

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CRYSTAL ROBERTSON, on behalf of herself
and her minor child D.R.;

ELIZABETH DAGGETT, on behalf of herself
and her minor child H.D.;

JOANN MCCRAY, on behalf of herself and her
minor child J.C.;

VERONICA GUERRERO, on behalf of herself
and her minor child A.F.;

MARCIA CANNON-CLARK AND DAVID
CLARK, on behalf of themselves and their
minor child B.R.C; and

THE ARC OF THE UNITED STATES,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

Case No. 1:24-cv-00656

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION

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MOTION FOR A PRELIMINARY INJUNCTION**

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TABLE OF ABBREVIATIONS

ADA	Americans with Disabilities Act
DCHRA	District of Columbia Human Rights Act
FAPE	Free Appropriate Public Education
GPS	Global Positioning System
IDD	Intellectual and Developmental Disabilities
IDEA	Individuals with Disabilities in Education Act
IEP	Individualized Education Program
HOD	Hearing Officer Determination
LEA	Local Education Agency
OSSE	Office of the State Superintendent of Education
OSSE DOT	Office of the State Superintendent of Education Division of Transportation
PRC	Parent Resource Center
Section 504	Section 504 of the Rehabilitation Act
The Arc	The Arc of the United States

INTRODUCTION

Every day, the District of Columbia and its Office of the State Superintendent of Education (OSSE) miserably fail their basic obligation to ensure students with disabilities have safe, reliable, and appropriate transportation to and from school. Buses regularly arrive hours late to pick up students or never arrive at all, often with no notice to families. OSSE also routinely fails to provide appropriate vehicles and staffing for students who require wheelchair accessible vehicles, nurses, or dedicated aides. Because of OSSE's failures, students are losing critical instructional time that they are entitled to under state and federal law. Inexcusably, OSSE fails to have a system that can provide students with disabilities with safe, reliable, and appropriate transportation, thereby depriving these students of a free appropriate public education (FAPE). This denies students with disabilities equal access to their education and unnecessarily segregates them from their peers, which violates their rights under the Individuals with Disabilities in Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA), and the District of Columbia Human Rights Act (DCHRA).

The individual named plaintiffs, the class of students they seek to represent, and The Arc, (hereafter collectively "Plaintiffs") seek a preliminary injunction to (1) halt Defendant's unlawful policies and practices and to bring them into compliance with the law; and (2) provide Plaintiffs with safe, reliable, and appropriate transportation services in conformity with their IEPs. Despite administrative hearing determinations that its practices deny children FAPE, OSSE has not resolved its deficient policies and practices that cause widespread transportation failures for students with disabilities. Such failures have led to systemic deprivations of FAPE, denials of equal access to their education, and unnecessary segregation. Accordingly, Plaintiffs respectfully request that this Court intervene in advance of transportation planning for 2024 summer school and for the 2024-2025 school year to ensure that students with disabilities do not suffer another interrupted

school year and continued discrimination.

Preliminary relief is appropriate here. Plaintiffs are likely to succeed in their claims that OSSE's failure to provide Plaintiffs with safe, reliable, and appropriate transportation deprives Plaintiffs of FAPE, denies them equal access to their education, and unnecessarily segregates them in violation of the IDEA, Title II of the ADA, Section 504, and the DCHRA; Plaintiffs are being irreparably harmed each day they are denied their education because of OSSE's failures; the balance of equities favor granting the preliminary injunction; and an injunction is in the public interest. Without this Court's swift intervention, Plaintiffs will suffer further and severe irreparable educational and social-emotional harm.

LEGAL AND FACTUAL BACKGROUND

I. The IDEA, the ADA, Section 504, and the DCHRA Require the District to Provide Safe, Reliable, and Appropriate Transportation Services to Ensure Students with Disabilities Receive FAPE, Have Equal Access to their Education, and Are Not Unnecessarily Segregated from their Peers.

The IDEA guarantees each student with a disability a FAPE, including special education and related services. 20 U.S.C. § 1400(d)(1)(A). Under the IDEA, each student has an Individualized Education Program (IEP) which details the child's needs, presents levels of educational performance, and goals, and sets out the student's education plan, including the provision of specialized instruction and "related services." 34 C.F.R. § 300.320. Related services include transportation and developmental, corrective, and other supportive services required to assist a child with a disability to access and benefit from special education. 34 C.F.R. § 300.34(a).

Transportation includes travel to and from schools and between schools, travel in and around school buildings, specialized equipment (such as special or adapted buses, child safety restraint systems, safety harnesses, lifts, and ramps), and accommodations such as dedicated aides

or dedicated nurses, if required, to provide special transportation for a child with a disability. 34 C.F.R. § 300.34(c)(16).

The ADA and Section 504 provide broad protections for individuals with disabilities. The laws prohibit state and local governments from excluding, unnecessarily segregating, and denying equal access to students with disabilities. 29 U.S.C. § 794(a); 42 U.S.C. § 12132; *see also* 28 C.F.R. §§ 35.130(b)(1), (3), (d); 34 C.F.R. §§ 104.4(b)(1)-(2). Both laws prohibit state and local governments from administering programs in ways that defeat the fundamental goals of public education programs with respect to students with disabilities. 28 C.F.R. § 35.130(b)(3)(ii); 28 C.F.R. § 104.4(b)(4)(ii). And both laws impose affirmative obligations on covered entities to provide reasonable modifications to ensure students with disabilities have an equal opportunity to benefit from public education. 28 C.F.R. § 35.130(b)(7); *see also* 34 C.F.R. §§ 104.34(a), 37(a)(1). The DCHRA similarly prohibits discrimination on the basis of disability and makes it unlawful to deny access to, or use of, any services to any qualified person, wholly or partially, for a discriminatory reason based upon their actual or perceived disability. D.C. Code § 2-1402.41(1).

OSSE is responsible for providing transportation for students with disabilities in the District through its Division of Transportation (OSSE DOT). OSSE works to provide “safe, reliable, and efficient transportation to and from school.” *See* OSSE Student Transportation Family Handbook: 2023-24 School Year (“OSSE DOT Handbook”), available at https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/OSSE-DOT%E2%80%99s%202023-24%20Family%20Handbook.pdf. As of January 31, 2024, there are 4,093 students with disabilities receiving transportation services from OSSE DOT on approximately 570 daily bus routes. *See* Exhibit 16, *Responses to Fiscal Year 2023 Performance Oversight Questions*, (“2023 Performance Oversight Responses”) at 223; OSSE DOT Daily DOT

Updates, available at <https://osse.dc.gov/page/daily-dot-updates>. Additionally, OSSE contracts with private transportation vendors to provide specialized transportation to approximately 368 students. 2023 Performance Oversight Responses at 223.

Although the Local Education Agency (LEA) is typically responsible for implementing all aspects of the IEP, the IDEA allows State Education Agencies, like OSSE, to provide services directly when it determines that there are “one or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these children.” 34 C.F.R. § 300.227(a)(1). Here, OSSE has assumed responsibility for providing transportation services to eligible District students. *See* D.C. Code § 38-2907(a).

II. The Plaintiffs and Putative Class Members Are District Students with Disabilities.

Each individual plaintiff is a student with a disability and has an IEP which entitles them to transportation services from OSSE. D.R. is an 11-year-old at Ludlow Taylor Elementary School in the District of Columbia diagnosed with autism. Exhibit 5, Declaration of Crystal Robertson ¶¶ 2, 4 (“Robertson Decl.”). H.D. is a 13-year-old student attending St. Coletta of Greater Washington (St. Coletta), a D.C. public charter school. Exhibit 1, Declaration of Elizabeth Daggett ¶ 2 (“Daggett Decl.”). J.C. is a 12-year-old student attending The Children’s Guild, a D.C. public charter school. Exhibit 4, Declaration of Joann McCray ¶ 2 (“McCray Decl.”). A.F. is a 14-year-old attending St. Coletta. A.F. is diagnosed with autism and a seizure disorder. Exhibit 2, Declaration of Veronica Guerrero ¶¶ 3, 5 (“Guerrero Decl.”). B.R.C. is an 8-year-old attending School Within a School at Goding in the District of Columbia. Exhibit 3, Declaration of Marcia Cannon-Clark at ¶ 2 (“Clark Decl.”). The individual Plaintiffs bring claims on behalf of themselves and of a putative class consisting of students with disabilities aged 3-22 who require transportation from the District of Columbia to attend school and have experienced and will continue to

experience Defendant's failure to provide safe, reliable, and appropriate transportation. *See* ECF 1 ¶ 211 ("Complaint").

The Arc of the United States (The Arc) is a national non-profit organization located in Washington, DC with the mission of promoting and protecting the human rights of people with intellectual and developmental disabilities (IDD) and actively supporting their full inclusion and participation in the community throughout their lifetime. Exhibit 14, Declaration of Katherine Neas ¶¶ 4–5 ("The Arc Decl.") Each individual plaintiff is a member of The Arc. Robertson Decl. ¶ 3; Daggett Decl. ¶ 3; McCray Decl. ¶ 4; Guerrero Decl. ¶ 4; Clark Decl. ¶ 3. The Woods, Mitchell, Maltz, Davis Smith, Kouma families are also members of The Arc and/or putative class members; their children, K.J., J.M., L.M., C.S., and K.M., are all students with disabilities entitled to receive transportation services from Defendant. Exhibit 8, Declaration of Melinda Woods ¶¶ 2–3 ("Woods Decl."); Exhibit 9, Declaration of Elizabeth Mitchell ¶¶ 2–4 ("Mitchell Decl."); Exhibit 10, Declaration of Stephanie Maltz ¶¶ 2–3 ("Maltz Decl."); Exhibit 11, Declaration of Jamie Davis Smith ¶¶ 2–4 ("Davis Smith Decl."); Exhibit 12, Declaration of Miryam Koumba ¶¶ 2–5 ("Koumba Decl.").

III. Individual Plaintiffs Filed Administrative Due Process Complaints to Vindicate Their Rights.

Part of the IDEA's procedural protections include the right to file due process complaints with OSSE's Office of Dispute Resolution to challenge their denial of FAPE. 34 C.F.R. § 300.507. Here, each individual plaintiff, on behalf of themselves and all others similarly situated, brought such a due process complaint against OSSE to challenge its failure to provide safe, reliable, and appropriate transportation under the IDEA, ADA, Section 504, and the DCHRA. *See* Robertson Decl. ¶¶ 41–44; Daggett Decl. ¶¶ 51–55; McCray Decl. ¶¶ 41–43; Guerrero Decl. ¶¶ 43–44; Clark Decl. ¶¶ 34–35. In each case, Hearing Officers have dismissed the individual Plaintiffs' systemic

IDEA claims and all non-IDEA disability discrimination claims, finding that such relief is unavailable in the administrative forum. Exhibit 1-C, Daggett HOD at 2 (Case No. 2023-0180); Exhibit 4-B, McCray HOD at 2 (Case No. 2023-0218); Exhibit 5-B, Robertson HOD at 2 (Case No. 2023-0203); Exhibit 3-B, Order Granting Motion to Dismiss Systemic Claim, Clark (Case No. 2023-0252); Exhibit 2-C, Pre-Hearing Order, Guerrero (Case No. 2023-0251). In D.R., H.D., and J.C.’s cases, the Hearing Officers found that OSSE’s failure to provide appropriate transportation services violates their individual rights under the IDEA. Daggett HOD at 8–10 (Case No. 2023-0180); McCray HOD at 9-15 (Case No. 2023-0218); Robertson HOD at 7–9 (Case No. 2023-0203).

