

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

CRYSTAL ROBERTSON, *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

No. 1:24-cv-00656-PLF

**DEFENDANT'S OPPOSITION TO PLAINTIFFS'
MOTION FOR A PRELIMINARY INJUNCTION**

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INTRODUCTION

Every school day the Office of the State Superintendent of Education Division of Transportation (OSSE-DOT) performs an “intricate ballet” transporting over 4,000 students with disabilities to and from schools both within and outside the District of Columbia. This task poses immense obstacles, including caring for and transporting medically fragile or otherwise high-needs students. Last school year, School Year 2022–23, also brought a crisis for OSSE when a growing (nationwide) bus driver shortage collided with OSSE’s rollout of a failed new routing system, resulting in significant transportation disruptions. OSSE has been working to overcome those obstacles through creative new programs aimed at boosting service supply, reducing ridership demand, improving OSSE’s technological infrastructure, streamlining information sharing, and increasing efficiency and transparency. That work has already produced significant performance gains, including improved on-time performance.

The five individual Plaintiffs here were all affected by these disruptions, and, using procedures established by the Individuals with Disabilities in Education Act (IDEA), they have all secured favorable decisions from administrative hearing officers finding that they were denied the free appropriate public education required by federal law. Despite their success, Plaintiffs have brought suit in federal court seeking more; in effect, a complete judicial take-over of OSSE-DOT’s operations, policies and procedures, plus monitoring and reporting.

It would be error for this Court to take up that invitation, primarily because Plaintiffs have failed to show that such relief is warranted, or even permitted, under the circumstances. Plaintiffs seek triply extraordinary relief (a preliminary structural injunction) without ever showing how it will help them (as opposed to maybe helping others). This truth shines through the holes in Plaintiffs’ claim under the IDEA—they have not even attempted to argue, for

example, that the hearing officer decisions in their individual cases were wrong in any way, and thus they fail to state a claim. Similarly, Plaintiffs have not shown that they are “aggrieved” by those decisions, and thus they have no IDEA cause of action. This problem is also reiterated in every element of the test for injunctive relief: Plaintiffs fail to show irreparable harm or the public interest or balance of equities tip in their favor. The hearing officer decisions issued have already provided relief that will help Plaintiffs, and quite possibly other disabled schoolchildren, get to and from school on time. Plaintiffs have not shown that a judicial take-over of OSSE-DOT’s operations, and imposition of their proposed “best practices” checklist, would help them individually, or that it would better things at all. If anything, a judicial order to arbitrarily speed up OSSE’s ongoing projects, or to pick one long-term strategy over another, risks short-circuiting the careful, effective development of new tools and policies that is already underway.

Plaintiffs also make disability discrimination claims under the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA), and the D.C. Human Rights Act (DCHRA). These are also unlikely to succeed, on simple grounds. Plaintiffs were not denied equal access to transportation because the District does not offer these services (in this way) to nondisabled students. Plaintiffs also fail to argue, let alone show, that the District acted with bad faith or gross misjudgment, which dooms any claim to discriminatory denial of education generally.

Finally, Plaintiff The Arc, a non-profit advocacy organization, has failed to argue basic elements in support of relief—for example, The Arc has not exhausted its IDEA remedies, or made any argument at all about irreparable harm. The Arc is not entitled to preliminary relief, nor are the other Plaintiffs. The Motion for Preliminary Injunction (Motion) should be denied.

FACTUAL BACKGROUND

I. OSSE-DOT Provides Transportation To and From School for Special Education Students as Required by the Individuals with Disabilities in Education Act.

The IDEA, 20 U.S.C. § 1400 *et seq.*, provides federal grants for the education of children with disabilities. To qualify for federal funding, participating states (and the District) must make a “free appropriate public education” (FAPE) available to every child with a disability. 20 U.S.C. § 1412(a)(1); 20 U.S.C. § 1401(31) (defining state to include the District). FAPE means “special education and related services,” meeting prescribed federal requirements, *id.* § 1401(9), and “related services” includes “transportation,” *id.* § 1401(26)(A). Federal regulations further define transportation to include “travel to and from school and between schools, travel in and around school buildings and specialized equipment (such as special adaptive buses, lifts and ramps) if required to provide special transportation for a child with a disability.” 34 C.F.R. § 300.34(c)(16).

To receive funding, a state must also submit a plan of compliance with the IDEA’s requirements to the U.S. Secretary of Education, 20 U.S.C. § 1412(a), who then distributes funding directly to each state’s designated State Education Agency (SEA), which in turn distributes funds to Local Education Agencies (LEAs). The SEA is the state entity generally responsible for “supervision of public” schools. *Id.* at § 1401(32). LEAs are, usually, local school districts. *Id.* at § 1401(19). Here in the District, OSSE is the SEA, and there are around 70 LEA’s. Ex. A, Decl. of Raphael Park (Park Decl.) ¶ 10. The Secretary of Education must approve a state’s plan, must monitor compliance, and may enforce the IDEA’s requirements by withholding funds or referring violations to other federal entities. *See generally* 20 U.S.C. § 1416.

The IDEA ensures that each student receives a FAPE by requiring schools to design highly individualized education programs, widely known as “IEP’s.” Teams of parents, teachers, school officials, and other professionals make these plans. *Holman v. District of Columbia*, 153 F. Supp. 3d 386, 389 (D.D.C. 2016). The teams decide “which related services must be made available by the school district,” and “[a]ll such services must be specified in a child’s written IEP.” *Petit v. U.S. Dep’t of Educ.*, 675 F.3d 769, 773 (D.C. Cir. 2012) (citing 20 U.S.C. § 1414(d)(1)(A)(i)(IV)); Ex. B, OSSE Special Education Transportation Policy (Transportation Policy) at 5. Generally speaking, students receive transportation services on their IEPs if they are medically fragile or if they require specialized non-medical accommodations. *Id.* at 3–5.

The District only provides transportation to school children as required by IEPs. It does not transport non-disabled students, Park Decl. ¶ 8, except generally, by providing free unlimited use of public transportation for all District residents, ages 5 to 21, who are enrolled in school, *see* District Dep’t of Trans., “Kids Ride Free Program,” <https://ddot.dc.gov/page/kids-ride-free-program>. OSSE has been responsible for providing these transportation services since 2009. Park Decl. ¶ 6; *see also* 20 U.S.C. § 1413(g)(2) (permitting SEAs to directly provide certain services “in such manner . . . as the [SEA] considers appropriate”). LEAs must notify OSSE of their enrolled students’ transportation needs by timely submitting and updating Transportation Request Forms (TRFs). Transportation Policy at 12.

Presently, OSSE transports more than 4,000 students directly from their home to their school and back on a daily basis. Park Decl. ¶ 16. About 20 percent of those students require specialized supports, such as a wheelchair lift or dedicated aide. *Id.* ¶ 18. Each of those students has a unique set of strengths and challenges. *Id.* ¶ 17. OSSE must balance the needs of each child with those of others on their routes and across the system, while maintaining reasonable

travel times. *Id.* A team of more than 1,000 drivers and attendants employed by OSSE, using a fleet of around 650 OSSE-owned vehicles, transports most students. *Id.* ¶ 12. Recently, all services have spread across about 550 routes, which are run each morning and again in the afternoon. *Id.* ¶ 18. Each day, staff are ready well before dawn to begin pick-ups as early as 5:35 a.m. *Id.*

II. Challenges Produced Significant Transportation Delays in School Year 2022–23.

OSSE is well aware that it was unable to provide timely service to some students during parts of the previous school year, School Year 2022–23. *Id.* ¶ 31. As agency leadership has explained to the Council for the District of Columbia, many factors combine to affect performance, but the confluence of two in particular last year caused significant challenges: (1) labor shortages, and (2) the transition to an ineffective new routing system (then transition back again). OSSE, Resp. to FY2023 Performance Oversight Questions (Feb. 23, 2024) (FY23 Performance Oversight Responses), [4-48] at 220; Park Decl. ¶¶ 24–43. (All citations are to ECF page numbers.)

As for many jurisdictions across the country, the COVID-19 pandemic presented formidable challenges to staffing, particularly among bus drivers. *See e.g.*, Park Decl. ¶¶ 26–28; Ex. C, Sebastian M. Hickey & David Cooper, *The School Bus Driver Shortage Remains Severe*, Economic Policy Institute (Nov. 14, 2023), <https://tinyurl.com/5bpdb6dy>; Ex. D, Donna St. George, *With too few bus drivers, schools struggle to get kids to class*, Washington Post (Sept. 2, 2023), <https://tinyurl.com/mvczdsk6> (describing labor shortage challenges for school districts nationwide). Prior to the pandemic, OSSE had more than enough drivers to staff its routes. Park Decl. ¶ 22. Since a return to full in-person education in School Year 2021–22, OSSE has lost 13

percent of its drivers and struggled to rebuild its bench. Park Decl. ¶ 24.¹ OSSE has not yet been able to meet its pre-pandemic staffing levels. *Id.* ¶ 28. This is true for many school districts. This year, for example, schools in Louisville, Kentucky closed entirely for over a week because of bus driver shortages. *Id.* ¶ 26. New York City warned parents of the potential for a driver strike to similarly disrupt school operations, and Chicago began this school year with just 230 drivers for a system requiring around 1300. *Id.* OSSE also dealt with frequent call-outs and an uptick in the pre-pandemic rate of retirements, both of which were particularly high in January 2023, FY23 Performance Oversight Responses at 220; *see also* Park Decl. ¶¶ 29–31.

At the same time OSSE has struggled to hire and retain qualified drivers, the hill to climb has grown steadily steeper. Today OSSE transports almost 700 more students than at the start of School Year 2021–22, a nearly 20 percent increase in ridership. Park Decl. ¶ 20. Ridership has increased five percent (by about 180 students) since the beginning of this school year. *Id.* ¶ 19.

Running up that hill, OSSE also faced operational headwinds after a failed attempt to transition its electronic bus routing system, TRAPEZE, to a new system at the start of School Year 2022–2023. Park Decl. ¶ 33–36. TRAPEZE stores OSSE’s student transportation data and builds bus routes using automated formulas. *Id.* ¶ 33. In 2022, OSSE attempted to implement a totally new system, known as SEON, that would build routes but also enable the agency to perform automated real-time and aggregate data tracking. *Id.* ¶ 35. Unfortunately, implementation revealed a number of issues with the system, including problems with the way

¹ The Court may take judicial notice of the fact that local schools were recently closed for in-person learning for long periods of time because of the COVID-19 pandemic. Fed. R. Evid. 201. In the District, “schools were predominantly closed for in-person learning in the 2020–21 school year,” though in-person attendance gradually increased across the year. *See*, OSSE, Resp. to FY2021 Performance Oversight Questions (Feb. 18, 2022), *available at* https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/FY21%20POH%20Narrative%20Final.pdf, at *297. Routes run increased from 3 to almost 200. *Id.*

that SEON pulled home and school address data into the system; inflexibility in route design; and improperly installed systems in the fleet. *Id.* ¶ 36. As a result, on January 9, 2023, OSSE returned to using the TRAPEZE system for student routing until a new system can be developed. *Id.* ¶ 37.

III. Pivots in School Year 2023–2024 Have Produced Significant Performance Gains.

OSSE has implemented myriad solutions to address identified obstacles to delivering on-time transportation services for the current school year.

OSSE has been working to build back its bench of available bus drivers by increasing outreach to potential employees, offering increasing amounts of money as a signing bonus for new hires, and partnering with other District agencies to expand the pipeline of potential drivers. *Id.* ¶ 40. For example, OSSE participated in hiring fairs in Fiscal Year 2022, resulting in 50 on-the-spot job offers and approximately 200 individuals added to its candidate pool. *Id.* ¶ 41. In February 2023, OSSE hosted a fair that attracted 1,754 registrants. *Id.* OSSE-DOT collaborated with the District’s Department of Motor Vehicles to send out notice of the fair to more than 4,500 active commercial driver’s license (CDL) holders and offered a signing bonus of \$5,000. *Id.* OSSE is currently working with the District of Columbia Infrastructure Academy (DCIA) within the Department of Employment Services (DOES) to offer a specialized program for participants looking to receive a CDL to increase the long-term pipeline too. *Id.* ¶ 42.

