

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-47

PROCEDURAL HISTORY

On March 30, 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 Yakima 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 31, 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 April 17, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On May 15, 2023, the OSPI complaint investigator communicated with the District via phone regarding the issues in the complaint.

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

ISSUE

1. Whether the District addressed the Student's need for disability-related accommodations on the bus and/or special education transportation since March 31, 2022.

LEGAL STANDARDS

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's individualized education program (IEP), and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments affect the student's need for transportation. Included in this consideration is whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or from getting to school in the same manner as nondisabled students. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School District*, 36 IDELR 289 (WA SEA 2002). The term "transportation" is defined as: travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for students eligible to receive special education services. 34 CFR §300.34(c)(16); WAC 392-172A-01155(3)(p).

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. IDEA, 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

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. 34 CFR §300.323(a); WAC 392-172A-03105(1). 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. 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 [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

1. At the start of the 2022–2023 school year, the Student was eligible for special education services under the category of autism, was in the fourth grade, and attended a District elementary.
2. The District's 2022–2023 school year began on August 24, 2022.
3. On October 18, 2022, the Student's IEP team developed a new annual IEP for the Student. The IEP included annual goals in basic reading, math, written expression, social, and adaptive, with progress reporting, including mid-term reports, quarterly, and semester report cards, and teacher/parents conference and annual IEP meetings. The Student's October 18, 2022 IEP provided the Student with the following specially designed instruction in a *special education setting*:
 - Reading: 450 minutes a week (to be provided by special education staff)

- Writing: 420 minutes a week (to be provided by special education staff)
- Math: 450 minutes a week (to be provided by special education staff)
- Social: 165 minutes a week (to be provided by special education staff)
- Adaptive: 60 minutes a week (to be provided by special education staff)

The Student's October 18, 2022 IEP also included transportation as a related service. The IEP indicated that transportation should be provided throughout the school year, and that the Student should utilize a harness during transport.

4. The Student's October 18, 2022 IEP also included a behavioral intervention plan (BIP). The BIP identified several behavior patterns for District staff to address with specific interventions. These included yelling, physical aggression, self-injurious behavior, and property destruction. The Student's BIP included descriptions of these behaviors, their instructional, environmental conditions, and circumstances, and the specific positive behavioral interventions and supports for use in responding to the observed behaviors.

When the Student displayed behaviors, such as yelling or screaming, the Student's BIP included the hypothesis that the Student was using that behavior to escape or avoid a task, attention, and/or access to tangibles. Such behavior was observed most often when demands were placed on the Student and during transitions from preferred to non-preferred activities. The BIP included specific antecedent manipulation strategies to decrease the occurrence of the targeted behaviors.

5. On February 2, 2023, the District documented that the Student was "reaching and hitting the child in front of" them, on the bus.
6. On February 28, 2023, the District's director of transportation sent an email to the Student's teacher and an elementary school administrator, reporting that the Student was "...screaming and yelling out on their morning and afternoon routes. The driver had to return [the Student] yesterday due to screaming/yelling..." The District's director of transportation went on to write that these issues with the Student, and other issues with other students generally on transportation, may indicate that a paraeducator was needed on District provided transportation.
7. On March 2, 2023, the District issued the Student a bus conduct infraction. The District documented that the Student "was yelling and screaming at the top of [their] lungs today..." The Student was assessed two 0.5 bus suspensions as a result of this conduct.
8. On March 28, 2023, the Student displayed behaviors on District provided transportation. As a result of those behaviors, the Student was returned home before arriving at school. The Parent reported that, due to their work schedule, they were unable to provide transportation to school for the Student that day. The Parent further reported that their work schedule generally resulted in the Student not attending school when District provided transportation returned the Student home.

9. On March 29, 2023, the Parent filed this complaint. As part of the complaint, the Parent reported that the Student was denied transportation due to behaviors on March 28, March 27, March 21, March 1, February 27, February 9, January 27, and January 11, 2023. The Parent also reported that the Student experienced similar issues during the 2021–2022 school year. The Student’s school noted that there were additional similar incidents that were not documented.