Despite receiving HODs holding that OSSE failures deprive them of a FAPE, D.R., H.D., and J.C. continue to receive, or be at risk of receiving, unsafe, unreliable, and inappropriate transportation to and from school, causing an ongoing FAPE deprivation and discrimination. Daggett Decl. ¶ 55; McCray Decl. ¶ 43. A.F. and B.R.C. are awaiting full resolution of their individual claims and continue to receive unsafe, unreliable, and inappropriate transportation to and from school, causing an ongoing FAPE deprivation and discrimination. Guerrero Decl. ¶ 43; Clark Decl. ¶ 34.

IV. OSSE is Systemically Failing Students with Disabilities By Not Providing Safe, Reliable, and Appropriate Transportation.

OSSE, through its policies and procedures, is administering a transportation system that cannot provide safe, reliable, and appropriate transportation services to students with disabilities. *See generally* Exhibit 7, Declaration of Dr. Linda Fran Bluth, Ed.D. (“Bluth Expert Decl.”) ¶ 23.

OSSE transportation is regularly late or does not show up at all, and as a result, students with disabilities regularly miss large portions of their school day. Despite OSSE’s stated policy of dropping students at school 10-30 minutes before the bell rings, OSSE DOT Handbook at 4, in the

morning, buses arrive hours late to pick up students or never arrive at all, often with no notice to families. *See generally* Robertson Decl.; Daggett Decl.; McCray Decl.; Guerrero Decl.; Clark Decl. In the afternoon, some students are pulled from class early and miss part of the school day to be transported home. McCray Decl. ¶ 32; Davis Smith Decl. ¶ 13. Other students are left stranded at school and must wait for the family to come pick them up because OSSE never showed up. McCray Decl. ¶ 33; Robertson Decl. ¶ 27. *See also* Exhibit 6, Declaration of Dr. Paul Livelli (“Livelli Expert Decl.”) ¶ 22(a)-(c) and (f) (observing generally that OSSE transportation does not get students to school or home on time).

OSSE’s own public reporting reveals that each day there are a substantial number of bus routes that are late or cancelled. Snapshots of OSSE’s data demonstrate the breadth of the problem. In just the first five months of the current 2023-2024 school year, there were over 1,000 delays and cancellations. In the week just before the filing of this Motion for Preliminary Injunction, there were over 100 routes delayed.¹ And, over a period of approximately 110 days, there were approximately 3,200 instances of recorded bus route disruptions in the morning or in the afternoon. Over 400 routes had at least one delay in multiple weeks within a school year, nearly 450 routes had delays on multiple days, and 300 routes had issues over consecutive days. Furthermore, over 150 routes had issues across multiple weeks in both the 2022–2023 and 2023–2024 school years, showing the persistence of the problem.² In each administrative due process hearing, OSSE also produced a “route analysis” for each individual plaintiff, Exhibits 1-D, 2-D, 3-C, 4-C, 5-C, which

¹ Data gathered from OSSE’s public website, Daily DOT Updates, <https://osse.dc.gov/page/daily-dot-updates>, which tracks daily bus delays and cancellations.

² This includes data from January 30, 2023 – March 15, 2023, which was provided to Plaintiffs’ counsel in response to District of Columbia Freedom of Information Act Request, DC Code § 2-531-539 and from August 30, 2023 - February 5, 2024, which was reported on Daily DOT updates, <https://osse.dc.gov/page/daily-dot-updates>.

admitted that Plaintiffs' buses are late, early, do not arrive, or otherwise disrupted a significant portion of the time.³ Each disrupted route means students with disabilities miss out on instructional time, therapies they need, and socialization with peers.

Worse, OSSE's data measurement suffers from a fatal flaw. As of January 2023, OSSE reports "on-time performance" by the time a bus *leaves the terminal*, regardless of whether the bus actually arrives at the child's home on time or whether it gets the child to school on time. 2023 Performance Oversight Responses at 217 ("in January 2023, the agency established a process to collect daily reportable data on whether a bus is 'late' based on a bus departing its terminal later than its scheduled time."). By measuring data this way, OSSE hides the true expanse of its failures.

Individual student data further demonstrates OSSE's transportation shortcomings. Plaintiffs and members of The Arc testify to an undeniable, years-long pattern of OSSE transportation arriving late or not at all. *See generally* Robertson Decl.; Daggett Decl.; McCray Decl.; Guerrero Decl.; Clark Decl.; Davis Smith Decl.; Koumba Decl.; Mitchell Decl.; Maltz Decl.; Woods Decl. OSSE's failure to provide safe, reliable, and appropriate transportation services is well-documented in the news.⁴ Dr. Paul Livelli, who has 34 years as a special educator, administrator, and now consultant with District students with disabilities, similarly observes that OSSE fails to provide reliable transportation to students with disabilities. Livelli Expert Decl. ¶¶ 22–26.

In the administrative due process hearings for D.R., H.D., and J.C., the Hearing Officers universally found, based largely on OSSE's own admissions, that OSSE is not providing on-time

³ OSSE's indication of 'late' on their route analysis is calculated by whether a student arrived after bell time, and not whether a student arrived at least 10 minutes prior to class time, which is OSSE's policy. McCray HOD at 10. (OSSE purports that a student should arrive "at least 10 minutes prior to class time in order for [a] student to get ready for classes.").

⁴ *See* Complaint, ECF 1, at FN 10.

transportation in violation of students' IEPs and the IDEA. Robertson HOD at 9 at 5; Daggett HOD at 5–9; McCray HOD at 8–15. Parents also tell a consistent story of system-wide failures. Each individual plaintiff, and five members of The Arc/putative Plaintiffs submit detailed affidavits in support of Plaintiffs' Motion for a Preliminary Injunction detailing their experience with OSSE transportation. *See generally* Robertson Decl.; Daggett Decl.; McCray Decl.; Guerrero Decl.; Clark Decl.; Davis Smith Decl.; Koumba Decl.; Mitchell Decl.; Maltz Decl.; Woods Decl. During the 2022–2023 School Year, OSSE dropped off A.F. late to school 90 times. Guerrero Decl. ¶ 12. The afternoon bus was late nearly every day in the 2022–2023 School Year and 55 times in the 2023-2024 school year thus far. Guerrero Decl. ¶¶ 12, 27. B.R.C.'s morning bus regularly arrives one to two hours after the scheduled pick-up time. Clark Decl. ¶¶ 12, 13. *See also* Koumba Decl. ¶¶ 6–7 (OSSE transportation occasionally late in the mornings, and consistently 30-60 minutes late in the afternoon); Davis Smith Decl. ¶¶ 5, 7, 11 (Transportation consistently late or cancelled; parent had to call police to file a missing person's report on one occasion when transportation was so late and OSSE could not track the bus); Woods Decl. ¶¶ 4–5 (transportation delays caused student to be late to school, late coming home, and miss days of school); Mitchell Decl. ¶¶ 5–6, 10–11 (transportation consistently late or does not show up in the mornings and drops off late in afternoons); Maltz Decl. ¶¶ 4–6, 8–10 (bus consistently late in the morning and afternoon).

Even when transportation shows up on-time, OSSE frequently cannot transport students because they do not have required equipment, dedicated aides, and/or nurses available. Daggett Decl. ¶ 25 (not transported because bus arrived without safety harness anchor); Guerrero Decl. ¶¶ 13, 38 (missed school days because safety harness and aide were not consistently provided in accordance with his IEP); Clark Decl. ¶¶ 14–16 (bus arrives without required nurse and without space for a wheelchair); Davis Smith Decl. ¶ 5 (OSSE does not provide safety harness, and when

parents provide it, contractor staff refuse to use it). *See also* Livelli Expert Decl. ¶ 22(e) (buses are not equipped with staff, accommodations, or equipment required by students' IEPs).

V. Defendant's Transportation Failures Deprive Students of Their Education.

OSSE's failure to provide safe, reliable, and appropriate transportation harms students because they miss instructional time and therapies at school, become anxious and agitated by the interruptions to their routines, experience unsafe conditions, and miss out on interaction with their peers. *See generally* Livelli Expert Decl. ¶¶ 27–45; Bluth Expert Decl. ¶¶ 20–21.

Dr. Livelli highlights the cascading impacts of transportation failures on students with disabilities. Students with disabilities are severely and uniquely impacted by lateness and absences. They miss foundational learning, and their conditions make it so they may not be able to arrive to follow a lesson when they arrive to school mid-class. Livelli Expert Decl. ¶¶ 29–30. Late and cancelled transportation means students miss critical parts of their school day, including instruction, therapy or other related services, and socialization time, which is essential for students with disabilities. *Id.* ¶¶ 28–32. Children with disabilities frequently have difficulties with transitions and need routine to maintain stability. *Id.* ¶ 35. This lack of consistent transportation may impact students with disabilities in different ways but, overall, the lack of structure and routine inhibits student progress. *Id.* ¶¶ 36–39. As a result of failed transportation, students with disabilities' meaningful progress towards their educational, independent living, and social-emotional goals is hindered. *Id.*

Plaintiffs' and The Arc's members' experiences also demonstrate how OSSE's transportation failures impact their education. Students miss instructional time because of OSSE's transportation failures. McCray Decl. ¶¶ 34–35; Robertson Decl. ¶ 34; Clark Decl. ¶ 27; Daggett Decl. ¶ 39; Guerrero Decl. ¶ 32; Koumba Decl. ¶ 6; Davis Smith Decl. ¶¶ 11, 14, 16; Woods Decl. ¶ 4; Mitchell Decl. ¶ 10; Maltz Decl. ¶ 4. J.C., D.R., and B.R.C regularly miss breakfast and

morning circle because of their unreliable morning bus. McCray Decl. ¶ 35; Robertson Decl. ¶ 34; Clark Decl. ¶ 27. When J.C. misses breakfast and morning circle, he misses opportunities to progress in his social and emotional goals on his IEP and develop appropriate social skills with his peers. McCray Decl. ¶ 35. C.S. has missed parts of her life-skills program and approximately 2 hours of school per week in 2024. Davis Smith Decl. ¶ 13, 16. B.R.C. receives physical therapy, occupational therapy, and speech-language pathology at school and misses these sessions when the bus is late. Clark Decl. ¶ 28. J.M. missed appointments with his school-provided behavioral health specialist because of OSSE's lateness. Mitchell Decl. ¶ 10. Because of late arrivals, J.C. receives Cs in his morning classes and dropped off the honor roll. McCray Decl. ¶ 37. As a result of missed instruction and related services, students do not make progress towards their IEP and other educational goals. Livelli Expert Decl. ¶¶ 27–42.