OSSE also began offering financial incentives to current staff to increase attendance and retention. Beginning in School Year 2022–23 and continuing through this year, drivers and attendants are offered cash bonuses for perfect attendance across semesters. *Id.* ¶ 44. OSSE also offered retirement-eligible staff \$25,000 incentives to stay on the job. *Id.* ¶ 45. OSSE believes

that because of these efforts, absenteeism has decreased with daily staff attendance improving by 8 percent in School Year 2023–2024, as compared to School Year 2022–2023. *Id.* ¶ 46.

To decrease the number of total staff required, and to increase route efficiency, OSSE also made a major pivot in the increased use of private route operators. *Id.* ¶ 47. In School Year 2022–2023, through emergency contracts, OSSE brought in six private route vendors to cover its service gaps. *Id.* ¶ 48. In advance of School Year 2023–2024, OSSE signed eight multi-year contracts with private route vendors that the agency can use for the next several years. *Id.* ¶ 49. As of January 2023, OSSE-DOT transported 29 students using private contractors. *Id.* ¶ 51. As of March 2024, that number was more than 300. *Id.* The combined effect of these recruitment and retention efforts has enabled OSSE to close the demand and supply gap this year. *Id.* ¶ 52.

While it redoubles efforts to redesign its routing system, *id.* ¶¶ 53–55, OSSE is closely monitoring and communicating to families the best available proxy for real-time delay data, *id.* ¶ 56. In January 2023, OSSE began tracking and real-time reporting bus departures from terminals. *Id.* A website shows whether each bus left on-time, is delayed, or cancelled entirely. *Id.* Some routes were cancelled entirely on certain days in School Year 2022–2023. *Id.* ¶ 57. That has not happened in School Year 2023–2024. *Id.* In early 2023, many routes left the terminal late. *Id.* ¶ 58. The week of January 16, 2023, for example, a *daily* average of 99 routes left late, yielding an 81 percent on-time departure rate. *Id.* This year, OSSE’s on-time departure rates have consistently been around or above 95 percent (ranging from 94.9 percent to 98.8 percent). *Id.* ¶ 59.² This number is meaningful because it requires, logically, that a bus, a driver,

² Plaintiffs’ unsupported data reporting is not contrary—in fact, when one does the math, Plaintiffs report an even *higher* overall on-time-departure percentage. For example, they assert that “over 100” routes were delayed in the week before they filed their Motion. Pls.’ Mem. at 19. Plaintiffs offer no support or explanation for how they came to that conclusion or made their

and any required attendant(s) have been timely identified and assigned to the route, which also means that, if the bus is late to school, it was not because any of those pieces were missing en route.

OSSE has also found and executed other ways to increase efficiency and performance. Leading up to School Year 2023–2024, OSSE made a concerted effort to get more Transportation Request Forms (TRFs) in on time. *Id.* ¶ 62. TRFs provide OSSE with key information including pick up and drop off addresses. *Id.* ¶ 9. Timely submissions are vital because OSSE must create optimal routes, assign drivers, conduct a “bid” for routes in accordance with bus drivers’ and bus attendants’ collective bargaining agreements, conduct practice runs, and communicate route times to families before the school year begins (in addition to having staff or contracts ready to service all resulting routes). *Id.* ¶ 15. As of August 1, 2022, just weeks before the start of School Year 2022–23, local schools had submitted only 1,224 TRFs, or only 39 percent of all anticipated TRFs. *Id.* ¶ 63. This led to significant routing delays at the start of the school year. *Id.*

In Spring 2023, OSSE created a continually updated website to help LEAs track TRF submission and ensure their timely submission, then met with each LEA to encourage use of this site and address delays in processing. *Id.* ¶¶ 64, 65. As a result, OSSE received 94 percent of TRFs by the required date for School Year 2023–2024. *Id.* ¶ 66. OSSE also reduced the amount of time it takes to process new TRF information once received. *Id.* ¶ 67. OSSE’s collective bargaining agreement with drivers and attendants requires it to run a bidding process for routes

calculations. *Id.* They provide no actual evidence. Still, assuming this is true and was over both morning and afternoon routes, across five days, and that there were about 1,100 routes completed each day, *see* Park Decl. ¶ 19, or 5,500 routes in the period (1,100*5), 100 routes is only 1.8 percent of all routes delayed ((100/5,500)*100). That hardly shows “systemic” failures to leave the terminal on time.

once TRFs are inputted. *Id.* In the past, this was an in-person and paper-only process that was prone to human error and took weeks to complete. *Id.* In December 2022, OSSE successfully completed its first electronic-only bid process, which produced faster results and allowed OSSE to return bidding process results the same day. *Id.* These changes have helped OSSE reduce the number of routes it operates by 13 percent in the current school year and led to measurable improvements in providing timely transportation services. *Id.* ¶¶ 66, 68.

OSSE is also engaging families to be part of the solution. *Id.* ¶ 69. OSSE regularly meets with parents and advocates to identify and discuss concerns or additional suggestions for improvement. *Id.* ¶ 70. One of the Plaintiff’s parents has been a member of OSSE’s Transportation Advisory Council for years. *Id.* Last December, OSSE began asking all drivers and attendants to communicate delays to families directly via standardized text messages. *Id.* ¶ 71. This spring, OSSE launched a new program enabling families to self-transport students by choice, with a \$400 monthly subsidy from OSSE-DOT to help cover costs. As of April 2024, about 400 families applied and, so far, OSSE has enrolled 180 families in the program. *Id.* ¶ 72.

IV. Plaintiffs’ Allegations and Procedural History

The named individual Plaintiffs are parents suing on behalf of their children, who are students with IEPs entitling them to transportation services through OSSE. Compl. [1] ¶¶ 65, 84, 103, 125, 144. The remaining Plaintiff, The Arc of the United States (The Arc), is a national non-profit. *Id.* ¶ 31. All individual Plaintiffs filed administrative due process complaints with OSSE. *Id.* ¶ 17. Plaintiff The Arc did not. *See generally* Compl. As of this filing, all individual Plaintiffs have received hearing officer determinations (HODs) from an OSSE Office of Dispute Resolution Administrative Hearing Officer. Pls.’ Mem. Supp. Pls.’ Mem. for Preliminary Inj. [4-1] (Pls.’ Mem.), Ex. 5-B, [4-24] (“Robertson HOD”); *id.* Ex. 1-C, [4-6] (“Daggett HOD”); *id.*

Ex. 4-B, [ECF 4-20] (“McCray HOD”); Pls.’ Notice, Ex. 1, [24-1] (“Guerrero HOD”); *id.*, Ex. 2, [24-2] (“Clark HOD”).

Plaintiffs filed this lawsuit on March 7, 2024, on behalf of themselves and all others similarly situated, against the District of Columbia, alleging violations of the IDEA (Count 1), the ADA (Count 2), Section 504 (Section 504) (Count 3), and the DCHRA (Count 4). Compl. ¶¶ 219–260. Plaintiffs allege that OSSE’s failure to provide safe, reliable, and appropriate transportation constitutes a denial of a free appropriate public education, and more broadly, a denial of equal opportunity to participate in and benefit from their education. *Id.* ¶ 17.

On March 14, 2024, Plaintiffs moved for a preliminary injunction ordering, among other things, that the District: (1) “fully implement all students’ IEPs, including but not limited to, transportation”; (2) maintain “safe, reliable, and appropriate” transportation services for all students; (3) ensure sufficient staffing and an adequate bus fleet; (4) develop policies and procedures for all OSSE staff to promote best practices for dealing with students with disabilities; (5) adopt a GPS system that can track all buses; (6) implement a parent communication system to provide real-time updates regarding students’ transportation; (7) create policies and procedures to track complaints pertaining to transportation; (8) implement “other policies and procedures to address the issues raised in this Complaint to ensure that Plaintiffs and the plaintiff class receive equal access to their education and are not unnecessarily segregated”; (9) report to the Court monthly as to compliance with the Order; (10) hire a transportation expert to review all transportation-related policies and procedures; and, (11) report to a special master appointed by the Court. *See* Pls.’ Mot. for Prelim. Inj. [4]; Pls.’ Mem.; Pls.’ Proposed Order for Prelim. Inj. [4-2].

LEGAL STANDARD

A preliminary injunction “is ‘an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.’” *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). It is “a stopgap measure, generally limited as to time, and intended to maintain a status quo or to preserve the relative positions of the parties until a trial on the merits can be held.” *Sherley v. Sebelius*, 689 F.3d 776, 781–82 (D.C. Cir. 2012) (cleaned up). Plaintiffs must prove they are “likely to succeed on the merits,” “likely to suffer irreparable harm,” and that “the balance of equities” favors such extraordinary relief, and “that an injunction is in the public interest.” *Winter*, 555 U.S. at 20. The last two factors merge when, as here, the government opposes an injunction. *Nken v. Holder*, 556 U.S. 418, 435 (2009). “All four factors, taken together,” must “weigh in favor of the injunction.” *Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009); *id.* at 1296 (Kavanaugh, J., concurring).

Any order for preliminary relief, like “every injunction,” must further comply with the specifications of Federal Rule of Civil Procedure 65, including sufficient detail. And Plaintiffs must show their right to relief with “[e]vidence that goes beyond the unverified allegations of the pleadings and motion papers” *E.g.*, *Bird v. Barr*, No. 19-cv-01581, 2020 WL 4219784, at *5 (D.D.C. July 23, 2020) (quoting 11A Wright & Miller, *Fed. Practice & Pro.* § 2948.1 (3d ed. 2015)).³ Indeed, the Supreme Court has described a movant’s burden at this stage as requiring “a clear showing” with “substantial proof,” and as a burden “much higher” than a non-movant’s burden at summary judgment. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (quoting in part 11A Wright & Miller, *Fed. Practice & Pro.* § 2948 (2d ed. 1995)).

³ This discussion now appears in § 2949 of the same title.

ARGUMENT

I. Plaintiffs Are Not Entitled to Any Preliminary Injunctive Relief.

Plaintiffs are not entitled to any relief because they have not—and cannot—meet their burden to establish any of the elements set forth by the Supreme Court in *Winter*. 555 U.S. at 22.

A. Plaintiffs Are Not Likely To Succeed on the Merits of Any Claim.

To show that they are likely to succeed on the merits, Plaintiffs must both state a claim for relief and provide “substantial proof” that they will in fact win those claims. *See* Fed. R. Civ. P. 12(b)(6); *Mazurek*, 520 U.S. at 972. With respect to their IDEA claims, Plaintiffs falter at step one, failing even to state claims, because they are not “aggrieved” within the meaning of the IDEA, and stumble at step two, because they have not even bothered to argue that the hearing officers’ decisions below are “wrong,” which is the basic test for an IDEA claim on appeal, such as these. (Alternatively, Plaintiffs could bring claims for enforcement of the orders below, but they have not argued, or proven, that they would succeed on those claims either.) Finally, Plaintiff The Arc also fails to state a claim, because it did not exhaust the IDEA’s remedies. Plaintiffs also fail to state or prove any claims for violations of the ADA, Section 504, or DCHRA.

1. Plaintiffs Fail To Show They Will Succeed on Their IDEA Claims.

a. The IDEA Permits and Requires “Due Process” Complaints.

The IDEA requires that persons or governments with a complaint concerning the provision of a FAPE “shall have an opportunity for an impartial due process hearing.” 20 U.S.C. § 1415(f)(1)(A). More specifically, federal regulations state that “a parent or a public agency may file a due process complaint . . . relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.” 34 C.F.R. § 300.507(a). These proceedings are often called “Due Process Hearings” (and will be so called

here). They provide “substantial” protections, including “the rights to be accompanied by counsel and to confront, cross-examine, and compel the attendance of witnesses,” and to an impartial hearing officer. *Kerkam v. McKenzie*, 862 F.2d 884, 887 (D.C. Cir. 1988) (cleaned up).