The Parent alleged that despite transportation being an IEP service, and the Student having a BIP to address known behaviors, when the Student displayed these behaviors, the BIP was not implemented. The Parent alleged that instead of implementing the BIP, the District responded to the Student’s behaviors in a manner that penalized the Student.

10. On April 17, 2023, the District submitted its response. The District did not contest the factual allegations contained in the Parent’s complaint. In a phone conversation, the District stated it planned to meet with the Parent in the near future to work toward resolving the Parent’s concerns.

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged that the District violated the IDEA when it failed to provide IEP accommodations to the Student on District provided transportation. The Parent reported that on several occasions that the Student was not provided with District transportation due to the Student’s behaviors. The Parent alleged that despite transportation being an IEP service, and the Student having a BIP to address known behaviors, when the Student displayed these behaviors the BIP was not implemented. The Parent alleged that instead of implementing the BIP, the District responded to the Student’s behaviors in a manner that penalized the Student.

School districts must ensure that it provides all services in a student’s IEP, consistent with the needs as described in that IEP. Each school district must ensure that the student’s IEP is accessible to each general education teacher, special education teacher, related services providers, and any other service provider who is responsible for its implementation.

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 disability affects the student’s need for transportation. 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. “Transportation” means travel to and from school and between schools; travel in and around school buildings; and specialized equipment, if required to provide special transportation for students eligible to receive special education services.

IEP teams must consider the use of positive behavioral interventions and supports and other strategies to address the student’s behavior. The team must consider the use of positive behavioral interventions and supports and other strategies to address the student’s behavior. A

child with a disability, whose behavior impedes their learning or that of others, must have included in their IEP a BIP to address the behavioral needs.

Here, the Student's IEP included transportation as a service. The Student's IEP also included a BIP that described common behaviors that the Student engaged in. These included the precise behaviors that the Student engaged in on the bus and that resulted in the District's transportation service returning the Student home when the Student displayed those behaviors. Evidence in the record included communications from the District's director of transportation inquiring of the Student's school and special education team whether the Student required a paraeducator on District provided transportation to address the Student's exhibited behaviors.

The District did not contest the factual allegations in this complaint. Again, districts are required to implement IEP accommodations and ensure all teachers and service providers are informed of the requirements for implementation. The Student's BIP described that the Student was prone to the precise behaviors for which the Student was returned home by District transportation. The District failed to address the Student's behavior in accordance with the existing BIP, and this resulted in the Student missing school on at least nine days during the 2022–2023 school year. The District acknowledged that there were more dates when the Student missed school due to this issue, that were not documented. Thus, OSPI finds a violation as the District failed to implement the Student's BIP during transportation or address whether additional or different supports were needed for transportation. The District will be required to convene the Student's IEP team to discuss the Student's transportation related needs and will provide a minimum of a week's worth of compensatory education.

CORRECTIVE ACTIONS

By or before **June 9, 2023** and **October 6, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **June 2, 2023**, the District and Parent will develop a schedule for a minimum of one week's worth of compensatory education per the Student's October 2022 IEP, as follows:

- Reading: 450 minutes
- Writing: 420 minutes
- Math: 450 minutes
- Social: 165 minutes
- Adaptive: 60 minutes

OSPI notes that because there were undocumented times transportation impacted the Student's ability to attend school, OSPI encourages the District and Parent to consider whether additional compensatory education hours are appropriate, in addition to the above ordered minutes.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory

services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **June 9, 2023**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **September 29, 2023**.

By or before **October 6, 2023**, the District must provide OSPI with documentation that it has completed compensatory services for the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **October 6, 2023**.

IEP Meeting

By or before **June 2, 2023**, the Student's IEP team will meet to discuss the Student's behavior and transportation. The IEP team should discuss whether additional or different supports are needed on transportation, and whether the Student's BIP needs to be updated to help address transportation needs.

By or before **June 9, 2023**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) the plan for recovery services if determined appropriate; and d) any other relevant documentation.

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.

RECOMMENDATIONS

The District's response and internal communications indicate there may be other students on the Student's bus with behavior needs, as indicated by the question about having a paraeducator on the bus. OSPI recommends the District review the behavior needs of all students on the particular bus and hold IEP meetings for other students, if there are needed adjustments to services and supports.

Dated this 17th day of May, 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.)