Chronically late afternoon buses also cause students to miss critical supplemental therapies after school. At least two therapists dropped A.F. as a patient because his chronically late afternoon bus delayed too many sessions. Guerrero Decl. ¶ 24. As a result, A.F. is much more aggressive at home and at school and has lost progress on his toileting and feeding goals at school. *Id.* K.M. was similarly dropped from afternoon services because of repeated lateness due to OSSE transportation issues. Koumba Decl. ¶ 8.

Additionally, students are harmed by the interruptions to their daily routines. Robertson Decl. ¶ 7; Clark Decl. ¶ 29; Daggett Decl. ¶ 39; Guerrero Decl. ¶¶ 33–34; Davis Smith Decl. ¶ 17; Maltz Decl. ¶ 12. D.R. suffered particularly traumatic experiences from OSSE's incompetence: on the first day of the 2022–2023 School Year, D.R. was dropped off at the wrong school and lost for three hours. Robertson Decl. ¶ 17. Later that fall, OSSE again had the wrong address and dropped off D.R. at his deceased mother's home, where no family members lived. *Id.* ¶ 23.

Further, by providing untimely buses and those that do not have required equipment, accommodations, and properly trained staff, OSSE places students in unsafe conditions that risk of serious injury or even death. *See* Bluth Expert Decl. ¶¶ 30(c), 32–35 (“OSSE either does not have, or is not using properly, the specialized equipment required in order to provide children with disabilities with safe, reliable, and appropriate transportation services.”); Daggett Decl. ¶ 42 (when H.D.’s bus is late in the afternoon, H.D. arrives home extremely distressed, exhausted, upset, and with a urine-soaked diaper); Guerrero Decl. ¶¶ 10, 16 (A.F. has developed acute anxiety about riding the bus after unprofessional conduct by bus staff towards his mother, and now requires a stroller to board and deboard); Clark Decl. ¶ 19 (late afternoon drop-offs jeopardize the effectiveness of B.R.C.’s scheduled doses of her anti-seizure and neurologically stabilizing medications); Davis Smith Decl. ¶ 6 (long bus rides leave C.S. dehydrated and with a soiled diaper, which put her at risk for cancer and other gynecological conditions); Koumba Decl. ¶ 8–9 (K.M. comes home agitated, hungry and in urgent need of the restroom, causing concerns about infection); Mitchell Decl. ¶ 15 (“being on the bus for over an hour is very frustrating for J.M., who has panic attacks from the bus’s delay”).

OSSE’s failures have also imposed significant burdens on Plaintiff families. When transportation fails, parents are faced with a choice between taking their child to school themselves, often at great financial and personal cost, or having their child miss critical time at school. Daggett Decl. ¶¶ 47–49; Clark ¶ 32; Guerrero Decl. ¶ 41. Those who self-transport must pay out of pocket for mileage or rideshare services. McCray Decl. ¶ 18 (paid \$80 a day for rideshare services to get J.C. to and from school during the 2022–2023 School Year, until she was eventually forced to buy a car and take on a car loan); Robertson Decl. ¶ 25 (regularly pays for Lyfts when D.R.’s buses fail to arrive); Guerrero Decl. ¶ 14 (acquired a car for the first time in order to drive her children

to school when the bus did not arrive); Clark Decl. ¶¶ 32–33. There is theoretically a system for parents to seek reimbursement for these costs, but parents have found it unreliable in practice. *See, e.g.*, Clark Decl. ¶ 33 (unable to receive some reimbursements because of “invalid signature” and waiting five months to receive others).

OSSE’s transportation failures have other negative consequences for families. Parents are often late to work or miss work entirely due to OSSE’s failures, and it is difficult for Plaintiff parents to hold a job. Clark Decl. ¶ 32; Robertson Decl. ¶ 19; McCray Decl. ¶ 39; Daggett Decl. ¶ 48. Entire families endure stress and uncertainty each morning. Daggett Decl. ¶ 48; Guerrero Decl. ¶ 41; McCray Decl. ¶ 39; Robertson Decl. ¶ 17; Clark Decl. ¶ 16. OSSE’s actions have forced parents to hire counsel to help their children obtain the necessary transportation and to regain the lost educational gains. Clark Decl. ¶ 34; Robertson Decl. ¶ 41; Guerrero Decl. ¶ 22; Daggett Decl. ¶ 51; McCray Decl. ¶ 41; Davis Smith Decl. ¶ 18.

VI. Defendant’s Deficient Policies and Practices Lead to Their Transportation Failures.

Defendant’s transportation system failures are the result of systemic deficiencies in OSSE’s policies and practices, including its outdated and ineffective routing system, lack of sufficient, trained staff, and lack of parent communication. These failures impact the entire putative class.

A. OSSE’s Routing System is Outdated and Inappropriate.

As discussed in detail above, students with disabilities are not arriving to and from school on time. *See supra* Section IV. The planned routes, even without accounting for unexpected delays, have students arriving to school late (after the on-time arrival window) and leaving school before the end of the day in order to receive transportation. McCray HOD at 4–8, 15 (finding the bus consistently dropped off J.C. late to school and the planned afternoon route was “unrealistic”); Daggett HOD at 6; Daggett Decl. ¶ 24 (H.D.’s scheduled afternoon drop-off time is not feasible and could only be possible if H.D. is picked up early from school, which he was in fall 2022). The

routing system fails to account for the needs of children along the entire route, including ensuring that the proper equipment is available. Clark Decl. ¶ 16 (OSSE DOT sent a bus to pick up B.R.C. that could not fit her wheelchair). It takes an unusually long time to route or reroute students when there is a routine change in circumstances. Livelli Expert Decl. ¶ 25; Robertson Decl. ¶ 28 (OSSE failed to transport D.R. for the first week of school because of a wrong address in their system); McCray Decl. ¶¶ 22–25 (OSSE took over a month to route J.C. to school after he transferred to The Children’s Guild). In the last two years, OSSE has twice changed its bus routing system. *See* 2022 Exhibit 15, *Responses to Fiscal Year 2022 Performance Oversight Questions*, (“2022 Performance Oversight Responses”) at 234, 251. Both of these systems have been failures, causing buses to consistently arrive late or early and bus routes to be cancelled or delayed. *Id.*

OSSE is not using state of the art technology to track vehicles, which means that parents cannot track their children’s buses nor rely on OSSE to tell them where vehicles are in real time, and OSSE cannot appropriately analyze its data to fix their routing errors. Clark Decl. ¶¶ 23, 25; Guerrero Decl. ¶ 31; McCray Decl. ¶ 44; Daggett Decl. ¶ 14. Instead, OSSE relies on handwritten and hand-collected paper “trip tickets” for data collection, which are prone to human error and do not allow the nimbleness needed to ensure appropriate transportation. Exhibit 1-E, Daggett Hearing Transcript (November 30, 2023), p. 88, ln. 10–13 (testimony of Jason Campbell, Associate Director of Audit and Compliance, OSSE DOT).

B. OSSE Does Not Have Enough Bus Drivers, Attendants, or Nurses.

In order to run a safe and reliable transportation system, OSSE needs sufficient numbers of bus drivers, attendants, and nurses to serve its student population. Yet, OSSE’s own assessment shows that it has been significantly understaffed for at least the last two years. For the 2022–2023 school year, OSSE reported that it required on average 554 bus drivers, which includes the needed number of drivers plus a 10% “bench” of drivers who can substitute in as needed. OSSE only had

an average of 468 drivers present each day (a nearly 20% shortfall). 2022 Performance Oversight Responses at 253. In the current 2023-2024 school year, OSSE reported that it requires 600 bus drivers and has 525. 2023 Performance Oversight Responses at 234. The shortage of drivers means that OSSE cannot reliably meet the demand for routes. Instead, OSSE “double routes” and even “triple routes” buses, meaning that one bus picks up students on the first route, brings the students to their schools, picks up students on the next route, brings the students to their schools, and, for triple routing, does that *again*.

For attendants and nurses, OSSE is similarly understaffed. OSSE reported requiring on average 641 attendants in the 2022–2023 school year, which includes a 10% “bench” of attendants who can substitute in as needed. OSSE only had an average of 474 present each day (a nearly 30% shortfall). 2022 Performance Oversight Responses at 253. In the 2023-2024 school year, OSSE requires 666 attendants and has only 576. 2023 Oversight Responses at 234. *See also* Guerrero Decl. ¶ 38 (required bus aide is not provided). Children with disabilities who need nursing support on transportation similarly report that there are not enough nurses to meet the need. *See* Livelli Expert Decl. ¶ 23; Clark Decl. ¶ 14 (bus consistently arrives without a nurse).

Parent and student experiences also demonstrate that OSSE staff are not properly trained. *See* Livelli Expert Decl. ¶ 24. H.D. has arrived home with the safety harness improperly tied around his neck. Daggett Decl. ¶ 44. The bus staff A.F. interacts with is often frustrated with his disability, interprets A.F.’s distress as aggression, and do not help him board safely. Guerrero Decl. ¶¶ 16, 39. Several Plaintiffs have similar interactions. *See* Koumba Decl. ¶ 10; Davis Smith Decl. ¶ 5 (OSSE-contracted drivers are unwilling or unable to help with safety harness); Mitchell Decl. ¶ 14 (“OSSE did little to intervene” in ongoing physical bullying of her son).

C. OSSE Does Not Effectively Communicate Bus Delays to Parents.

OSSE provides parents with information about bus delays in three ways: 1) online reporting

of bus route status; 2) automated calls or texts to parents; and 3) the Parent Resource Center (PRC) call center. 2023 Performance Oversight Responses at 228. OSSE’s website with bus information is often incorrect and lacks specificity. When reporting incidents, OSSE reports only if the bus was late leaving the bus terminal or cancelled. It does not report when buses are late because of traffic delays, breakdowns, or any other reason, and the bus can leave the terminal on time but be late to pick up the student and/or late to bring the student to school. Maltz Decl. ¶ 5. It does not indicate how late a bus is running. Daggett Decl. ¶ 12. It also does not track if the bus has the appropriate staff, equipment, and accommodations to safely transport the students on its route. Clark Decl. ¶ 16; Davis Smith Decl. ¶ 8. Caregivers also do not get accurate information from OSSE by text, email, or calls to plan for when the bus is coming. *See, e.g.*, Daggett Decl. ¶ 11; Clark Decl. ¶ 24; Maltz Decl. ¶ 8 (calls to see if bus is coming every day because text and robocalls are not reliable). Even if information is provided, Defendant only provides these updates in English, so they are useless for non-English-speaking parents. Guerrero Decl. ¶ 44. The PRC is similarly unhelpful. Wait times are incredibly long when parents call to find out the status of the bus. Robertson Decl. ¶ 20 (waited on hold for 45 minutes); Clark Decl. ¶ 24 (waited on hold for 30 minutes); Daggett Decl. ¶ 13 (waited on hold for 45 minutes). When parents and caregivers do connect with someone, they are told that PRC staff cannot track the buses or give information about bus location. McCray Decl. ¶ 20; Clark Decl. ¶ 24; Daggett Decl. ¶ 14; Mitchell Decl. ¶ 7; Maltz Decl. ¶¶ 8, 11.