The hearing officer’s decision “shall be made on substantive grounds based on a determination of whether the child received a [FAPE].” 20 U.S.C. § 1415(f)(3)(E). This “always require[s] a fact-intensive and child-specific inquiry.” *Branham v. District of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005). “When a hearing officer . . . concludes that a school district has failed to provide a student with a FAPE, it has ‘broad discretion to fashion an appropriate remedy . . . ,’” *B.D. v. District of Columbia*, 817 F.3d 792, 797–98 (D.C. Cir. 2016) (cleaned up), including “prospective relief,” *Branham*, 427 F.3d at 11. Whatever the form, *all* IDEA relief “must be tailored to meet the child’s specific needs.” *Id.*; *id.* at 12 (explaining the IDEA requires tailored relief because the Act “guarantees disabled students ‘special education and related services *designed to meet their unique needs*’”) (quoting 20 U.S.C. § 1400(d)(1)(A)) (emphasis added in *Branham*).

“Any party aggrieved by the findings and decision” can “bring a civil action with respect to the [due process] complaint” presented to the hearing officer. 20 U.S.C. § 1415(i)(2). “Either the school or the parent may appeal . . . in either state or federal court.” *D.C. Int’l Charter Sch. v. Lemus*, 660 F. Supp. 3d 1, 8 (D.D.C. 2023). Federal courts give “due weight” to the hearing officer’s determinations but “less deference than is conventional in administrative proceedings.” *Z.B. v. District of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018). The challenger has the burden “of persuading the court that the hearing officer was wrong.” *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005); *Kerkam*, 862 F.2d at 887.

The IDEA requires that a parent or government exhaust these procedures before bringing suit using the IDEA’s cause of action, *see* 20 U.S.C. § 1415(i)(2), or before filing suit under other federal laws “seeking relief that is also available under” the IDEA, *id.* § 1415(l). The Supreme Court has explained that the exhaustion requirement applies “when the gravamen of a complaint seeks redress for a school’s failure to provide a FAPE, even if not phrased or framed in precisely that way,” *Fry v. Napoleon Cmty. Sch.*, 580 U.S. 154, 170 (2017), and even if suit is “brought under a different statute,” *id.* at 168. *See also Luna Perez v. Sturgis*, 598 U.S. 142, 147–48 (2023) (holding exhaustion not required when plaintiff sought only compensatory damages under ADA, because it is “a form of relief . . . IDEA does not provide”).

b. Plaintiffs Are Not “Aggrieved” By The “Denial” of Their “Systemic” and Non-IDEA Claims.

Plaintiffs are not likely to succeed on the merits of their IDEA claims because the IDEA provides no cause of action to those who, like these Plaintiffs, prevail on their Due Process Complaints. These Plaintiffs prevailed. For Plaintiffs D.R., H.D., and B.R.C., in fact, a hearing officer awarded each of them almost exactly what they asked for, close to verbatim, in each case. Plaintiffs did not secure orders on behalf of all other students “similarly situated,” or using the words “policies and procedures,” but Plaintiffs cannot be “aggrieved” under the IDEA simply because they did not secure relief for third parties or relief that is functionally indistinguishable from what they got.

As explained above, only a “party aggrieved by the findings and decision” of a hearing officer can sue under the IDEA. 20 U.S.C. § 1415(i)(2). The D.C. Circuit has strictly construed that language, emphasizing that “Section 1415(i)(2)(A)’s plain text refers not simply to an ‘aggrieved’ party, but to one aggrieved” by the findings and decision of a hearing officer. *B.D.*, 817 F.3d at 801. Thus, says the Circuit, “[o]ne who wins before a hearing officer is not

‘aggrieved’ by the hearing officer’s decision,” *id.*, and in that circumstance, the IDEA provides no cause of action, *id.* at 802; *see also Blackman v. District of Columbia*, 456 F.3d 167, 172 n.6 (D.C. Cir. 2006) (“Because the appellees were either ‘prevailing parties’ at the administrative level or had reached private agreements with the [the District of Columbia Public Schools], they had no IDEA cause of action.”).

Here, Plaintiffs D.R. and H.D., concede that “[e]ach received a Hearing Officer Determination that found in their favor on the IDEA claims” Pls.’ Mem. at 35. Indeed, they urge deference to those decisions. *Id.* at 34 (citing cases “declining to overturn a hearing officer’s determination”). The same hearing officer awarded each of these Plaintiffs compensatory and prospective relief, stating relevantly that “OSSE shall provide consistent, reliable and appropriate transportation to and from Public School pursuant to [each] Student’s IEP and, to the extent practicable, notify Student’s family of any changes to Student’s transportation, including changes to route, delays and cancellations.” Robertson HOD at 11; Daggett HOD at 13. And the same hearing officer granted the same relief to Plaintiff B.R.C. soon after Plaintiffs filed their complaint. Clark HOD at 12–13. This order matches the relief requested in each Plaintiff’s Due Process Complaint nearly verbatim. *Compare id. with* Ex. E, Robertson Due Process Compl., at 14 (requesting that hearing officer “[o]rder OSSE to provide consistent, reliable, and appropriate transportation to and from school in conformity with D.R.’s IEP” and “[o]rder OSSE to effectively communicate with D.R.’s family regarding any changes to special education transportation including, but not limited to, changes to D.R.’s route, delays, and cancellations”); Ex. F, Daggett Compl., at 15–16 (same but different initials); Ex. G, Clark Compl., at 13–15 (same).

Again, Plaintiffs take no issues with the HODs they received. They do not argue that they are wrong. Instead, all Plaintiffs in this action assert that they are “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.” Pls.’ Mem. at 36. Plaintiffs cite no authority at all in support of the implied argument that this is sufficient to show they are aggrieved. *Id.*

Plaintiffs’ apparent assumption is unsupported and incorrect. To start, for D.R., H.D., and B.R.C., the “systemic” relief that they actually requested below were orders almost identical to what they got. For example, D.R. separated his prayer for relief into “Individual Relief” and “Systemic Relief” sections. Robertson Compl. at 14–15. Individually, he asked the Hearing Officer to “Order OSSE to provide consistent, reliable, and appropriate transportation to and from school in conformity with” his IEP. *Id.* at 14. Under the “Systemic” heading, he sought, for himself and “all similarly situated students,” an order that OSSE “develop and implement adequate and effective policies and procedures to provide D.R. and other students with disabilities eligible for transportation services as part of their IEPs with consistent, reliable and safe transportation to and from school.” *Id.* at 15. Plaintiffs H.D. and B.R.C. sought the same relief. *See* Daggett Compl. at 15–16; Clark Compl. at 14–15. And, as stated above, each of the Plaintiffs got the individual but not “systemic” relief they requested.

In effect, Plaintiffs’ requests for “systemic” relief below were only requests to afford relief to others, *i.e.*, all other students similarly situated. They did not ask for any particular change to any particular policy or procedure—they simply asked that OSSE’s policies and procedures somehow ensure adherence to their IEPs. *Supra.* And that is effectively what they

got, when the hearing officer ordered OSSE to adhere to their IEPs. Plainly, if OSSE must get the individual Plaintiffs to and from school on time, OSSE must have policies and procedures in place to do so; and if those policies and procedures succeed for the Plaintiffs, they are adequate and effective under the IDEA. Moreover, if it is true that the “policies and procedures” relevant to Plaintiffs’ injuries are “systemic,” meaning they apply to the whole system, or to more than one child, then effective individual relief would require those policies to change. (If, for example, new routing system technology is truly required to address the issues that caused problems with Plaintiffs’ transportation services, rather than changes to Plaintiffs’ individual routes, so be it.)

Doe v. Arizona Department of Education is instructive. 111 F.3d 678, 682 (9th Cir. 1997). There, in considering whether the IDEA’s exhaustion requirement might be excused, the Ninth Circuit found that the state’s failure to provide educational services to all students in a certain jail was not a “systemic” claim because the state’s “admitted blunder might be corrected through IDEA hearings.” *Id.* at 684. Just so here. It may be that individual Due Process Complaints can lead to “implementation of ... remedies which are universally applicable.” *Ass’n for Retarded Citizens of Alabama, Inc. v. Teague*, 830 F.2d 158, 162 (11th Cir. 1987); *see also*, *e.g.*, *Student A v. San Francisco*, 9 F.4th 1079, 1081 (9th Cir. 2021) (reasoning, also in context of exhaustion, that students’ allegations were “of bad results, not descriptions of unlawful policies or practices,” and that simply showing scale did not make the allegations “systemic claims”).

The hearing officer himself—to whom Plaintiffs say this Court should defer—recognized this. Although, in each case, he declined to enter Plaintiffs’ “systemic” relief, in each case he also reasoned that individual orders to comply “may well benefit other children as well.” *See*,

e.g., Daggett HOD at 12. The hearing officer acknowledged that at least some difference between the “individual” and “systemic” relief Plaintiffs requested was merely semantic.

Put another way, the relief Plaintiffs sought here was not structural; it was simply the same individualized relief they sought for themselves but on behalf of other students. Plaintiffs have not identified how the dismissal of the “systemic” relief they sought adversely affected, or aggrieved, *them* in any way.

On similar common-sense grounds, Plaintiffs cannot be “aggrieved” by the failure of an administrative process to afford relief that would not affect them. Plaintiffs have no general right to seek relief for others. *Cf. Warth v. Seldin*, 422 U.S. 490, 499 (1975) (reiterating that standing in federal court “cannot rest . . . on the legal rights or interests of third parties”). And IDEA claims are fundamentally individual in nature. “A focus on the particular child is at the core of the IDEA” *Andrew F. v. Douglas Cnty*, 580 U.S. 386, 400 (2017). The IDEA requires preparation of *individualized* educational plans, and Due Process Complaints primarily test the adequacy of design and compliance with those IEPs. *Supra* Argument Section I.A.1.a.

Plaintiffs’ claim to be “aggrieved” by the dismissal of their disability discrimination claims below—that is, claims not at all based on the IDEA—crystallizes the confusion. They seem to suggest that they *have* an IDEA claim—that they are “aggrieved” under the IDEA and entitled to its cause of action—because they could not pursue *non*-IDEA claims through its procedures. That makes no sense. Congress cannot have intended to create infinite loopholes. *Cf. B.D.*, 817 F.3d at 802 (construing cause of action narrowly).

In sum, Plaintiffs are not likely to succeed on the merits of their IDEA claims because they are not aggrieved within the meaning of that statute.

c. Plaintiffs Are Not Aggrieved By Non-Compliance And Have Not Brought An Enforcement Claim.

Although Plaintiffs J.C. and A.F. did not get the verbatim-relief-requested that Plaintiffs D.R., H.D., and B.R.C. received, Plaintiffs J.C. and A.F. also fail to show that they are “aggrieved” within the meaning of the IDEA. At best, Plaintiff J.C. argues that he is aggrieved for the same reasons discussed above—the denial of his “systemic” and non-IDEA claims—and because “[d]espite receiving [a] rulin[g] requiring OSSE to provide appropriate and on-time transportation,” J.C. “continue[s] to experience delayed and inappropriate [*sic*] transportation.” Pls.’ Mem. at 36. Plaintiff H.D. also argues the same thing. *Id.* Even if it were true that Plaintiffs J.C. and H.D. have continued to experience delays despite a favorable ruling, that is a claim seeking *enforcement* of the favorable ruling, or compliance—not a claim that J.C. or H.D. are aggrieved.⁴

In 2016, the D.C. Circuit squarely held that the IDEA, “20 U.S.C. § 1415(i)(2)(A) provides no enforcement cause of action.” *B.D.*, 817 F.3d at 802. This is because plaintiffs who receive favorable decisions are not “aggrieved” within the plain text of the IDEA. *Id.* at 801. This decision controls and forecloses the claims J.C. and H.D. make here. *See* Pls. Mem. at 36.

