool-aged child to the site at which the public agency provides special education and related services to the child, if that site is different from the site at which the child receives other preschool or day care services.) In determining whether to include transportation in a child’s IEP...the IEP team must consider how the child’s disability affects the child’s need for transportation, including determining whether the child’s disability prevents the child from using the same transportation provided to nondisabled children.

The decision as to whether a student receives transportation as a related service should be decided on a case-by-case basis by the IEP team. In the present matter, in the Student's January 12, 2023 IEP, transportation is marked as regular, and the PWN does not mention that the parties specifically discussed transportation. When the IEP was developed by the team, which was less than two months ago, it appears the IEP team did not believe there was a reason to provide the Student with transportation as a related service. Additionally, through email and in his interview, the Parent stated that the reason for the transportation request was because it was inconvenient for the Parents to transport the Student to preschool, and thus, there was not necessarily a disability related need for special education transportation. Further, emails from January 18 and January 30, 2023 show that the District did consider the Student's need for transportation in a thorough manner following the Parent's requests shortly after the initial IEP meeting. Ultimately, the District agreed to provide the Student transportation pending the scheduling and location of her speech services, which are still in the process of being scheduled.

Based on the information currently before OSPI, OSPI finds that there is no violation as to the first issue because the District ultimately considered the request for transportation and agreed to provide transportation. However, despite the District agreeing to provide transportation, OSPI notes that it does not appear that the Student's IEP has subsequently addressed this or considered whether the IEP needs to be modified. Thus, OSPI strongly recommends the Student's IEP team meet and discuss transportation. OSPI also encourages the District and Parent to finalize the scheduling of the speech services.

Issue Two: IEP Implementation – Regarding the second issue, the Parent alleged the Student should be included in her preschool program as a full participant rather than as an integrated student.

On February 17, 2023, OSPI asked both parties what was considered a "full participant" as compared to "integrated student". Based on the parties' responses, it does not appear that full participant or integrated students are terms used in the District's preschool. However, based on emails from the Parent reviewed in the complaint, it appears the Parent believed that the Student's IEP should be implemented in her preschool classroom and believed that was her least restrictive environment. This may have been due in part to information provided by the teacher, which stated that the "[Student's] LRE (least restrictive environment) is her preschool classroom" and "If they suggest moving her to your home school, please let them know that that is a more restrictive environment, as she would not have access to her peers during her therapy minutes."

At the time OSPI received the Parent's complaint and opened the present matter, it appeared that this case included an IEP implementation issue. After an investigation, it appears the issue is related more to whether the IEP team determined the appropriate least restrictive environment in which to implement the Student's IEP.

The continuum of alternative placements a public agency providing special education and related services to a preschool child with a disability may include, but is not limited to, the following: providing opportunities for the participation of preschool children with disabilities in preschool

programs operated by public agencies other than school districts (such as head start or community-based child care); enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; locating classes for preschool children with disabilities in regular public elementary schools; and providing services and instruction in the home.

It does not appear that the Student's IEP team addressed whether the preschool classroom was the Student's least restrictive environment, which the District acknowledged, stating in part:

At the IEP meeting held on January 12, 2023, the District SLP and Parents discussed the area of qualification. Given the nature of the services, the District did not address at the IEP meeting whether the Student required exposure to general education peers in order to benefit from the specially designed instruction being delivered, nor did Parent raise this issue at the IEP meeting. The SLP did not raise this issue based on the understanding that the appropriate service delivery method for Student's services was for Student to receive direct instruction from the SLP that would focus specifically on the articulation errors Student was demonstrating. As such, the District's SLP did not believe an explicit discussion of Student's attendance at [school] was necessary given the area of eligibility and nature of services for which Student qualified.

To remedy any issue, the District is proposing to reconvene Student's IEP team to discuss whether Student requires time in general education in order to receive a FAPE.

As the District acknowledged, the IEP team did not specifically discuss the Student's placement and appropriate least restrictive environment for IEP implementation, OSPI finds a violation and as proposed by the District, will require the Student's IEP team to meet.

CORRECTIVE ACTION

By or before **April 22, 2023**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By or before **April 15, 2023**, the District will reconvene the Student's IEP team to discuss whether the Student requires time in general education in order to receive FAPE and the appropriate placement for the Student, considering the continuum of placement options. OSPI also recommends, as discussed above, that the IEP team discuss the Student's need for transportation as a related service and amend the IEP as needed.

By or before **April 22, 2023**, the District will provide OSPI with a copy of the IEP, if amended, and the PWN from the IEP meeting.

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 22nd day of March, 2023

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.)