VII. Defendant Has a Long History of Failing to Provide Safe, Reliable, and Appropriate Transportation for Students with Disabilities Absent Judicial Oversight.

OSSE’s current failure to provide safe, reliable, and appropriate transportation services for students with disabilities is only the latest in a decades-long dereliction of the District’s responsibility to provide transportation. In fact, the District’s transportation division was under a court-supervised consent decree until 2012 to ensure it provided required services. In 1995, a

putative class sued D.C. for violating the IDEA in *Petties v. District of Columbia* in 1995. No. 95-CV-0148 (PLF), 2006 WL 1046943, at *1 (D.D.C. Apr. 21, 2006) (ECF No. 1347), *aff'd*, 232 F. App'x 4 (D.C. Cir. 2007). Among the issues litigated were the District's failure to provide adequate transportation, which the Court granted a preliminary injunction to address. *Petties v. District of Columbia*, 881 F. Supp. 63 (D.D.C. 1995).

Despite the preliminary injunction, the District of Columbia continued to fail to meet its transportation obligations under the IDEA, and it required years of close court oversight and intervention before the District was deemed to be providing transportation in accordance with the law. Following the preliminary injunction, the court engaged increasingly serious methods to compel the District to follow the law: It appointed an outside expert to resolve the transportation issues and then appointed a special master. *Petties v. District of Columbia*, No. 95-CV-0148 (PLF), slip op. at 2, 3–4, 7 (D.D.C. July 8, 1997) (ECF No. 380). The Special Master appointed a transportation administrator who oversaw DCPS's transportation system for five years. *Petties v. D.C.*, No. 95-CV-0148 (PLF), 2006 WL 1046943, at *1 (D.D.C. Apr. 21, 2006) (ECF No. 1347), *aff'd*, 232 F. App'x 4 (D.C. Cir. 2007).

Eventually, under the guidance of the Special Master, the District made progress in remedying the transportation issues, and the District moved closer into compliance with the IDEA. In December 2012, the court entered final judgment ending the oversight. *See Petties v. District of Columbia*, No. 95-CV-0148 (PLF), 2012 WL 6696928, at *1 (D.D.C. Dec. 19, 2012) (ECF No. 2061). At the time, the District boasted of a transportation system that was reliably transporting 94% or more of students to school on-time with sufficient fleet and staff. *See Defendant's Motion to Vacate Orders Related to Student Transportation, Petties v. District of Columbia*, No. 95-CV-0148, (D.D.C. June 21, 2012) (ECF No. 2006). The District used a modernized GPS tracking

system to determine if buses were bringing students to school and home on time and was able to make real-time corrections. *Id.* Yet, now only 12 years later, OSSE has significantly regressed.

The lesson from *Petties* is clear: until the court took action, the District continued to fail students. Once the Court stepped in, things improved. With regular data reporting, oversight and monitoring, and outside expertise, Defendant was able to provide safe, reliable, and appropriate transportation. After the lapse of the *Petties* consent decree in 2012, the District fell back into non-compliance, and students with disabilities are suffering the consequences. Now, as the generation before them, a new generation of students with disabilities seek an injunction to end the District's unlawful policies and practices which deprive them of FAPE, deny them an equal opportunity to access their education, and unnecessarily segregate them from their peers.

LEGAL STANDARD

A plaintiff seeking a preliminary injunction must establish: “(1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). “[T]he moving party must make a clear showing that [the] four factors, taken together, warrant relief.” *Shawnee Tribe v. Mnuchin*, 984 F.3d 94, 101 (D.C. Cir. 2021) (citing *Archdiocese of Washington v. Washington Metropolitan Area Transit Authority*, 897 F.3d 314, 321 (D.C. Cir. 2018)). In this Circuit, “[A] strong showing on one factor could make up for a weaker showing on another.” *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011); *see also Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 125 (D.D.C. 2013) (applying *Sherley* to grant a preliminary injunction to prevent denial of FAPE). As set forth below, Plaintiffs satisfy all four factors.

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF EACH OF THEIR CLAIMS

A. OSSE’s Failure to Provide Safe, Reliable, and Appropriate Transportation Violates the IDEA.

OSSE is systemically failing to implement students’ IEPs by failing to provide them with appropriate transportation services and thus denying them FAPE. Once a student’s IEP is developed, the school district “must ensure that . . . special education and related services are made available to the child in accordance with the child’s IEP.” 34 C.F.R. § 300.323(c)(2). Related services include transportation. 34 C.F.R. § 300.34(c)(16).

“[A] material failure to implement a student’s IEP constitutes a denial of FAPE.” *Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 144 (D.D.C. 2018). Plaintiffs “challenging the implementation of an IEP . . . must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP.” *Wilson v. D.C.*, 770 F. Supp. 2d 270, 274 (D.D.C. 2011) (citing *Houston Independent School District v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). Specifically, plaintiffs must show that “the aspects of the IEP that were not followed were ‘substantial or significant,’” such that “deviations from the IEP’s stated requirements were ‘material.’” *Catalan ex rel. E.C. v. D.C.*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). When deciding whether a deviation was material, D.C. courts have insisted that “[v]ery few, if any, ‘provisions’ of an IEP will be insignificant or insubstantial, and [caselaw] should not be read to allow educators to distinguish in the abstract between important and unimportant IEP requirements.” *Catalan*, 478 F. Supp. 2d at 76. The test is holistic, focusing “on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.” *Wilson*, 770 F. Supp. 2d at 275.

Here, Plaintiffs are students with disabilities who require transportation from OSSE via

their IEPs. Daggett Decl. ¶¶ 5–7; Clark Decl. ¶¶ 5–7; Guerrero Decl. ¶¶ 6–7; McCray Decl. ¶¶ 6–7; Robertson Decl. ¶¶ 5–6. Yet, Defendant is failing to implement effective transportation services, and that deviation is material. Indeed, in just the first five months of the current 2023-2024 school year, there were over 1,000 delays and cancellations, and in the week just before the filing of this Complaint, there were over 100 routes delayed.⁵ OSSE’s current route planning “suffers significant deficiencies that impact OSSE’s ability to provide safe and appropriate transportation for children with disabilities,” Bluth Expert Decl. ¶ 30, and lacks sufficient trained drivers, attendants, and other staff; and specialized equipment. Bluth Expert Decl. ¶ 34–35.

OSSE’s material deviation from IEP transportation requirements is strikingly clear with regard to the individual Plaintiffs. *See* Daggett Decl. ¶¶ 18, 23, 26, 31; Clark Decl. ¶ 9; Guerrero Decl. ¶¶ 12, 26; McCray Decl. ¶¶ 10, 13, 16, 23; Robertson Decl. ¶¶ 9, 10, 16, 19. Courts regularly compare the proportion of services mandated in an IEP with the services actually provided to determine whether the deviation is material. *See Wilson*, 770 F. Supp. 2d at 276. The ratio of promised to provided services does not have to be high when the services are important to meeting a student’s IEP goals. OSSE regularly provides Plaintiffs with less than 50% of what their IEPs require. During spring 2023, J.C.’s bus dropped him off late to school 88 times—over 96% of the time. McCray Decl. ¶ 26. In fall 2023, J.C.’s bus dropped him off late to school 28 times—over 58% of the time. *Id.* ¶ 30. During the 2023 Extended School Year, OSSE DOT failed to send a bus to pick up J.C. “until the final week of the summer school session.” McCray HOD at 7. In the 2022–2023 School Year, OSSE was only able to get H.D. home on time once out of nearly 200 days, and 70% of the time the drop-off was more than an hour late. Daggett HOD at 9. D.R.’s morning bus arrived late or not at all 50 out of 149 days in 2022–2023 and 10 out of 24 days in the

⁵ DOT Daily Updates, <https://osse.dc.gov/page/daily-dot-updates>.

first portion of 2023–2024. Robertson HOD at 5. D.R.’s afternoon bus dropped him off late on 92 out of 140 days. *Id.* at 6. In the 2022–2023 school year, A.F. missed 11 days of school because of OSSE’s failures, arrived late to school 90 times, and was home late nearly every day. Guerrero Decl. ¶ 12. In the fall of the 2023–2024 school year, A.F. missed approximately three days of school, was late to school 20 times, and continued to be dropped off late at home. *Id.* at ¶ 27. From August 2022 to December 2023, B.R.C.’s bus never arrived approximately 44 times and was late for morning pick-up 27 times. Clark Decl. ¶ 10. In the 2022–2023 school year, B.R.C. was dropped off late in the afternoon approximately 62 times and in the fall of 2023–2024 school year, 34 times. *Id.* at ¶ 17. OSSE is also materially deviating from students’ IEPs when it fails to provide the proscribed accommodations and staffing students need. *See supra* Section IV at 10; *see also* Guerrero Decl. ¶¶ 6–7; Daggett Decl. ¶¶ 6–7, 32, 38; Clark Decl. ¶¶ 6–7, 14. Plaintiffs’ experts find the same. Bluth Expert Decl. ¶¶ 18–21 (“Unreliable transportation related services deny children a FAPE and deprives them of an equal opportunity to access their public education”); Livelli Expert Decl. ¶¶ 18–21 (“Transportation is the key for these children to receive FAPE.”)

Importantly, each Hearing Officer has already determined that OSSE failed to provide safe, reliable, and appropriate transportation, and that this amounted to a material deviation from students’ IEP. *See* Daggett HOD at 10 (“OSSE’s ongoing failures to provide consistent, reliable and appropriate transportation to [H.D.] are far more than *de minimis* and rise to a denial of FAPE due to preventing access to [H.D.’s] education”); McCray HOD at 12–15 (“for a child like [J.C.], who cannot communicate well and requires structure and consistency, regular bus transportation both to and from school is material”); Robertson HOD at 9 (“OSSE’s failures to provide consistent, reliable and appropriate transportation” when the D.R. was dropped off late 66% of the time in the afternoon and over 50% of the time in the mornings is “more than *de minimis* and rise[s] to a denial

of FAPE”). The “reasoned” and “specific” findings of fact in the HODs are entitled to deference on judicial review. *See, e.g., Moradnejad v. District of Columbia*, 177 F. Supp. 3d 260, 278 (D.D.C. 2016) (declining to overturn a hearing officer’s determination); *Turner v. Dist. of Columbia*, 952 F. Supp. 2d 31, 37 (D.D.C. 2013) (same).