That said, courts in this district have allowed plaintiffs who are not aggrieved by their HODs to *enforce* them, when there is proof of noncompliance, through 42 U.S.C. § 1983. *E.g.*, *K.W. v. District of Columbia*, 385 F. Supp. 3d 29, 43 (D.D.C. 2019). But Plaintiffs have not

⁴ The hearing officers’ decisions were issued for Plaintiffs A.F. and B.R.C. after Plaintiffs filed their Motion. *See* Pls.’ Notice, [24]. As stated above in Section I.A.1.b., the order for prospective relief issued in B.R.C.’s case was virtually identical to the order issued in D.R. and H.D.’s cases; the same arguments, at least as to that piece of the relief, would thus apply. In any event, though Plaintiffs filed notice of the new decisions, they have not supplemented their Motion to explain how they are aggrieved by these orders. Presumably, the argument would be that all Plaintiffs are aggrieved by the denial of “systemic” relief.

shown noncompliance and have not made any arguments showing a likelihood of success under 42 U.S.C. § 1983. *See generally* Compl. and Pls.’ Mem.

For all of these reasons, all of the individual Plaintiffs have failed to show that they are “aggrieved” within the meaning of the IDEA and failed to state a claim under that statute.

d. Even if Aggrieved, Plaintiffs Are Not Likely To Succeed on the Merits of Their IDEA Claims Because They Have Not Shown that the Hearing Officers Erred.

Even if Plaintiffs are aggrieved, their IDEA claims are not likely to succeed because they have not demonstrated that the hearing officers erred, which is “the standard applicable in . . . district court.” *Reid*, 401 F.3d at 521. Each Plaintiff has the burden to show, by a preponderance of the evidence, that their hearing officer decisions are “wrong” in some way. *Id.*; *Kerkam*, 862 F.2d at 887. None of the Plaintiffs argues this—nothing in their Motion describes how or why they believe their HODs, or any one or any piece of them, are wrong. *See generally* Pls.’ Mem. As discussed above, they do not like that their “systemic claims” and disability discrimination claims were dismissed. *Id.* at 36. But they also do not argue that those decisions were “wrong.” *See generally* Pls.’ Mem. To the extent the Motion can be read to suggest that the hearing officers were “wrong” to deny “systemic” relief, this suggestion is unpersuasive for all the reasons just above—and, as discussed further below, because Plaintiffs have failed to specifically connect the relief they request here to remedying their own injuries in any way. *See* Argument Section II.A below. Accordingly, Plaintiffs are not likely to succeed on the merits of any claims under the IDEA. *Cf. C.G. v. Pennsylvania*, 888 F. Supp. 2d 534, 567 (M.D. Pa. 2012), *aff’d*, 734 F.3d 229 (3d Cir. 2013) (“[T]he evidence presented could only support a finding that the denials of a FAPE were the result of problems with the components of individual programs rather than systemic violations and that in the specific cases presented to the Court, the problems either

were, or could have been, remedied by taking advantage of the administrative procedures in place.”) (citation omitted).

e. Plaintiff The Arc Fails To State an IDEA Claim.

Plaintiff The Arc fails to state an IDEA claim on an even more basic level: The Arc has never filed a Due Process Complaint, nor exhausted those remedies. Plaintiffs appear to concede that exhaustion is required and that The Arc has not exhausted administrative remedies. *See, e.g.*, Compl. ¶ 17 (“The *individual* Plaintiffs have exhausted their administrative remedies.”) (emphasis added); Pls.’ Mem. at 35–37. And, by Plaintiffs’ own terms, the doctrine of vicarious exhaustion does not excuse this failure; Plaintiffs explain that doctrine concerns an “individual plaintiff in a class action,” Pls.’ Mem. at 36, which is not The Arc, Compl. ¶ 211. Plaintiffs point to no other exception or explanation. The Arc therefore fails to state an IDEA claim.⁵

2. Plaintiffs Fail to Show They Will Succeed Under the ADA, Section 504, or the DCHRA.

In addition to the IDEA, Plaintiffs assert claims under the ADA, Section 504, and the DCHRA (the “discrimination claims”). *See* Compl. ¶¶ 237, 249, 258. Courts evaluate claims brought under Section 504, the ADA, and the DCHRA using the same framework. *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1260 n.2 (D.C. Cir. 2008); *A.M. v. Bridges Pub. Charter Sch.*, No. 17-cv-177, 2019 WL 1932579, at *2 n.7 (D.D.C. May 1, 2019). To succeed on the merits of a claim under any of these statutes, Plaintiffs must show they were denied an equal opportunity to meaningfully participate in or benefit from government services, programs, or activities *because of* their disabilities. *See* 42 U.S.C. § 12132 (ADA); 29 U.S.C. § 794 (Section

⁵ Perhaps this is because entities like The Arc also appear to lack a cause of action under IDEA. *See Winkelman v. Parma City*, 550 U.S. 516, 527 (2007) (discussing references to “parents” in plain text); 20 U.S.C. § 1415(f)(3)(C) and (i)(3)(B)(i); 34 C.F.R. § 300.507(a)(1).

504 of the Rehabilitation Act); *Alexander v. Choate*, 469 U.S. 287, 301 (1985); *Am. Council of the Blind*, 525 F.3d at 1267; *Hunter v. District of Columbia*, 64 F. Supp. 3d 158, 166–67 (D.D.C. 2014). “Unjustified isolation” can also be considered discrimination “based on disability.” See *Olmstead v. Zimring*, 527 U.S. 581, 597 (1999).

Plaintiffs’ discrimination claims are not likely to succeed because they have not shown—or even alleged—that they were denied any opportunities given to non-disabled children or discriminated against because of their disabilities. This is true whether the benefit or service at issue is defined as transportation to and from school or as an adequate public education. If the former, there is no discrimination because the District does not provide specialized transportation to and from school to *non*-disabled children at all; rather, transportation is provided through Metrobus and Metrorail. Thus Plaintiffs cannot have been denied an *equal* opportunity to participate in or benefit from this service. If the latter, to prove discrimination, Plaintiffs must show that the District acted in bad faith or with gross misjudgment. But Plaintiffs have not even tried to meet this high bar, let alone hurdled it. Finally, Plaintiffs have not shown any unjustified isolation. Such claims concern the *location* of services a government provides, not, as Plaintiffs complain, the adequacy of services provided.

a. The District Has Not Denied Plaintiffs an Equal Opportunity To Benefit from Transportation To and From School.

At bottom, Plaintiffs’ Complaint alleges that the District fails to provide disabled students with “safe, reliable and appropriate transportation” to and from school. Compl. ¶¶ 1, 2, 6, 17, 19, 44, 67, 161, 162, 168, 169, 182, 188, 191, 194, 211, 214, 215, 237, 238, 263, 264. But any claim that the District is failing to provide Plaintiffs transportation to and from school in violation of the ADA, Section 504 or the DCHRA fails easily.

Plaintiffs haven't been denied an equal opportunity to benefit from the District's transportation service, as compared to their non-disabled peers, because only disabled students receive the service. Park Decl. ¶ 8; *see, e.g., Disability Rts. New Jersey, Inc. v. Comm'r, New Jersey Dep't of Hum. Servs.*, 796 F.3d 293, 305 (3d Cir. 2015) (“[W]e are unaware of any case holding that a Title II violation can be stated in the absence of an allegation that a qualified person with a disability has been denied access to a public service, program, or activity to which nondisabled people have access.”); *Hargrave v. Vermont*, 340 F.3d 27, 36–37 (2d Cir. 2003); *Greene v. City of New York*, 21-cv-05762 (PAC), 2024 WL 1308434, at *15 (S.D.N.Y. Mar. 26, 2024) (“A program which provides services exclusively to the mentally disabled cannot discriminate against the mentally disabled within the meaning of the ADA and Rehabilitation Act.”); *cf. T.T. v. District of Columbia*, No. 06-cv-00207, 2007 WL 2111032, at *10 (D.D.C. July 23, 2007); *compare with United States v. Univ. of Alabama*, 908 F.2d 740, 750–51 (11th Cir. 1990) (finding Section 504 violation when University failed to make reasonable accommodations for disabled students in the transportation that it provided to all students).

The simple fact that the District provides door-to-door transportation *only* to disabled students also distinguishes this case from the transportation-focused cases Plaintiffs cite. *See* Pls.' Mem. at 42. Indeed, in *K.K. v. North Allegheny School District*, cited by Plaintiffs, the court reasoned the local school district may have discriminated against the plaintiff if it failed “to afford *disabled and nondisabled students* an equal opportunity to receive transportation” services by making some reasonable accommodation or modification to the services it provided to *all* students. No. 14-cv-00218, 2017 WL 2780582, at *10, *14 (W.D. Pa. June 27, 2017) (emphasis added). Similarly, in *D.A. v. Penn Hills Public School District*, the court entered judgment for plaintiff because it found the school district “must afford disabled and nondisabled students an

equal opportunity to receive transportation for nonacademic purposes” but failed to do so by refusing a request for door-to-door transportation instead of transportation from a bus stop. No. 20-cv-01124, 2021 WL 1929287, at *1, *6 (W.D. Pa. May 13, 2021) (quoting *K.K.* at *10).⁶

In sum, Plaintiffs do not (and cannot) allege that they were treated differently from non-disabled students with regard to transportation services. *See generally* Compl. Nor do Plaintiffs make any such showing in their Motion. Pls.’ Mem. at 40–43. Plaintiffs thus are not likely to succeed on any discrimination claim concerning the District’s provision of transportation per se.

b. The District Has Not Denied Plaintiffs an Adequate Education Because of Any Bad Faith Actions or Gross Misjudgments.

Although Plaintiffs’ Complaint is, at bottom, about a failure to provide transportation services, Plaintiffs argue in their Motion that, as a result of this failure, they have been denied “an equal opportunity to participate in and benefit from [the District’s] public education program,” in violation of the ADA, Section 504 and the DCHRA. Pls.’ Mem. at 40. Put another way, they assert they have been excluded “from public education,” unable “to access their education,” and denied “equal access to their education.” *Id.* at 41. Put yet another way, they have been denied a FAPE, the same claim they make under IDEA. *See id.* at 31.

To be sure, a government’s failure to provide an adequate public education to a disabled child may violate the ADA, Section 504, and the DCHRA—but these disability rights laws are, of course, not the same as the IDEA. Whereas the IDEA provides certain affirmative rights, the

⁶ Plaintiffs also cite *J.L. on behalf of J.P. v. New York City Dep’t of Educ.*, 324 F. Supp. 3d 455 (S.D.N.Y. 2018), which concerned the provision of transportation to and from school. *J.L.* framed the relevant benefit or service provided as an adequate public education, rather than transportation services per se. *Id.* at 468 (defining the claim as one for failure to provide “an equal opportunity to a free and adequate education”). As discussed below, *J.L.*, most Circuits, and every court in this district to consider it apply a different legal test to that kind of claim.

ADA, Section 504, and the DCHRA prohibit *discrimination*. *See, e.g., Fry v. Napoleon Comm. Schs.*, 580 U.S. 154, 170–71 (2017); *C.G. v. Pa. Dep’t of Educ.*, 734 F.3d 229, 234 (3d Cir. 2013) (“The IDEA governs the affirmative duty to provide a public education to disabled students, while the ADA and [Section 504] embody the negative prohibition against depriving disabled students of public education.”) (citation omitted); *Hurry v. Jones*, 734 F.2d 879, 886 (1st Cir. 1984). Courts considering factually overlapping IDEA and discrimination claims have consistently found that proof of an IDEA violation alone—that is, proof of a denial of a FAPE—does not also make out a discrimination claim. *E.g., Miller v. Albuquerque*, 565 F.3d 1232, 1246 (10th Cir. 2009) (affirming summary judgment for defendant where plaintiff established a denial of FAPE but did not show “the discrimination element” required to establish a violation of Section 504; reasoning that “a denial under the IDEA does not ineluctably establish a violation of § 504”); *cf. Lunceford v. District of Columbia*, 745 F.2d 1577, 1580 (D.C. Cir. 1984) (indicating agreement that a plaintiff must show something more than a mere denial of FAPE in bringing a claim under Section 504).

Most circuit courts considering how a plaintiff with an IDEA claim might also establish a discrimination claim have found that the plaintiff must show “bad faith” or “gross misjudgment” by government defendants. *See, e.g., I.Z.M. v. Rosemount-Apple Valley-Eagan*, 863 F.3d 966, 973 (8th Cir. 2017); *C.L. v. Scarsdale*, 744 F.3d 826, 841 (2d Cir. 2014); *G.C. v. Owensboro*, 711 F.3d 623, 635 (6th Cir. 2013); *D.A. v. Houston*, 629 F.3d 450, 454-55 (5th Cir. 2010); *Sellers v. Manassas*, 141 F.3d 524, 529 (4th Cir. 1998).⁷

⁷ The Eleventh Circuit has also used a “deliberate indifference” standard when considering a fact pattern that might state a violation for denial of a FAPE under IDEA or for discrimination under the ADA and Section 504. *See J.S. v. Houston*, 877 F.3d 979, 985–88 (11th Cir. 2017). As discussed below in Section I.A.2.c, the Eleventh Circuit understood this claim to be about

Although the D.C. Circuit has yet to squarely address the question, this Court adopted the very same standard almost thirty years ago, in *Walker v. District of Columbia*, 969 F. Supp. 794, 797 (D.D.C. 1997). Since then, “[a]ll other judges in this District who have faced the question seem to have followed suit. *See, e.g., R.S. v. District of Columbia*, 292 F. Supp. 2d 23, 28 (D.D.C. 2003) (Huvelle, J.); *Henneghan v. DCPS*, 597 F. Supp. 2d 34, 37 (D.D.C. 2009) (Kennedy, J.); *Holmes-Ramsey [v. District of Columbia]*, 747 F. Supp. 2d [32,] 38–39 [(D.D.C. 2010)] (Kollar-Kotelly, J.); *Alston v. District of Columbia*, 770 F. Supp. 2d 289, 298 (D.D.C. 2011) (Urbina, J.); *Jackson [v. District of Columbia]*, 826 F. Supp. 2d [109,] 122 [(D.D.C. 2011)] (Rothstein, J.); *B.D. v. District of Columbia*, 66 F. Supp. 3d 75, 80 (D.D.C. 2014) (Leon, J.); *D.L. v. District of Columbia*, 109 F. Supp. 3d 12, 23–24 (D.D.C. 2015) (Lamberth, J.)” *Reid-Witt v. District of Columbia*, 486 F. Supp. 3d 1, 7 (D.D.C. 2020) (Nichols, J.); *see also Robinson v. District of Columbia*, 535 F. Supp. 2d 38, 41–42 (D.D.C. 2008) (Bates, J.).

Bad faith or gross misjudgment can only be demonstrated if the “officials involved have exercised professional judgment[] in such a way as . . . to depart grossly from accepted standards among educational professionals.” *Walker v. District of Columbia*, 157 F. Supp. 2d 11, 35–36 (D.D.C. 2001) (quotation omitted). This is a high bar. “Only in the rarest of cases will a plaintiff be able to prove that a school system’s conduct is” sufficiently “persistent and egregious.” *Reid-Witt*, 486 F. Supp. 3d at 9 (quoting *Walker*, 157 F. Supp. 2d at 36); *Alston*, 770 F. Supp. 2d at 299 (denying Section 504 and ADA claims where plaintiffs demonstrated only “sporadic instances of negligence” whereby the District denied plaintiff a FAPE over a period of four years); *but see Douglass v. District of Columbia*, 605 F. Supp. 2d 156, 168 (D.D.C. 2009)

discrimination in the form of unjust segregation, rather than a denial of an equal opportunity to benefit from an adequate public education.

(allowing a claim alleging gross mismanagement to proceed where plaintiff alleged a facially discriminatory policy).

Here, Plaintiffs have not even argued, let alone shown, that the District has acted in bad faith or with gross misjudgment. *See* Pls.’ Mem. at 37–43. Plaintiffs rely upon multiple cases that discuss this standard—see Pls.’ Mem at 38 (citing *Reid-Witt*, 486 F. Supp. 3d 1), at 42 (citing *J.L. v. New York City*, 324 F. Supp. 3d 455 (S.D.N.Y. 2018))—but they inexplicably ignore it. Accordingly, Plaintiffs are not likely to succeed on their discrimination claims.⁸

c. The District Has Not Unjustly Segregated Plaintiffs.

Finally, Plaintiffs offer some (but still very little) argument that the District has discriminated against them by unjustly segregating or isolating them from their peers. Plaintiffs argue that their missed school time “unnecessarily segregates [them] from their classmates, leading to isolation and stigmatization,” Pls.’ Mem. at 41, and that “[p]olicies that unnecessarily remove, or seriously risk removing, students with disabilities from their classrooms constitute discriminatory segregation in violation of the ADA,” *id.* at 42. They cite three cases in support of their claim. *Id.* at 42.

Plaintiffs again apply an inapplicable legal standard. The Supreme Court has said “unjustified isolation” is a form of discrimination on the basis of disability. *Olmstead*, 527 U.S.

⁸ Even if Plaintiffs had argued the proper legal standard, *J.L.* is distinguishable. In that case, the plaintiffs’ claims survived a motion to dismiss because they alleged that school District representatives “were aware of the myriad failures to provide nursing and transportation services yet did nothing to remediate them.” 324 F. Supp. at 468. Here, as set forth throughout, OSSE’s affirmative efforts to identify and rectify possible causes for transportation delays preclude a finding that OSSE discriminated against Plaintiffs because of their disability. Background Section III; *see also J.S. v. Attica Cent. Sch.*, No. 00–CV–513S, 2011 WL 4498369, at *15 (W.D.N.Y. Sept. 27, 2011) (finding no bad faith or gross misjudgment under Section 504 where the school district was made aware of accessibility issues and took affirmative steps to remediate).

at 597; *see also, e.g.*, 28 C.F.R. § 35.130(d); 28 C.F.R. § 41.51(d). And this is true in part because unnecessarily segregating disabled persons from nondisabled persons “perpetuates unwarranted assumptions” and stigmatizes disabled persons. *Id.* at 600. Still, not every government act that separates a disabled person from their peers is discrimination.

Multiple circuits have explained that a plaintiff is *unjustly* segregated when the government provides a particular service in a segregated or institutional setting that it could (through existing programs) provide in a more inclusive setting. In other words, these kinds of claims concern “the location of services, not whether services will be provided.” *Cohon v. New Mexico Dep’t of Health*, 646 F.3d 717, 729 (10th Cir. 2011) (quoting *Townsend v. Quasim*, 328 F.3d 511, 517 (9th Cir. 2003) (citing *Rodriguez v. City of New York*, 197 F.3d 611 (2d Cir. 1999))). Similarly, as with all ADA or Section 504 claims, this cannot be a complaint about the *adequacy* of services provided. *Alexander*, 469 U.S. at 304; *Buchanan v. Maine*, 469 F.3d 158, 173 (1st Cir. 2006) (collecting cases, and affirming summary judgment for defendant on ADA claim because, “[b]y the time of summary judgment motions, the claim was not about . . . denial of services, but rather . . . adequacy of treatment”); *Disability Rts. New Jersey, Inc.*, 796 F.3d at 307, 307 n.5 (3d Cir. 2015) (rejecting ADA challenge to policy regulating forcible medication, in part because “allowing such a challenge could improperly transform the ADA from an antidiscrimination statute into a law regulating . . . quality of care”); *Carpenter-Barker v. Ohio*, 752 F. App’x 215, 221 (6th Cir. 2018) (“*Olmstead* requires that states accommodate qualifying individuals by allowing them to receive their treatment in an integrated setting; it does not set a standard of care or . . . require that states offer all the aid a [plaintiff] wants.”).

This principle also explains two of the three cases Plaintiffs rely upon. In *J.S. v. Houston*, according to his IEP, plaintiff J.S. was to be spending most of his time at school in an

integrated, general education classroom. 877 F.3d 979, 983 (11th Cir. 2017). J.S. was also assigned a one-on-one teacher’s aide. *Id.* For whatever (seemingly bad) reason, J.S.’s aide developed a habit of taking J.S. out of his classroom and to the school’s weight room instead. *Id.* Citing *Olmstead*, the Eleventh Circuit reasoned that J.S. had been “excluded and isolated from his classroom . . . on the basis of his disability,” that this could result in “stigmatization and deprivation of opportunities for enriching interaction with fellow students,” and that J.S. had stated “a claim of intentional discrimination.” *Id.* at 986–87. But this claim could also be framed as one about *where* services were provided—that is, the school district should have provided J.S. with education in a classroom with his peers, not alone in a weight room.⁹

Similarly, in *Georgia Advocacy Office v. Georgia*, the plaintiff challenged a program that placed disabled students in special-education-only classrooms, segregated from their peers in general education classrooms. 447 F. Supp. 3d 1311, 1315 (N.D. Ga. 2020). Plainly, this case also raised a question of *where* services should be provided, not whether or how. *Id.*

Plaintiffs’ third case, *K.N. v. Gloucester City Bd. of Educ.*, is and should only have been a failure-to-accommodate case. Plaintiff K.N. argued that the school district’s refusal to assign a special education teacher, in addition to a dedicated aide, made it impossible for him to meaningfully participate in the school’s after-school program. 379 F. Supp. 3d 334, 354 (D.N.J.

⁹ Other than *Olmstead*, the *J.S.* court cited only one precedent in support of its reasoning: *K.M. ex rel. D.G. v. Hyde Park*, 381 F. Supp. 2d 343, 360 (S.D.N.Y. 2005). *K.M.* involved a disabled student routinely subjected to such hurtful and continuous bullying about his disability that he spent most of a school year eating lunch with his teacher and two other students instead of in the school cafeteria. *Id.* at 348, 353. The court held that the school district’s “deliberate indifference to pervasive, severe disability-based harassment that effectively deprived a disabled student of access to the school’s resources and opportunities” constituted discrimination. *Id.* at 360. In the alternative, and citing only *Olmstead*, the court also found that plaintiff’s “claims related to the lunchtime isolation appear to be [an *Olmstead*] claim.” *Id.*

2019). The court found the district had failed to reasonably accommodate plaintiff’s needs. *Id.* at 350–54, 352. In the alternative, with no citation to precedents supporting such a theory, the court also found that this failure constituted discrimination in the form of unjust isolation. *Id.* at 355 (“Thus, because Plaintiffs’ proposed accommodation would have provided meaningful access and the District refused to grant that accommodation, the District imposed unnecessary segregation upon J.N.”). The Court should not find this collapsed logic in dicta persuasive.

For all of these reasons, Plaintiffs’ discrimination claims will not succeed.

B. Plaintiffs Do Not Satisfy the Other Criteria for a Preliminary Injunction.

Even if the Court were to find that Plaintiffs are likely to succeed the merits of any of their claims, they are not entitled to preliminary injunctive relief because the other three *Winter* factors, “taken together,” do not tip in Plaintiffs’ favor. *Cf. Davis*, 571 F.3d at 1292 (outlining standard). First, the individual Plaintiffs have failed to show they face actual, certain, and great harm in the absence of relief; this is fatal to their request. Second, Plaintiff The Arc has made no argument at all that it will suffer irreparable harm—also fatal. Finally, the equities and public interest do not favor prematurely entering the triply extraordinary structural relief Plaintiffs seek.

1. Plaintiffs Fail To Show They Face Irreparable Harm.

It is well established that, to obtain emergency injunctive relief, Plaintiffs must show they face imminent and “irreparable harm.” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (quoting *Sampson v. Murray*, 415 U.S. 61, 88 (1974)). This is “a high standard”: The injury “must be both certain and great,” “actual not theoretical,” and “of such *imminence* that there is a clear and present need” for relief. *Id.* (emphasis in original) (internal quotations omitted). *Id. Accord, e.g., League of Women Voters v. Newby*, 838 F.3d 1,

7–8 (D.C. Cir. 2016); *United States v. Facebook*, No. 23-5280, 2024 WL 1128083, at *1 (D.C. Cir. Mar. 12, 2024).