Although Plaintiffs do not need to prove a deviation from an IEP caused educational harm to prove the deviation was material, *Wilson*, 770 F. Supp. 2d at 275, Plaintiffs easily can. *See generally* Livelli Expert Decl. OSSE’s transportation failures have deprived Plaintiffs of the ability to receive other services mandated on their IEPs and make educational progress. Robertson Decl. ¶ 42; Clark Decl. ¶ 28; Guerrero Decl. ¶¶ 24, 36; Woods Decl. ¶ 8; Davis Smith Decl. ¶ 13. Plaintiffs have missed many hours of special education instruction and related services mandated by their IEPs because of OSSE’s failure to provide consistent morning transportation to school. Clark Decl. ¶¶ 27, 28 (late morning pick-ups cause B.R.C. to be late to school and miss physical, occupational, and speech therapy); Guerrero Decl. ¶¶ 12, 27, 36 (missed 11 days and was late 90 times in the 2022–2023; 3 days and late 20 times in 2023–2024 school year so far); Robertson Decl. ¶ 26 (missed at least 30 days of school in the 2022–2023 school year because of OSSE’s failures). *See also supra* Section V at 11-12. Late and otherwise unreliable transportation causes cascading deviations from Plaintiffs’ IEPs and makes it difficult for them to achieve their educational goals. Livelli Expert Decl. ¶¶ 28–30. When students are late or miss school because of OSSE’s transportation failures, students with disabilities are also denied opportunities for inclusion with their peers. Livelli Expert Decl. ¶¶ 28, 32, 44. *See also* McCray Decl. ¶ 35; Robertson Decl. ¶ 34; Clark Decl. ¶ 27; Daggett Decl. ¶ 43. These resulting deviations from students’ IEPs also deny Plaintiffs FAPE. Livelli Expert Decl. ¶¶ 21, 27.

OSSE's failure to provide transportation also interrupts routines that are critical for students with disabilities to be mentally and emotionally prepared to learn. *See* Livelli Expert Decl. ¶¶ 33, 35–37, 39. *See also supra* Section V at 12. For example, J.C. suffers severe behavioral tantrums when the bus does not arrive on time. McCray Decl. ¶ 9. He requires at least 30 minutes of verbal coaching to calm down, which cuts into time for special education classes and therapies. *Id.* ¶¶ 9–10. If the bus does not arrive when expected, D.R. panics, paces back and forth, and starts obsessively repeating words. Robertson Decl. ¶ 7. It can take 3–4 hours for D.R. to recover from these “large upsets” to his routine. Robertson HOD at 6. These interruptions deny students with disabilities FAPE. Livelli Expert Decl. ¶ 46.

1) Individual Plaintiffs Have Satisfied the IDEA's Exhaustion Requirement.

i) Individual Plaintiffs Have Exhausted the Administrative Process for Their Systemic Claims.

Under the IDEA, parents are required to exhaust administrative processes prior to bringing claims in federal court. 20 U.S.C. § 1415(l). Plaintiffs McCray, Daggett, and Robertson each filed due process complaints against OSSE to address OSSE's failure to provide safe and adequate transportation and fully litigated their administrative hearings. Each received a Hearing Officer Determination that found in their favor on their IDEA claims and dismissed their systemic and disability discrimination claims. McCray HOD at 2; Daggett HOD at 1–2; Robertson HOD at 1. They bring this federal action within 90 days of receiving these decisions. *See* IDEA § 1415(i)(2)(B); Daggett HOD (issued 12/11/2023); McCray HOD (issued 1/10/2024); Robertson HOD (issued 2/1/2024). Additionally, Plaintiffs Guerrero and Clark have each filed due process complaints against OSSE, have had their systemic and disability discrimination claims dismissed, and have fully litigated or are in the process of litigating their administrative hearings. Plaintiffs

Guerrero and Clark expect to receive a Hearing Officer Determination shortly after filing. Guerrero Decl. ¶ 43; Clark Decl. ¶ 34.

Each Plaintiff is aggrieved by the dismissal of their systemic claims that OSSE's policies and procedures resulted in systemic issues with transportation causing harm to them and to hundreds of students with disabilities and the dismissal of their claims under Section 504, the ADA, and the DCHRA. *See* McCray HOD at 2; Dagget HOD at 1–2; Robertson HOD at 1–2; Ex. 3-B; Ex. 2-C. Plaintiffs are also aggrieved by OSSE's failure to modify its practices following the HODs in their favor. Despite receiving rulings requiring OSSE to provide appropriate and on-time transportation, H.D. and J.C. continue to experience delayed and inappropriate transportation. Daggett Decl. ¶ 55; McCray Decl. ¶ 43. Without changes to OSSE's policies, all Plaintiffs are at risk of ongoing transportation failures. Daggett Decl. ¶ 51; McCray Decl. ¶ 43; Robertson Decl. ¶ 43; Guerrero Decl. ¶ 43; Clark Decl. ¶ 34.

ii) Exhaustion is Otherwise Satisfied Under the Doctrine of Vicarious Exhaustion.

Plaintiffs who have not yet fully exhausted satisfy the exhaustion requirement under the doctrine of vicarious exhaustion. Vicarious exhaustion provides that each individual plaintiff in a class action “need not exhaust his or her administrative remedies individually so long as at least one member of the class has.” *Blackmon-Malloy v. U.S. Capitol Police Bd.*, 575 F.3d 699, 704 (D.C. Cir. 2009). The doctrine of vicarious exhaustion hinges on the “functional, rather than formal, similarity of the parties’ claims.” *See Breen v. Chao*, 2018 WL 1509077, at *7 (D.D.C. March 27, 2018).

As set forth above, Plaintiffs McCray, Daggett, and Robertson have satisfied IDEA's exhaustion requirement. The claims asserted by each of the Plaintiffs and the putative class members are functionally similar because they challenge Defendant's general practice or policy.

Accordingly, the remaining Plaintiffs have vicariously exhausted their claims under the IDEA.

Plaintiffs are likely to prevail on their claim that OSSE is violating the IDEA.

B. OSSE’s Failure to Provide Safe, Reliable, and Appropriate Transportation Violates the ADA, Section 504, and the DCHRA.

Plaintiffs are likely to prevail on their claims under the ADA, Section 504, and the DCHRA. Congress enacted the ADA to provide a clear and comprehensive mandate to eliminate discrimination against people with disabilities and to provide strong and consistent standards for identifying and addressing such discrimination. “The ADA is a ‘broad mandate’ of ‘comprehensive character’ and ‘sweeping purpose’ intended ‘to eliminate discrimination against disabled individuals, and to integrate them into the economic and social mainstream of American life.’” *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001). *See also* 42 U.S.C. § 12101(b)(1), (2). To comply with the ADA’s integration mandate, a public entity is forbidden from engaging in “unjustified ‘segregation’ of persons with disabilities.” *Olmstead v. L.C.*, 527 U.S. 581, 600 (1999) (quoting 42 U.S.C. § 12101(a)(5)).

Title II of the ADA mandates that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130.2. The ADA regulations also require public entities to “make reasonable modifications” to their programs and activities “when the modifications are necessary to avoid discrimination.” 28 C.F.R. § 35.130(b)(7)(i); *see also Pierce v. District of Columbia*, 128 F. Supp.3d 250, 267 (D.D.C. 2015) (noting that public entities have affirmative obligations to satisfy their Title II obligations). The ADA defines “disability” as “a physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1)(A). Title II and Section 504 “cover... children with disabilities, in both public schools

and other settings.” *Fry v. Napoleon Comm. Schs.*, 580 U.S. 154, 159 (2017); *see also Alston v. Dist. of Columbia*, 561 F. Supp.2d 29, 37–38 (D.D.C. 2008).

In tandem with Title II, Section 504 prohibits discrimination against people with disabilities by any program or activity receiving federal financial assistance. 29 U.S.C. § 794. The DCHRA similarly makes it unlawful for an educational institution “[t]o deny, restrict, or to abridge or condition the use of, or access to, any of its facilities, services, programs, or benefits of any program or activity to any person otherwise qualified, wholly or partially, for a discriminatory reason” based on an individual’s disability. D.C. Code § 2-1402.41(1). An educational institution is defined as “any public . . . institution including an . . . elementary or secondary school” or a “school system” or “an agent of an educational institution.” *Id.* § 2-1401.02(8).

Taken together, these statutes impose upon the District a series of affirmative legal requirements to create policies ensuring the adequate provision of education to students with disabilities. The standards for proving a violation of the ADA, Section 504, or the DCHRA are virtually the same. *See Pierce*, 128 F. Supp. 3d at 266 n.10; *Reid-Witt on behalf of C.W. v. Dist. of Columbia.*, 486 F. Supp. 3d 1, 10 (D.D.C. 2020). Under these statutes,⁶ Plaintiffs must show: (1) they are qualified individuals with disabilities, (2) Defendant is subject to the Acts, and (3) they were excluded from, denied the benefit of, or subject to discrimination under a program or activity on the basis of disability. *See Hunter on behalf of A.H. v. District of Columbia*, 64 F. Supp. 3d 158, 166 (D.D.C. 2014). As set forth below, Plaintiffs meet each element of their claims under all three laws.

⁶Unless otherwise specified, Plaintiffs’ references to the ADA should be read to encompass their Section 504 and DCHRA claims as well.

1) Plaintiffs Are Qualified Individuals with Disabilities.

Plaintiffs D.R., H.D., J.C., A.F., and B.R.C. are qualified individuals with disabilities under the ADA. The Arc’s membership includes the individual Plaintiffs and families of students with disabilities in the District who require transportation from the District to attend school and have experienced and will continue to experience Defendant’s failure to provide safe, reliable, and appropriate transportation. The Arc Decl. ¶¶ 13–14. Each individual plaintiff has a disability that “substantially limit[s] a major life activity” such as their learning, among other activities. 42 U.S.C. § 12102(1)(A). *See* Robertson Decl. ¶ 5; Daggett Decl. ¶ 6; McCray Decl. ¶ 6; Guerrero Decl. ¶ 6; Clark Decl. ¶ 5. Plaintiffs D.R., H.D., J.C., A.F., and B.R.C. and members of The Arc are otherwise qualified to receive services provided by Defendant because they “meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2). As school-age children who live in the District, the Plaintiff children and other members of The Arc are eligible to participate in the educational programs and receive the educational services provided by Defendant. *See* 20 U.S.C. § 1412(a)(1)(A).

2) Defendant is Subject to the ADA, Section 504, and the DCHRA.

The ADA and its implementing regulations apply to “public entities,” including “any State or local government” and “any department, agency, special purpose district, or other instrumentality of a State or States or local government.” 42 U.S.C. § 12131(1). Defendant falls within this definition. Additionally, public education is a “program or activity” within the meaning of the ADA. *Id.* Moreover, because Defendant also receives federal financial assistance, it is subject to the requirements of Section 504. 29 U.S.C. § 794; 34 C.F.R. § 104.4(a). *See* <https://osse.dc.gov/service/individuals-disabilities-education-act-idea-grants>. And because OSSE is an agent of the D.C. public school system, Defendant falls within the definition of an educational institution as defined by the DCHRA. D.C. Code § 2-1401.02(8); *see also* D.C. Code § 2-1402.01.

3) Defendant is Denying Plaintiffs an Equal Opportunity to Participate in and Benefit from Public Education and Unnecessarily Segregating Them from Their Peers.

As set forth in Sections IV-VII, OSSE is systemically failing to run a transportation system that can deliver safe, reliable, and appropriate transportation to and from school for students with disabilities, thereby denying them an equal opportunity to participate in and benefit from the District's education program, and unnecessarily segregating them from their peers by reason of their disabilities in violation of the ADA.

Defendant is excluding, and causing schools to exclude, Plaintiffs from participation in public education by implementing policies and procedures that fail to provide Plaintiffs with safe, reliable, and appropriate transportation to and from school, causing them to frequently miss significant instruction time and, sometimes, entire school days.⁷ 42 U.S.C. § 12132, 28 C.F.R. § 35.130. Safe, reliable, and appropriate transportation to and from school is a foundational requirement for Plaintiffs to have an equal opportunity to participate in and benefit from Defendant's public education program. Without it, Plaintiffs cannot even be present to participate in class, let alone progress with their education, causing them to fall behind their peers who have the benefit of a full school day. *See, e.g.*, McCray Decl. ¶ 37; *see also* Livelli Expert Decl. ¶¶ 30, 35. Due to Defendant's failure to provide safe, reliable, and appropriate transportation, Plaintiffs have missed out on a staggering number of hours and entire days of school. *See supra* Section IV at 9.

⁷ The Office of Special Education and Rehabilitation Services (OSERS) of the U.S. Department of Education 2009 Questions and Answers on Serving Children With Disabilities Eligible for Transportation advises that "a school day for a child with a disability should not be longer or shorter than a school day for general education students." https://sites.ed.gov/idea/files/OMB_08-0101_Transportation-11-4-09_FINAL-1.pdf

Defendant also excludes students with disabilities from public education even when the buses do transport students to school. When students arrive late to school, they miss critical instructional and social learning opportunities that other students benefit from. Interrupted routines, and long and uncomfortable bus rides without proper supports further delays Plaintiffs' ability to participate in school beyond the late arrival. Livelli Expert Decl. ¶¶ 30–43. *See supra* Section V.

Defendant also routinely fails to provide necessary equipment that Plaintiffs require to access busing that enables them to attend school. For medically fragile students, a lack of proper equipment and supervision can cause bodily injury. Because OSSE has failed to reliably provide an aide to A.F., he is at risk of falling out of his harness should he have a seizure. Guerrero Decl. ¶¶ 37, 38. Twice in the spring of 2024, someone wrapped H.D.'s safety harness around his neck. Daggett Decl. ¶ 44. Operating a transportation system without reliable staffing for nurses and aides, training for bus drivers, appropriately equipped vehicles, or necessary safety equipment means that Plaintiffs cannot safely get to school to access their education. *See supra* Section V at 12-13. Defendant has lost students entirely and left it up to individual parents and teachers to realize they are missing and find them. *See supra* Section V at 12; Robertson Decl. ¶¶ 17, 23. This is a particular risk for students who are non-speaking and who face barriers in communicating what happened to their parents and teachers.

In addition to denying Plaintiffs equal access to their education, Defendant's repeated exclusion of Plaintiffs from their schools through frequent late arrivals, shortened school days, and entire missed school days unnecessarily segregates them from their classmates, leading to isolation and stigmatization. Robertson Decl. ¶ 34; Clark Decl. ¶ 27.

School districts violate the ADA when they fail to accommodate and fully integrate students with disabilities. *See, e.g. K.K. v. North Allegheny Sch. Dist.*, No. CV14-218, 2017 WL 2780582, at *13 (W.D. Pa. June 27, 2017) (denying defendant’s motion for summary judgment of ADA claims involving busing of disabled student when school district knew student “could not participate in the transportation program” because of a disability but “refused to make a reasonable modification in its program” to provide “access to the program equal to that” of nondisabled students); *D.A. by & through D.A. v. Penn Hills Pub. Sch. Dist.*, No. 2:20-CV-1124-NR, 2021 WL 1929287, at *13 (W.D. Pa. May 13, 2021) (denying summary judgment of ADA claims when school district failed to reasonably accommodate disabled student, thereby denying him access to school bus program); *J.L. on behalf of J.P. v. New York City Dep’t of Educ.*, 324 F. Supp. 3d 455, 467 (S.D.N.Y. 2018)(parents stated ADA claims alleging that city department of education policies limited available services to disabled students); *K.N. v. Gloucester City Bd. of Educ.*, 379 F. Supp.3d 334, 354 (D.N.J. 2019) (defendant school district violated the ADA when it failed to accommodate disabled student in an integrated classroom with non-disabled peers, leading to the student’s social isolation and segregation). Policies that unnecessarily remove, or seriously risk removing, students with disabilities from their classrooms constitute discriminatory segregation in violation of the ADA. *See J.S., III by and through J.S. Jr. v. Houston Cnty. Bd. of Educ.*, 877 F.3d 979, 986–87 (11th Cir. 2017) (per curiam) (applying *Olmstead*’s framework to removal from school classrooms); *Georgia Advoc. Off. v. Georgia*, 447 F. Supp. 3d 1311, 1324 (N.D. Ga. 2020) (holding that plaintiffs stated an *Olmstead* claim alleging unnecessary segregation in education context).

Defendant is discriminating against Plaintiffs by reason of their disabilities. In contrast to their classmates who have the benefit of a full school day each day, Defendant’s failure to provide

safe, reliable, and appropriate busing to Plaintiffs has caused them to miss critical instruction time, entire school days, and isolated them from their peers. *See supra* Section V.

Finally, the modifications that Plaintiffs seek through this preliminary injunction—that Defendant provides them with safe, reliable, and appropriate transportation services—are reasonable. As *Petties* demonstrates, Defendant is capable of adequately transporting students with disabilities (while under a court order and with adequate supervision). *See* Defendant’s Motion to Vacate Orders Related to Student Transportation, *Petties v. District of Columbia*, No. 95-CV-0148, (D.D.C. June 21, 2012) (ECF No. 2006). A return to the *status quo ante* is not unreasonable and other school districts do not have comparable transportation failures. *See id.* *See* Livelli Expert Decl. ¶¶ 22–26; *see generally* Bluth Expert Decl. (transportation best practices); Exhibit 13, Declaration of Alexandra Robinson (“Robinson Expert Decl.”) (same).

Plaintiffs are likely to prevail on their claims under the ADA, Section 504, and the DCHRA.

C. Plaintiffs Have Standing.

In order to prevail on the merits, Plaintiffs must also demonstrate their Article III standing. Plaintiffs satisfy the three-prong test for standing articulated in *Friends of the Earth, Inc. v. Laidlaw Environmental Services*, 528 U.S. 167, 180–181 (2000), namely: (1) an actual or threatened injury-in-fact, (2) that is fairly traceable to the alleged illegal action, and (3) that is likely to be redressed by a favorable court decision. *See, e.g., Valley Forge Christian Coll. v. Am. United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982).

1) Individual Plaintiffs Have Standing.

Plaintiffs have an injury that is both “concrete and particularized.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 334 (2016). “Parents have standing to sue when practices and policies of a school threaten their rights and interests and those of their children.” *Liddell v. Special Admin. Bd. of*

Transitional Sch. Dist. of City of St. Louis, 894 F.3d 959, 965–66 (8th Cir. 2018). Here, as described above, OSSE’s failures are having a profound impact on the educational interests of Plaintiffs’ children. *See supra* Section I.A. Even when Plaintiffs’ experience bouts of on-time transportation, they remain at-risk of transportation failures unless OSSE develops an effective system. *See generally supra* Section VI.

There is also “a causal connection between the injury and the conduct complained of.” *Lujan v. Defenders of Wildlife*, 504, U.S. 555, 560 (1992) (citing *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41–42 (1976)). Here, OSSE’s policies and practices deny District students safe and appropriate transportation. *See supra* Section VI.

Finally, an injury is redressable “if it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Friends of the Earth, Inc.*, 528 U.S. at 181. Courts have broad discretion in crafting remedies under the IDEA, *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.*, 471 U.S. 359, 369 (1985), and the ADA, *Am. Council of the Blind v. Paulson*, 581 F. Supp.2d 1, 2 (D.D.C. 2008) (“district courts are free to issue an injunction demanding compliance with the law”). To satisfy the redressability prong, Plaintiffs need only show that the Court be able to offer the plaintiffs at least some of the relief the plaintiffs seek. *Severino v. Biden*, 71 F.4th 1038, 1042 (D.C. Cir. 2023) (quoting *Collins v. Yellen*, 594 U.S. ---, 141 S.Ct. 1761, 1779 (2021)). As the *Petties* litigation demonstrates, *see supra* Section VII, the relief requested by Plaintiffs will address their injuries and is within the Court’s authority to grant.

2) The Arc Has Associational Standing.

Organizations may bring suit on behalf of their members if: (1) the organization’s members “otherwise have standing to sue in their own right,” (2) “the interests [the organization] seeks to protect are germane to the organization’s purpose,” and (3) “neither the claim asserted nor the

relief requested requires the participation of individual members in the lawsuit.” *See, e.g., Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 342–43 (1977). The Arc satisfies each factor.

First, members of The Arc have standing to sue in their own right. Organizations satisfy this requirement if even only one of their members has standing. *See, e.g., Warth v. Seldin*, 422 U.S. 490, 511 (1975) (“the association must allege that its members, *or any one of them*, are suffering . . . injury”) (emphasis added). The Arc is a non-profit organization with members who are District residents with disabilities, or parents of children with disabilities, who require transportation to attend school. Its members include Plaintiffs Robertson, Daggett, McCray, Guerrero, and Marcia Cannon-Clark and David Clark. The Arc Decl. Decl. ¶ 15. As explained above, *see supra* Section I.C, these members have standing.