Here, the individual Plaintiffs point primarily to (1) past harms, and (2) presumptions in support of their burden to show irreparable harm. Pls.’ Mem. at 47–52. They argue, in sum, that the alleged past denials of FAPes, “which Hearing Officers have already concluded *occurred*, is per se harm for purposes of a preliminary injunction” *Id.* at 47–48 (emphasis added).¹⁰ Even if it were true that Plaintiffs have suffered past harms, as discussed above, Plaintiffs have already received relief for those harms. *See above* Argument Section I.A.1.b–d. But Plaintiffs have offered no good argument that this relief is ineffectual and that they continue to face actual, imminent (future) harm. *See generally* Pls.’ Mem. at 47–52.

Past harms and presumptions are not enough. Plaintiffs must put forth “substantial proof” that they will suffer “certain” *future* harm without relief. *See Mazurek*, 520 U.S. at 972; *CFGC*, 454 F.3d at 297. One Plaintiff affirmatively concedes that, since “October/early November 2023”—that is, for more than six months now—OSSE has “consistently picked up D.R.” Robertson Decl., [4-22] ¶ 32. That does not show any need for relief, just the opposite.

At best, following a citation in Plaintiffs’ argument section, Pls.’ Mem. at 47, to all the citations in another argument section, *id.* at 31–37, Plaintiffs argue that since receiving favorable HODs, “H.D. and J.C. continue to experience delayed and inappropriate [*sic*] transportation,” citing to Daggett Decl., [4-3] ¶ 55 and McCray Decl., [4-18] ¶ 43. Pls.’ Mem. at 36. But Paragraph 55 of the Daggett declaration simply states, in conclusory fashion, that “[d]espite the Hearing Officer’s order, OSSE is not arriving on time and not complying with [H.D.]’s IEP.”

¹⁰ Plaintiffs also point, separately, to “exacerbated irreparable harms,” concerns for their physical safety, and “great personal cost[s]” to parents, but each of these alleged harms are related to or consequences of the alleged failure to timely transport Plaintiffs. *Id.* at 49–52.

Conclusory statements in affidavits are not enough to entitle movants to extraordinary relief. *E.g.*, 11A Wright & Miller, Fed. Practice & Pro. § 2949 (3d ed. Apr. 2023). Paragraph 43 of the McCray declaration is similarly devoid of concrete content, stating that “[b]ecause the hearing officer did not order” prospective relief, “J.C. is at risk of continued FAPE deprivation,” and that OSSE “continues to fail to provide reliable communication about transportation” Again, not enough. Wright & Miller § 2949; *CFGC*, 454 F.3d at 298 (holding movants failed to show imminent harm where alleged “injury was far too speculative to warrant” relief).

Plaintiffs also point to cases finding that a denial of a FAPE or discrimination on the basis of disability, *per se*, causes irreparable harm. Pls.’ Mem. at 47–48. Plaintiffs misrepresent the scope or meaning of the presumption. When applicable, as here, it excuses them from having to show that the harms they allege are *irreparable*—in other words, the denial of a FAPE is definitely, legally, the kind of harm that can be addressed by injunctive relief. *See, e.g., Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 124 (D.D.C. 2013) (stating that failure to provide a FAPE “constitutes irreparable injury” and explaining that “DCPS cannot retroactively cure the harm caused by” missed services). It does not, however, relieve Plaintiffs of their burden to show that the alleged harm is “certain” to occur. To be sure, in each of the cases Plaintiffs cite, before issuing relief, the courts *also* find that there is some ongoing or imminent harm to be remedied. *E.g., Lofton*, 7 F. Supp. 3d at 119, 124 (ongoing harm where plaintiff continues to be placed at an allegedly inappropriate placement); *Massey v. District of Columbia*, 400 F. Supp. 2d 66, 75 (D.D.C. 2005) (ongoing harm where plaintiff allegedly continues to lack appropriate placement); *Blackman v. District of Columbia*, 277 F. Supp. 2d 71, 79 (D.D.C. 2003) (ongoing harm where plaintiffs totally denied due process hearing); *Charles H. v. District of Columbia*, No. 21-cv-00997, 2021 WL 2946127, at *11 (D.D.C. June 16, 2021) (ongoing harm where

plaintiffs not receiving in-person instruction or any additional services at all). Plaintiffs make no such showing here. *Supra*. And the same arguments apply to their discrimination claims—they must, but do not, show ongoing or imminent harm. *See* Pls.’ Mem. at 48.

Plaintiff The Arc does not even argue it will suffer irreparable harm, and therefore cannot possibly have met its burden. *See* Pls.’ Mem. at 47–52, 31–37.

For all of these reasons, Plaintiffs’ Motion should be denied. *CFGC*, 454 F.3d at 297 (“A movant’s failure to show any irreparable harm is . . . grounds for refusing to issue a preliminary injunction, even if the other three factors . . . merit such relief.”).

2. The Balance of the Equities and Public Interest Favor the *Status Quo*.

In trying to meet their burden to show the last two (merged) *Winter* factors support entry of preliminary injunctive relief, Plaintiffs argue, in effect, that they are entitled to relief because the District is obliged to comply with the law anyway; that the alleged violations cannot be adequately addressed “on a student-by-student basis”; and that alignment with “best practices and professional guidance” should therefore be required by court order. Pls.’ Mem. at 52–56 (internal quotation marks omitted).

The District of course agrees that Plaintiffs must be provided with a FAPE, including related services, and that it cannot discriminate on the basis of disability. But, with respect to past violations, Plaintiffs have already received individualized relief through the administrative process and have not shown any new or continuing harms that would justify additional relief. *See* Argument Section I.B.1. Further, the cases Plaintiffs cite concern orders invalidating illegal policies, or prohibitory orders, not the sort of broad and speculative relief Plaintiffs seek here. *See* Pls.’ Mem. at 56.

As to their next point, Plaintiffs are not correct that the individualized relief already provided cannot possibly prevent future harms. The one case Plaintiffs cite in support of this argument, *Easter v. District of Columbia*, 128 F. Supp. 3d 173, 176 (D.D.C. 2015), is not persuasive. In *Easter*, the plaintiff alleged he had been denied special education while placed at a youth correctional facility because the District had not identified an LEA to service that facility. 128 F. Supp. 3d at 176 (D.D.C. 2015). The District argued that he failed to state a “systemic” claim for relief. *Id.* at 178. The court held that this was “precisely the type of issue that cannot be addressed on a student-by-student basis” *Id.* at 178. But that is simply not true. The plaintiff in *Easter* did not file a Due Process Complaint until after exiting the facility. 128 F. Supp. 3d at 175. If he had, a hearing officer could have ordered the District to provide him with special education, which would have required the District to identify an LEA to serve the facility (or to otherwise solve the problem). *E.g., Doe*, 111 F.3d at 682 (explaining how individual administrative complaint could have resulted in remedy for plaintiff and every child at same correctional facility). *See also* Argument Section I.A.1.b *above*.

Finally, it is not in the public interest, or equitable, for the courts to determine whether or how OSSE should implement “best practices and professional guidance.” Pls.’ Mem. at 53. To start, there is no guarantee—and more importantly, no evidence—that compliance with every best practice in the book would ensure that each Plaintiff is dropped off on time each day. As discussed below, the *scope* of Plaintiffs’ requested relief is beyond the legal violations they have alleged, and the causal connections they have (and have not) drawn. *See* Argument Section II.A.

Even so, the D.C. Circuit has strongly cautioned that the kind of relief Plaintiffs seek here—systemic, structural, institutional, however phrased, a take-over—is “doubly” extraordinary. *See Salazar v. District of Columbia*, 896 F.3d 489, 497 (D.C. Cir. 2018) (“An

injunction is an exceptional form of relief. . . . Doubly so when the judicial branch undertakes to restructure the operations of an executive branch of government and to superintend its operations on an ongoing basis.”) (citation omitted); Pls.’ Prop. Order. Injunctions of this sort are especially, triply extraordinary at a preliminary phase of proof, because they upend the status quo for potentially years to come, and may be very difficult to unwind if the movant does not ultimately prevail. For example: Plaintiffs ask the Court to order the District to maintain “a bench of drivers, attendants, nurses and OSSE terminal staff to serve the plaintiff class.” Pls.’ Prop. Order at 2. That appears to foreclose OSSE’s recent pivot to private contracting, *see* Background Section III, and to thereby make a major, possibly unwise, policy decision about how best to serve District residents. *See Horne v. Flores*, 557 U.S. 433, 454–55 (2009) (reversing injunction committing Arizona to specified levels of educational funding, where the order focused on the means instead of the end, and “improperly substituted” the court’s judgment concerning “educational and budgetary policy”). The public has an interest in debating such questions through the political process. *Id.* at 449 (“Injunctions of this sort bind state and local officials to the policy preferences of their predecessors and may thereby improperly deprive future officials of their designated legislative and executive powers.”) (internal quotations omitted).

This is not a matter of abstract principle. Officials in the Executive Branch of the District Government are presently and actively engaged in developing and implementing new ideas to improve student transportation by closing recent gaps between service supply and ridership demand, Park Decl. ¶¶ 39–52; seeking efficiencies in every component of the process to improve performance for students, *id.* ¶¶ 61–68; making families part of the solution, *id.* ¶¶ 69–72; and thoughtfully executing a second effort to completely redesign the technology infrastructure for

student transportation, *id.* ¶¶ 53–55. The Legislative Branch is also keenly interested in and closely tracking OSSE’s needs and progress. *See, e.g.*, Pls.’ Exhibit 15 [4-47] at 231–255 (detailed questions from D.C. Council to OSSE touching on many of the same issues raised here, including staffing and routing, with respect to Fiscal Year 2022); Pls.’ Exhibit 16 [4-48] at 215–236 (same, FY 2023). At a recent hearing concerning OSSE’s performance and budget requests for Fiscal Year 2025, three members of the D.C. Council separately pressed State Superintendent Dr. Christina Grant on transportation questions, including when and how OSSE will develop and deploy a new data system. *See* FY2025 Budget Oversight Hearing, DCPS and OSSE (April 11, 2024), *available at* <https://tinyurl.com/279zj6xy> (exchanges beginning at timestamp hour-marks 4:45, 5:25, and 5:48). State Superintendent Grant emphasized that “[t]his is an all-District, or whole-of-government effort to ensure that these children get to and from school.” *Id.* at 5:34:00.

The balance of the equities and public interest favor letting this active policy process play out while the specialized fact-finding procedures of litigation do too. To simply order the District to work faster on switching routing systems, for example, under the circumstances, and on this record, would be arbitrary and even counterproductive. *E.g.*, Park Decl. ¶ 55.

For all of these reasons, the Plaintiffs’ Motion should be denied. *See Winter*, 555 U.S. at 32 (reiterating that an injunction “does not follow from success on the merits as a matter of course” and reversing injunction where, even if plaintiffs would prevail on the merits and could show irreparable harm, balance of equities and public interest did not favor injunction).

II. Plaintiffs Are Not Entitled to the Overbroad, Vague Relief They Seek.

A. Plaintiffs Are Not Entitled to Class-wide or Structural Relief.

Even if the Court were to find that Plaintiffs require some form of preliminary injunctive relief, Plaintiffs are not entitled to relief for non-parties or relief that goes beyond what is needed

to remedy the legal violations they may have shown. The Supreme Court has recognized the “general rule”—rooted in traditional equitable principles—that “injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (internal quotations and citation omitted). The injunction should not reach beyond the plaintiffs: The “relief should be limited to the parties before the Court.” *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 478 (1995) (reversing order for injunctive relief that applied to all Executive Branch employees in favor of order benefitting only the class of plaintiffs before the Court); *see also Horne*, 557 U.S. at 470 (suggesting statewide relief for claim brought against local subunit was overbroad and raising standing concerns). Nor should it reach beyond “the extent of the violation established.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

In other words, relief “must be narrowly tailored to remedy the specific harm shown” to the plaintiffs. *Neb. Dep’t of Health & Human Servs. v. Dep’t of Health & Human Servs.*, 435 F.3d 326, 330 (D.C. Cir. 2006) (reversing order for injunctive relief that swept broader than plaintiffs’ continuing harms); *Reid*, 401 F.3d at 523–24 (stating that IDEA relief depends on “equitable considerations” and that “the essence of equity jurisdiction is to do equity and to mould each decree to the necessities of the particular case”) (cleaned up).

Here, Plaintiffs have expressly proposed the Court order injunctive relief on behalf of themselves and the “plaintiff class.” Prop. Order, [4-2] at 2. But of course, no class has yet been certified, and to order such relief would be in error. *See, e.g., Nat’l Treasury Emps. Union*, 513 U.S. at 478 (reversing relief afforded beyond certified class); *Salazar*, 896 F.3d at 499-500 (same); *California v. Azar*, 911 F.3d 558, 582–83 (9th Cir. 2018) (“[T]he rule that injunctive relief should be narrowly tailored to prevent harm to the parties before the court applies with

special force where, as here, there is no class certification.”); *Brown v. Trs. of Boston Univ.*, 891 F.2d 337, 361 (1st Cir.1989) (similar); *Sharpe v. Cureton*, 319 F.3d 259 (6th Cir.2003) (similar); *Meyer v. CUNA Mut. Ins. Soc.*, 648 F.3d 154, 169–71 (3d Cir. 2011) (similar); *Kane v. De Blasio*, 19 F.4th 152, 172–74 (2d Cir. 2021) (similar).

Similarly, Plaintiffs ask the Court to order relief that reaches well beyond the scope or text of the Complaint, let alone the evidence presented. Prop. Order at 2–3. For example, they ask the Court to order that the District “[f]ully implement all students’ IEPs, including but not limited to” specified transportation issues. *Id.* at 2. Students’ IEPs include many requirements that have nothing to do with transportation. There is no basis to order the District to “fully comply” with those requirements in the course of this case. Even transportation-related provisions in the Proposed Order appear seemingly out of the blue: Plaintiffs propose orders related to the “number” of OSSE “terminal staff;” the adequacy of the physical fleet, including policies around “preventative and emergency maintenance;” and air conditioning. Prop. Order at 3. None of these are identified as issues or even mentioned in the Complaint or Motion.

Plaintiffs’ Proposed Order also addresses a slew of concerns that *are* alleged in the Complaint, or touched upon in the Motion, but not tied to a violation of law. They seek, in that vein, court-ordered action and oversight concerning supposed failures to implement IEP requirements for “transportation paraprofessionals and attendants, limited travel time, medical/nursing services, specialized transportation safety equipment, and specialized transportation assistant services”; and “immediate[e]” development and implementation of “policies and procedures for training staff to ensure that all staff employed or contracted by OSSE to provide transportation receive adequate training in best practices”; “a parent communication system to provide parents with real-time updates on delays, cancellations, or

other changes in language parents can understand”; and “policies and procedures for complaints and investigations that ensure parents receive timely responses to complaints filed with OSSE.”

Id. at 2–3.

Failures to provide necessary supports, or buses, or to adequately train staff, might violate the IDEA—but even according to Plaintiffs’ Motion, not *every* failure is a violation. Rather, only a “*material* failure to implement a student’s IEP constitutes a denial of FAPE.” Pls.’ Mem. at 21 (quoting *Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 144 (D.D.C. 2018)) (emphasis added). The “test” as to material “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.’” Pls.’ Mem. at 31 (quoting *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 274 (D.D.C. 2011); *see also, e.g., L.J. v. Broward Cnty*, 927 F.3d 1203, 1211 (11th Cir. 2019) (explaining “*de minimis* shortfalls are not enough”).

Plaintiffs have not separately argued that they have been denied FAPes as a result of any material lack of necessary supports or inadequate OSSE training. One of the five Plaintiffs’ HODs found that the District denied him a FAPE “in failing to provide Student A a dedicated aide from February 18, 2022 to April 24, 2023.” Guerrero HOD, [24-1] at 11. The other four HODs make no mention of missing necessary supports, and none of them found violations related to inadequate training. *See generally* [4-1], [4-24], [4-6], [24-2]. Even if one Plaintiff was denied a FAPE in connection with one missing support over a year ago, that finding alone comes nowhere close to supporting the sweeping relief Plaintiffs seek. And nothing in their Motion papers makes out further “material” violations or shows certain future harm will result if the relief they seek is denied.

To be sure, Plaintiffs have alleged various isolated incidents in which isolated incidents in which they were not provided with required supports. Daggett Decl., [4-3] ¶¶ 25, 31, 32 (no anchor for safety harness on Feb. 10, 2023; Aug. 28, 2023; Nov. 7, 2023); Guerrero Decl. ¶ 13 (missing harness for a “few days” at start of School Year 2022–2023); *id.* ¶ 20–21 (bus unable to “manage” new equipment first day in use, not resolved until next school week); *id.* ¶ 38 (unidentified “several occasions” when there was no dedicated aide on bus); Cannon-Clark Decl. ¶ 14 (stating there have been “multiple occasions” when bus arrived without a nurse, and specifying one from October 2023). There is one citation in the record to one day when one bus “broke down.” Daggett Decl. ¶ 21. Two Plaintiffs also express concerns or “worry” about OSSE’s training. *Id.* ¶ 44 (describing “multiple” instances when harness was improperly secured, and speculation that training is inadequate); Guerrero Decl. ¶ 16 (one argument with bus attendant about improper use of safety harness); *id.* ¶¶ 39–40 (expressing “worry” about OSSE training). None of this amounts to a material violation of the IDEA, and plainly cannot support the broad, systemic relief Plaintiffs propose. *Cf. Middleton*, 312 F. Supp. 3d at 145 (20 percent deviation from IEP requirements was material and not de minimis); *Wade v. District of Columbia*, 322 F. Supp. 3d 123, 133 (D.D.C. 2018) (27 percent deviation was material).

Plaintiffs’ requests concerning communications and complaint processing fall even farther afield. Plaintiffs describe concerns about OSSE’s communications to parents at length. *E.g.*, McCray Decl. ¶ 44 (“I also am seeking that OSSE DOT provide reliable and effective communication with me, including a fully staffed Parent Resource Center with limited to no wait times, an accurate tracking system for me to know where J.C.’s bus is, and accurate daily text messages, calls, and emails that notify me of any changes to J.C.’s route.”). They mention some concerns about reimbursement and complaint processing. *E.g.*, Cannon-Clark Decl. ¶ 33

(expressing concerns that standard reimbursement process “is cumbersome and unnecessarily complicated”). But nothing in the Motion connects these concerns to a violation of law—and nothing in the plain text of the IDEA or its regulations requires OSSE to provide Plaintiffs with real time GPS bus tracking or call-center service or un-cumbersome reimbursement procedures. *See, e.g., K.N. v. Bridges Public Charter School*, 660 F. Supp. 3d 29, 37–44 (D.D.C. 2023) (finding requirement in plaintiff’s IEP that he be carried from apartment to bus goes beyond IDEA’s transportation requirements and was not enforceable). In fact, the only HOD that specifically addressed a Plaintiff’s right to relief concerning communications (an allegation about language access) found no violation. Guerrero Decl., [24-1] at 10–11. Plaintiffs do not separately argue, or prove, that any of these alleged harms violated the law. *See generally* Pls.’ Mem. They have thus failed to show any right to relief for them. *E.g., Califano*, 442 U.S. at 702.

Finally, Plaintiffs have also failed to show that the relief they seek could actually *remedy* the past transportation violations that the Hearing Officers found occurred, that is, untimely drops offs (both ways). *See, e.g., Cobell v. Norton*, 391 F.3d 251, 259 (D.C. Cir. 2004) (vacating injunction where plaintiffs did not meet “their burden as the moving party to demonstrate the necessity of the . . . injunction to safeguard . . . their interests”). As noted above, Plaintiffs’ requested relief is based entirely on reference to “best practices” described by consultants. Pls.’ Mem. at 53–55 (citing Decl. of Dr. Linda Fran Bluth (Bluth Decl.) [4-28], Decl. of Alexandra Robinson (Robinson Decl.) [4-44]). These experts appear to know a lot about student transportation generally, but little (if anything) about recent operations in the District. *E.g.* Bluth Decl. ¶¶ 2–17; Robinson Decl. ¶¶ 2–13; *id.* ¶ 13 (“At this stage, I offer general best practices rather than specific opinions about DC’s transportation system for students with disabilities.”).

There is no description of what materials these experts reviewed. *See* Bluth Decl. ¶¶ 17, 23 (referencing review of “materials” and “documents” without explanation); Robinson Decl. ¶ 12 (referencing “study of literature”). There is no explanation of what benefits these changes would produce, or how they would affect bus travel times. *Id.* There is no connection between the delays Plaintiffs vaguely allege they continue to experience and OSSE’s use or not-use of these practices. *Id.* (Indeed, there is no discussion of the individual students’ experiences or routes at all. *Id.*) And there is no testimony suggesting concrete causal analysis. *Id.*

At best, there is correlation: Plaintiffs see problems, and they see an absence of some things (a new routing system, for example)—that is correlation. But, of course, “[c]orrelation is not causation.” *In re Navy Chaplaincy*, 738 F.3d 425, 429 (D.C. Cir. 2013); *Meister v. Med. Eng’g Corp.*, 267 F.3d 1123, 1129 (D.C. Cir. 2001) (“[T]he mere simultaneous existence of the two [characteristics] clearly is not an appropriate methodology.”). In sum, Plaintiffs have not proven the relief they seek is “narrowly tailored to remedy the specific harm shown.” *Neb. Dep’t of Health & Human Servs.*, 435 F.3d at 330.

B. Plaintiffs’ Proposed Order Does Not Comply with Fed. R. Civ. P. 65.

Finally, even if Plaintiffs’ Proposed Order is appropriate, its terms are fatally vague. Any injunction must “describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.” Fed. R. Civ. P. 65(d)(1)(C). These are “no mere technical requirements,” but rather are “designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.” *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). For instance, “injunctions simply requiring the defendant to obey the law are too vague to satisfy

Rule 65.” *Shook v. Cnty of El Paso*, 543 F.3d 597 (10th Cir. 2008) (internal quotations omitted); accord *S.E.C. v. Wash. Inv. Network*, 475 F.3d 392, 407 (D.C. Cir. 2007) (reversing order).

Here, Plaintiffs ask, in part, for an order vaguely directing the District to obey the law. See Pls.’ Prop. Order at 2 (Subpart e), 3 (Subpart h). That is improper. Much of Plaintiffs’ suggested language is also too vague to provide clear guidance to District officials faced with the threat of sanctions for contempt. For example, it is not clear what it means to “ensure that students are on the bus for an appropriate amount of time given their individualized needs,” Subpart d, particularly if that is different from “[f]ully implement[ing] all students’ IEPs,” Subpart c. Plaintiffs’ proposed order fails the requirements of Rule 65 and should not be entered. *E.g.*, *Shook*, 543 F.3d at 604.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs’ Motion.

Dated: May 15, 2024.

Respectfully submitted,

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

CRYSTAL ROBERTSON, *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

No. 1:24-cv-00656-PLF

**LIST OF EXHIBITS TO DEFENDANT'S OPPOSITION
TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

- Exhibit A Declaration of Raphael Park
- Exhibit B OSSE Transportation Policy
- Exhibit C Sebastian M. Hickey & David Cooper, *The School Bus Driver Shortage Remains Severe*, Economic Policy Institute (Nov. 14, 2023)
- Exhibit D Donna St. George, *With too few bus drivers, schools struggle to get kids to class*, Washington Post (Sept. 2, 2023)
- Exhibit E Robertson Due Process Complaint
- Exhibit F Daggett Due Process Complaint
- Exhibit G Clark Due Process Complaint
- Exhibit H Guerrero Due Process Complaint
- Exhibit I McCray Due Process Complaint

EXHIBIT A

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

CRYSTAL ROBERTSON, *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

No. 1:24-cv-00656-PLF

DECLARATION OF RAPHAEL PARK

Pursuant to 28 U.S.C. § 1746, I, Raphael Park, declare and state as follows:

1. I am over the age of eighteen (18) years, competent to testify to the matters contained in this declaration and testify based on my personal knowledge acquired in the course of my official duties.