Second, ensuring students with disabilities in the District are not deprived of FAPE, denied equal access to their education, and unnecessarily segregated due to Defendant’s inadequate transportation is germane to The Arc’s purpose. The Arc’s mission is “to promote and protect the human rights of people with intellectual and developmental disabilities and actively support their full inclusion and participation in the community throughout their lifetimes.” *Our Mission and Values*, The Arc., <https://thearc.org/about-us/mission-values>. The Arc’s Position Statement on Education states: “all children and youth with intellectual and developmental disabilities must receive a . . . FAPE that includes fair evaluation, ambitious goals, challenging objectives, the right to progress, individualized supports and services, high quality instruction, and access to the general education curriculum in age-appropriate inclusive settings.” The position statement notes that one critical aspect of ensuring FAPE is to “assure safe school transportation for all students with disabilities . . . schools must assure the sufficient allocation of transportation resources such that

transportation is not used to justify early departures, late arrivals, or excessive travel times.”
Education, The Arc., <https://thearc.org/position-statements/education>.

Finally, neither the claims nor injunctive relief sought here require the participation of individual members. An organization may assert associational standing on behalf of its members when neither the claims nor the requested relief require the participation of individual members in the lawsuit. *Hunt*, 432 U.S. at 343. The third prong of associational standing is a prudential, rather than constitutional, consideration. *United Food & Commercial Workers Union Local 751 v. Brown Grp.*, 517 U.S. 544, 557 (1996). For this reason, Courts of Appeals have not required an association to satisfy this third prong when seeking only injunctive or declaratory relief on behalf of its members, and they allow standing if an association plaintiff can prove its case with a sampling of evidence from its members. *See, e.g., Ass’n of Am. Physicians and Surgeons, Inc. V. Texas Medical Board*, 627 F.3d 547, 552–53 (5th Cir. 2010); *Bano v. Union Carbide Corp.*, 361 F.3d 696, 714 (2d Cir. 2004); *Pa. Psychiatric Soc’y v. Green Spring Health Servs., Inc.*, 280 F.3d 278 (3d Cir. 2002). Federal courts routinely find that advocacy organizations representing individuals with disabilities, including chapters of The Arc, have associational standing to challenge violations of federal laws protecting individuals with disabilities in cases seeking systemic, injunctive relief without the participation of individual members. *See, e.g., Equal Rights Ctr v. Uber Techs., Inc.*, 525 F. Supp.3d 62, 81 (D.D.C. 2021); *La Union del Pueblo Entero v. Abbott*, 618 F. Supp. 3d 449, 501 (W.D. Tex. 2022) (The Arc of Texas); *G.T. v. Kanawha Cnty. Schs.*, No. 2:20-CV-00057, 2020 WL 4018285, at *7 (S.D. W. Va. July 16, 2020) (The Arc of West Virginia).

II. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY IF A PRELIMINARY INJUNCTION IS NOT GRANTED

A. Defendant's Failure to Provide FAPE and Equal Access to Education and Ensure Plaintiffs are Not Unnecessarily Segregated Is a Per Se Irreparable Injury.

This Court has long held that “a failure to provide a FAPE constitutes irreparable injury.” *Lofton*, 7 F. Supp. 3d at 124 (citing *Massey v. Dist. of Columbia*, 400 F. Supp. 2d 66, 75 (D.D.C. 2005)). Where there is a denial of FAPE, “there results a **per se harm** to the student and the irreparable injury requirement for a preliminary injunction has been satisfied.” *Blackman v. Dist. of Columbia*, 277 F. Supp. 2d 71, 79 (D.D.C. 2003) (emphasis added) (reasoning that irreparable harm results from the denial of FAPE because a child’s window to learn is finite). Every day that OSSE fails to provide appropriate, safe, reliable, and on-time transportation is another day that Plaintiffs are denied their education, thereby suffering an irreparable injury. “Any agency whose appointed mission is to provide for the education . . . of disabled children fails that mission when it loses sight of the fact that, to a young, growing person, time is critical” to their education and progress goals. *Charles H. v. Dist. of Columbia*, 2021 WL 2946127, at *10 (citation omitted). Each school day has only a limited amount of time dedicated to a student’s learning, and compounded with the “rate at which a child develops and changes, . . . a few months can make a world of difference in the life of that child.” *Blackman*, 277 F. Supp. 2d at 80 (citation omitted). Although “[a] child without disabilities would suffer harm from being unable to attend school; such harm is heightened for a disabled child with much greater need for daily structure and consistency.” *Massey*, 400 F. Supp. 2d at 75. “Each day a child is denied a free appropriate education . . . he or she is harmed yet again.” *Blackman*, 277 F. Supp. 2d at 79.

OSSE is failing to provide reliable, safe, and appropriate transportation for students with disabilities, and thus is denying Plaintiffs FAPE, see *supra* Section I.A. This denial of FAPE, which

Hearing Officers have already concluded occurred, is per se harm for purposes of a preliminary injunction, and is all that is required to necessitate this Court's immediate intervention.

Defendant's ongoing violations of federal disability civil rights laws also causes irreparable harm. Where a "defendant has violated a civil rights statute," courts "presume that the plaintiff has suffered irreparable injury from the fact of the defendant's violation." *Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 827 (9th Cir. 2001); *see also Callicotte v. Carlucci*, 698 F. Supp. 944, 949 n.3 (D.D.C. 1988) (finding it "worthy to note" that "harm caused by discrimination creates a presumption of irreparable injury"); *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984) ("[I]rreparable injury may be presumed from the fact of discrimination and violations of fair housing statutes"); *Bd. of Educ. Of the Highland Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850, 878 (S.D. Ohio 2016).

The presumption in favor of finding irreparable harm has specifically been found when a defendant's actions violates the ADA and Section 504. *See Bartell v. Grifols Shared Servs., NA, Inc.*, No. 21-cv-953, 2023 U.S. Dist. LEXIS 131671, at *22–23 (M.D.N.C. July 31, 2023) ("Plaintiff has demonstrated Defendants violated civil rights statutes—the ADA and Section 504—so irreparability may be presumed"); *Pathways Psychosocial v. Town of Leonardtown, M.D.*, 223 F. Supp. 2d 699, 717 (D. Md. 2002). *See also Nat'l. Assoc. Of the Deaf v. Trump*, 486 F. Supp.3d 45, 59 (D.D.C. 2020) (denying deaf plaintiffs access to federal government information by failing to provide ASL interpreter was irreparable injury and violation of Section 504); *Bonnette v. District of Columbia Ct of Appeals*, 796 F. Supp.2d 164, 187 (D.D.C. 2011) (failing to accommodate plaintiff's disability in academic testing "is itself a form of irreparable injury and violation of Title II"). Here, as discussed above in Section I.B., Defendant has violated Plaintiffs' civil rights under the ADA, Section 504, and the DCHRA. Therefore, irreparable harm may be presumed.

B. Defendant’s Failure to Provide Transportation Services Has Irreparably Harmed Plaintiffs’ Educational Opportunities and Isolated Them From Their Peers.

Plaintiffs are experiencing exacerbated irreparable harms as a result of Defendant’s failures. Defendant’s failure to provide appropriate transportation causes students to miss school and related services such as therapies and behavior supports, deny Plaintiffs equal access to their education and unnecessarily segregates them, endangers students’ physical and emotional health, and leaves parents with the untenable choice to self-transport their children, often at great personal expense, or miss school altogether.

As discussed in Section V above, when Defendant transports students to school late or not at all, the students miss instruction, related services, and social interaction with their peers, which impacts their progress towards their educational goals. Livelli Expert Decl. ¶¶ 27–32. Plaintiffs are entitled to receive services like occupational, physical, and behavioral therapies, and speech-language therapy as outlined in their IEPs to make meaningful progress towards their education goals, yet are repeatedly missing them because of late or absent transportation. *See supra* Section V at 10-12. Plaintiffs miss time to interact with their peers as mandated in their IEPs and which are directly relevant to their progress in communication, adaptive/daily living, and emotional, social, and behavioral development goals. *Id.* As a result, students are not making meaningful progress towards their educational goals, and this harm is irreparable. Livelli Expert Decl. ¶ 45. (describing how the harm is irreparable); *see Lofton*, 7 F. Supp. 3d at 124. “[T]he gravity of the harm is vast and far reaching” when a child is deprived of his or her education. *Ass’n for Disabled Ams., Inc. v. Fla. Int’l Univ.*, 405 F.3d 954, 957-58 (11th Cir. 2005) (citing *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954) (“[E]ducation is perhaps the most important function of state and local governments” because “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”)).

Defendant’s failures also negatively impact Plaintiffs and putative class members’ emotional regulation and well-being. *See supra* Section I.A at 23. As the Court found in *Massey*, the impact to the students’ education goes beyond missed academics and therapies—the failure to provide transportation interrupts the consistency and routine on which students with disabilities and their families rely. *Massey*, 400 F. Supp. 2d at 75. Plaintiffs also experience irreparable harm because OSSE’s transportation failures segregate them from their classmates, leading to isolation and stigmatization. Guerrero Decl. ¶ 32; McCray Decl. ¶ 35; Daggett Decl. ¶ 40; Robertson Decl. ¶ 34; Clark Decl. ¶ 27. Because of Defendant’s chronically late afternoon drop-offs, they miss therapy appointments and opportunities to interact with their community. *See supra* Section V at 11-12, Livelli Expert Decl. ¶¶ 42, 43. Students’ routines are also interrupted, making it difficult for them to be ready for learning: they expect the bus to arrive at a certain time and rely on a regular schedule for their mental well-being and safety. Daggett Decl. ¶ 9; Robertson Decl. ¶ 22; McCray HOD at 4; Clark Decl. ¶ 15. Late arrivals to school cause aggressive or anxious behaviors, such as crying, self-harm, and repetitive speech—the very behaviors targeted in their IEP goals—and impacts their ability to focus on learning. McCray Decl. ¶ 27; Robertson Decl. ¶ 34. *See supra* Section I.A. at 23. This too causes students irreparable harm. Livelli Expert Decl. ¶¶ 33–37. *See D.R. ex rel. Courtney R. v. Antelope Valley Union High Sch. Dist.*, 746 F. Supp. 2d 1132, 1145–46 (C.D. Cal. 2010) (a student who uses a wheelchair experienced irreparable harm to her “self worth and sense of independence” by the school’s failure to allow her to independently access the elevators).

C. Defendant’s Failure to Provide Appropriate Transportation Endangers Students’ Emotional and Physical Safety.

Defendant’s actions put Plaintiffs at risk of physical harm. Risking student safety is an irreparable harm. *See Doe 1 v. Perkiomen Valley Sch. Dist.*, 585 F. Supp. 3d 668, 702 (E.D. Pa.

2022) (collecting cases and finding that the increased risk of injury constitutes an irreparable harm). Defendant fails to safely transport children with disabilities who have complex medical needs and require accommodations, such as nurses, safety harnesses, and aides. *See supra* Sections IV at 10, Section VI.B; Guerrero Decl. ¶¶ 8–10; Clark Decl. ¶ 6; Daggett Decl. ¶¶ 7–8. Delays in transportation, especially long afternoon rides, causes students to miss regularly scheduled medications. *See* Daggett Decl. ¶ 10; Clark Decl. ¶ 19; Bluth Expert Decl. ¶ 30(c). Long ride times can leave students hungry, tired, and dehydrated. *See* Daggett HOD at 9; Livelli Expert Decl. ¶ 38. For students who cannot independently use the bathroom, long afternoon bus rides also can exacerbate discomfort from a soiled diaper. *See* Daggett Decl. ¶ 36; Davis Smith Decl. ¶¶ 7,8 (C.S. is at risk of cancer from sitting in her soiled diapers caused by long bus rides). Plaintiffs are also at risk because Defendant’s deficient systems leave them stranded across the city, unsupervised and often unable to advocate for themselves. Robertson HOD at 4 (D.R. taken to wrong school, wrong address). Such failures are inexplicable and directly put children with disabilities in harm’s way.

D. Failure to Provide Appropriate Transportation Forces Parents to Self-Transport at Great Personal Cost.

When Defendant fails to transport students with disabilities to and from school, parents are left to pick up the pieces. Parents have to sacrifice their resources, careers, educational pursuits, and other childcare obligations to ensure their child arrives to and from school safely and in a timely manner. *See* Clark Decl. ¶ 32 (on the brink of employment termination because of OSSE’s unpredictable schedule); Daggett Decl. ¶ 48 (son’s late busses have caused missed work and limited productivity in the morning); McCray Decl. ¶ 39 (took out a car loan and unable to attend educational classes and job fairs, and maintains a job with a flexible schedule given OSSE’s

failures); Mitchell Decl. ¶ 16 (quit her dream job and has not worked in the past two years because of OSSE’s unreliability); *See supra* Section V at 13.

* * *

In sum, Plaintiffs have suffered irreparable harm because Defendant’s failure to provide appropriate transportation is denying them FAPE, denying them equal access to education, and unnecessarily segregating them in violation of the IDEA, ADA, Section 504, and the DCHRA.

III. A PRELIMINARY INJUNCTION SERVES THE PUBLIC INTEREST

A preliminary injunction is appropriate in this matter because the balance of the equities weighs heavily in Plaintiffs’ favor and would strongly serve the public interest. When the government is the nonmovant in a request for a preliminary injunction, the harm to the opposing party and public interest merge and are considered “one and the same.” *Pursuing America’s Greatness v. Fed. Election Comm.*, 831 F.3d 500, 511 (D.C. Cir. 2016). That is because “the government’s interest is the public interest.” *Id.*

When considering relief from the District’s violation of the IDEA, this Court has found that “[t]he public interest lies in the proper enforcement of . . .the IDEA.” *Petties v. District of Columbia*, 238 F. Supp. 2d 88, 99 (D.D.C. 2002); *see also DL v. District of Columbia*, 194 F. Supp. 3d 30, 98 (D.D.C. 2016), *aff’d*, 860 F.3d 713 (D.C. Cir. 2017) (“the public interest will be served by compelling the District to provide special education and related services, and access thereto, in accordance with applicable law”); *Massey*, 400 F. Supp. 2d at 76 (“the relevant public interest is that of the students”). Indeed, this Court previously granted comparable relief in a near identical case involving the District’s failure to provide adequate transportation for disabled children. *See Petties*, No. 95-CV-0148 PLF, 2012 WL 6696928, at *1 (granting preliminary injunction and appointing an administrator to oversee changes).

Likewise, this court has found that the public interest is served when disabled plaintiffs enforce their rights under the ADA and Section 504. *See, e.g., Nat'l Assoc. Of the Deaf*, 486 F. Supp.3d at 59 (holding that public interest is served when deaf plaintiffs sued under Section 504); *Bonnette*, 796 F. Supp.2d at 188 (approvingly noting that “the public has a strong interest in ensuring that the antidiscrimination aims of the ADA are satisfied”). Here, there is a compelling public interest to ensure that students with disabilities have equal access to public education as their non-disabled peers. Congress has mandated that the public interest requires equal treatment for persons with disabilities, thereby maximizing their integration and independence. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d). An injunction supports this well-established public interest.

A. Systemic Injunctive Relief Will Create a Safe, Reliable, and Appropriate Transportation System.

Defendant’s failure to implement safe, reliable, and appropriate transportation requires an order enjoining OSSE to reform its policies and practices; it cannot be addressed on a “student-by-student basis.” *See Easter v. D.C.*, 128 F.Supp.3d 173 (D.D.C. 2015) (systemic claims are “precisely the type of issue that cannot be addressed on a student-by-student basis during Due Process Hearings, but is better addressed by seeking injunctive relief in federal court . . . [.]”) *See also* Daggett HOD (“it is the understanding of the undersigned that Hearing Officers are not permitted to change policy.”).

Here, OSSE’s transportation system does not align with best practices and professional guidance, as evidenced by the failures described above. *See generally* Bluth Expert Decl. ¶¶ 22–52, *see also* Robinson Expert Decl. ¶¶ 14–49. Dr. Bluth and Ms. Robinson co-author the industry standards for student transportation that are widely used by school districts nationally. Their expert

affidavits detail transportation best practices for students with disabilities based on the National Congress on School Transportation (NCST)⁸ and their decades of experience in the field.

In order to provide on-time and safe transportation for students with disabilities, OSSE must adjust how it plans and executes its transportation routes. Bluth Expert Decl. ¶¶ 24–25. Routes should be scheduled to ensure students arrive within 10–30 minutes of the start of the school day and depart after the end of the day so that students with disabilities do not experience a shortened school day. *Id.* ¶¶ 26, 27; Robinson Expert Decl. ¶ 37. Students with disabilities should not be routed to be on transportation for excessive period of times, something that is particularly important for students who need medication, food, or water at particular times, who wear diapers, or who are immobilized on transportation. Bluth Expert Decl. ¶ 28. Routes should deploy the safest vehicles appropriate for student needs, which are typically school buses and not private, non-bus vehicles. Robinson Expert Decl. ¶¶ 39–44.

Using modern technology for routing is best practice, which can take into account individualized student needs to produce effective routes. *Id.* ¶¶ 34–36. These systems can be informed by collect accurate, real-time data, and adjusted using the data as needed. to track vehicles, and be able to analyze the data to adjust routes as needed. Bluth Expert Decl. ¶¶ 25, 29; Robinson Expert Decl. ¶¶ 30–36. With current available systems, parent communication through texts, calls, and emails is possible, and parents should be able to track their child’s bus through an app on their phone or computer and receive notifications from the provider. Robinson Expert Decl. ¶¶ 47, 48. Parents should be kept informed about their child’s bus status so they know where the child is at all times. *Id.* ¶ 49.

⁸ The NCST is body with over 300 delegates from school transportation organizations that has met since 1939 to create standards for the industry. *See* <https://www.nasdpts.org/NCST-NSTSP>.

OSSE must also ensure its transportation system is sufficiently staffed and trained. Staffing should consist of sufficient drivers and bus attendants to cover routes plus at least a 10% bench. Robinson Expert Decl. ¶¶ 23–26. In addition, 1:1 aides for students who require them on their IEP for the bus should not be grouped in with bus attendants as these aides should have different skills and should be staffed consistently to the same children. Robinson Expert Decl. ¶¶ 27, 28. Transportation staff must be sufficiently trained in order to provide safe and effective transportation for students with disabilities. Training should include, at a minimum, special education and disability awareness, special education and anti-discrimination law, operational policies and procedures including safety inspections student accountability and observation, behavior management, communication, and reporting and record keeping. Robinson Expert Decl. ¶¶ 25, 26; Bluth Expert Decl. ¶¶ 36–41. Staff should be prepared to use necessary equipment like power lifts, wheelchairs and other mobility devices, and adaptive and assistive devices like child safety restraint systems and safety vests. Robinson Expert Decl. ¶¶ 25, 26; Bluth Expert Decl. ¶¶ 36–41. All bus staff should be trained that rapport with families is key to their roles and to establish that rapport, Robinson Expert Decl. ¶¶ 45–49.

In order to ensure that OSSE provides safe, reliable, and appropriate transportation, the Court should order OSSE, with the support of transportations experts, to develop and implement a corrective action plan consistent with Plaintiffs’ Proposed Order.

IV. THE BALANCE OF EQUITIES FAVORS GRANTING A PRELIMINARY INJUNCTION

The balance of equities strongly supports injunctive relief for Plaintiffs. District students with disabilities who require special education transportation are uniquely dependent on the government. Unlike students enrolled in general education, many of these students are required by the District to travel far from their neighborhood schools, including into Virginia and Maryland, to

receive an education, many cannot travel independently on public transportation or in a private vehicle such as an Uber or taxi, due to their tender age, and many need accommodations such as child safety restraint systems and nursing services to be transported safely. They rely solely on Defendant for transportation to school.

Injunctive relief will not unduly burden Defendant. A preliminary injunction would necessarily require Defendant to ensure appropriate special education transportation is provided to District students with disabilities, a task they are already obligated to do. *See* Bluth Expert Decl. ¶¶ 19, 24. (explaining obligations of school transportation agencies). “An injunction requiring the District to do nothing more than comply with its legal obligations cannot, by definition, harm it.” *DL*, 194 F.Supp.3d at 98. State agencies “cannot suffer harm from an injunction that merely ends an unlawful practice.” *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015) (quoting *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)). That is because “[t]here is generally no public interest in the perpetuation of unlawful agency action.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Rather, “there is a substantial public interest ‘in having governmental agencies abide by the federal laws that govern their . . . operations.’” *Id.* (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)). In addition, while an injunction could result in the need for additional funding, financial burdens should receive minimal consideration, since the District agreed to comply with the IDEA in return for federal funding. As this Court found in *Petties*, any “financial hardship” to provide or pay for special education services for eligible students under the IDEA does not “justif[y] the risk to the class members that [Defendant] seeks to impose [of violating their rights under the IDEA], a risk that directly results from [Defendant’s] own failure to follow the law.” 238 F. Supp. 2d at 99. Here, an injunction compelling Defendant to fulfill its statutory obligations would do no more than end Defendant’s unlawful practices.

CONCLUSION

Defendant has failed to implement policies, procedures, and practices to ensure that Plaintiffs receive safe, reliable, and appropriate transportation pursuant to the IDEA, Section 504, the ADA, and the DCHRA. Without this Court's swift intervention, Plaintiffs will continue to be denied the education and transportation services to which they are entitled, causing them irreparable harm. Accordingly, this Court should issue a preliminary injunction requiring Defendant to, among other things, immediately provide Plaintiffs with safe, reliable, and appropriate transportation services.

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Respectfully submitted,

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