2. I am the Deputy Superintendent of Operations with the Office of the State Superintendent of Education (OSSE). In this role, I am responsible for managing the provision of all transportation services for qualified students in the District of Columbia. I have worked at OSSE for the last two years and have worked in the District of Columbia government for the last twelve years.

3. I am a parent myself. I wake up each morning feeling like a parent who needs to get 4,000 kids with special needs to school on time.

4. I provide this declaration to describe the transportation services that OSSE is responsible for and to explain the agency's ongoing efforts to improve the bus system writ large.

5. OSSE is the State Education Agency (SEA) in the District of Columbia and is responsible for ensuring “safe, reliable, and efficient transportation” for students who are deemed eligible for transportation services per their “Individualized Education Program” (IEP).

6. The division in charge of transporting students is often called OSSE-DOT (OSSE Department of Transportation). OSSE took responsibility for student transportation in 2009.

7. In most jurisdictions around the country, Local Education Agencies (LEAs) provide student transportation instead of the SEA. (Only Hawaii has a state education agency running transportation—like the District—instead of various LEAs.)

8. The District only provides transportation to students who are deemed eligible for transportation services in their IEPs; non-disabled students do not receive transportation services.

9. Once a student is deemed eligible for transportation services, the student’s school or LEA must submit a Transportation Request Form (TRF) to OSSE within five business days of the eligibility determination. TRFs provide OSSE with information including but not limited to an eligible student’s home address, morning and afternoon drop off details, the name and address of their school, and their parent or legal guardians’ contact information.

10. There are around 200 schools in the District and 70 LEAs. The District of Columbia Public Schools (DCPS) is one LEA, and many charter schools or charter groups are separate LEAs.

11. OSSE also transports students to dozens of schools outside the District, including as far as Baltimore, Maryland, and Fairfax, Virginia.

12. OSSE-DOT transports most students using a fleet of approximately 650 OSSE-owned buses and vans, operated by a team of more than 1,000 OSSE-employed drivers and attendants.

13. LEAs are responsible for preparing students IEPs, including with regard to transportation needs, and for submitting all required documentation for each student, including a TRF, by the first week of June before the start of the school year (this year June 3, 2024), or, at the latest, at least seven business days before the start of the school year.

14. TRFs for extended school year (ESY) services over the summer are due in May. As of May 6, 2024, the District's biggest LEA (DCPS) has submitted more than 95% of their expected TRFs for the summer term.

15. Timely TRF submissions are vital for the design and implementation of students' transportation services because OSSE must create optimal routes, assign drivers, conduct a "bid" for routes in accordance with bus drivers' and bus attendants' collective bargaining agreements, conduct practice runs, and communicate route times to families before the school year begins.

16. As of the current school year, OSSE is responsible for providing more than 4,000 students with door-to-door transportation services on a daily basis. This means that, whereas most school districts across the country pick up groups of students at designated bus stops, OSSE-DOT makes an individual stop at each eligible student's home address.

17. All of OSSE's students have unique sets of strengths and challenges, and different needs. OSSE must harmonize those on each bus and route, assigning students who are medically fragile with students who have autism, or serious emotional disturbances, or other needs, while balancing the social composition of each bus with reasonable travel times between homes and schools. OSSE also must account for varying individualized IEP requirements, some of which, for example, restrict a particular student's travel time or pick-up order.

18. On March 26, 2024, for example, based on anticipated attendance, OSSE routed 4,057 students. About 750 of those students required some sort of specialized support, such as a

wheelchair lift or dedicated aide. (OSSE codes for 44 different kinds of specialized supports in the agency's routing system.) Pickups began at 5:35 a.m. (meaning many OSSE-DOT team members had to wake up around 3:30 a.m. to execute this work) and continued until 8:46 a.m. Students went out on 551 different routes: 462 operated by OSSE, and 89 operated by contractors. Then OSSE-DOT did it all again, in reverse, that afternoon.

19. The number of students requiring transportation services varies significantly year-to-year and even month-to-month. The number of students OSSE transports has increased by about 180, or 5 percent, just since the beginning of this school year.

20. The total number of OSSE-transported students has increased considerably over the last four years. Today OSSE transports almost 700 more students than at the start of School Year 2021-2022, a 19.5 percent increase in ridership.

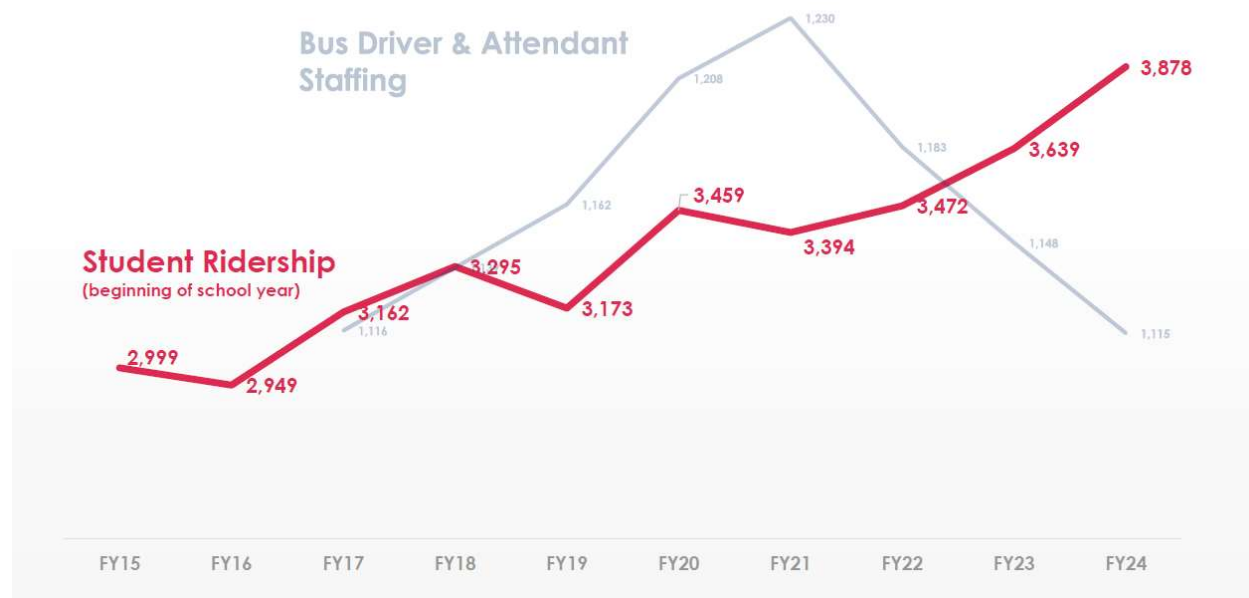
21. Unfortunately, at the same time that demand for transportation services has been growing, the supply of drivers who do the work each day has been shrinking.

22. Before the COVID-19 pandemic, as of School Year 2019-2020, OSSE employed a team of drivers sufficient to cover all routes, plus an 11 percent "bench" of drivers available to cover routes for drivers who call out. This exceeded the agency's target of a having a 10 percent bench

23. During the pandemic, even though schools paused in-person learning completely for some months, OSSE-DOT did not furlough its transportation team. Instead, drivers switched to supporting other District needs, including delivery of essential food and supplies to District residents and transportation for health care workers.

24. OSSE-DOT's driver and attendant workforce has nonetheless shrunk by 9 percent since 2021. OSSE's bench of drivers has been reduced by 13 percent since July 2021.

25. Earlier this year, I prepared a chart for District leaders showing these opposing trends in supply and demand for transportation services:



26. The shortage of bus drivers has been and continues to be a regional and national problem since the pandemic. This year, schools in Louisville, Kentucky closed entirely for over a week because of driver shortages. New York City warned parents of the potential for a driver strike to similarly cease school operations. Chicago began this school year with just 230 drivers, for a system requiring around 1,300.

27. The District is in stiff competition for a specialized and shrinking workforce even with our neighbors in Maryland and Virginia.

28. As reported to the D.C. Council, OSSE-DOT's directly employed labor force has not fully rebounded since the pandemic, and OSSE is still working to build back to its 10 percent

bench target. OSSE, Resp. to FY2023 Performance Oversight Questions (Feb. 23, 2024), at 219, <https://tinyurl.com/5n7x3zvu>.

29. Frequent callouts by existing staff also poses challenges. Driver and attendant callouts affect all students, as OSSE has to make adjustments on the fly. If there are no substitutes available, drivers may run multiple routes, causing significant knock-on delays.

30. For instance, in this case, during School Year 2022-2023, Plaintiff D.R.'s bus driver called out on 25 percent of school days, which no doubt caused delays for the route.

31. These trends have hurt OSSE-DOT's performance and resulted in delays for students, especially during School Year 2022-2023.

32. In addition, a change in the way OSSE-DOT designed and operated bus routes also caused significant delays and some confusion in School Year 2022-2023.

33. Prior to School Year 2022-2023, OSSE-DOT used an automated system called TRAPEZE to design bus routes. The system takes into account student and school addresses, school bell times, ride time, and bus capacity or equipment limitations, such as the number of students that a bus can comfortably fit.

34. Though TRAPEZE can build routes, it does not have GPS data tracking and aggregation capabilities; for any given student on any given day, OSSE-DOT must use a manual paper process to identify whether the student rode the bus and whether transportation was timely.

35. In School Year 2021-2022, OSSE-DOT began piloting a new routing system, called SEON, that was intended to better meet the operational needs of the division by enabling real-time data collection, aggregation, and reporting on bus locations and transit times.

36. SEON went live across all of OSSE-DOT's routes at the beginning of School Year 2022-2023. Unfortunately, implementation revealed a number of issues with the system,

including problems with the way that SEON pulled foundational address data into the system; inflexibilities in route design (for example, difficulties changing routes day-to-day in response to student attendance changes); and improperly installed GPS systems in the fleet.

37. As a result of the problems with SEON, on January 9, 2023, OSSE-DOT returned to using its TRAPEZE system for student routing, until a new system can be devised.

38. OSSE-DOT has been and continues to actively address issues related to staffing and the District's routing system.

39. OSSE has been working to address staffing shortages in many ways.

40. OSSE is working to build back its bench by increasing outreach to potential employees, offering increasing amounts of money as a signing bonus for new hires, and partnering with other District agencies to expand the pipeline of potential drivers.

41. For example, OSSE-DOT participated in two hiring fairs in Fiscal Year 2022, resulting in 50 on-the-spot job offers and approximately 200 individuals added to its candidate pool. In February 2023, OSSE hosted a fair just for drivers and attendants that attracted 1,754 registrants. OSSE-DOT collaborated with the District's Department of Motor Vehicles to send out notice of the fair to more than 4,500 active CDL license holders and offered a signing bonus of \$5,000.

42. OSSE is currently working with the District of Columbia Infrastructure Academy (DCIA) within the Department of Employment Services (DOES) to offer a specialized program for participants looking to receive a CDL license to increase the long-term pipeline too.

43. As compared to Fiscal Year 2023, this year OSSE has nearly doubled the size of its Human Resources team, which has enabled it to screen, hire, and onboard new staff much faster.

44. OSSE has also implemented targeted incentives to make fuller use of the staff it already has. At the start of School Year 2022-2023, OSSE piloted an attendance incentive program that provided individual drivers and attendants with financial bonuses for perfect attendance. OSSE renewed this program in early 2023 in response to higher-than-usual call-outs. It has been in effect for all of this School Year 2023-2024.

45. OSSE-DOT also implemented a \$25,000 retention incentive to maintain retirement-eligible staff during peak seasons (though it is not currently available).

46. Because of these efforts, absenteeism has decreased and daily staff attendance has improved 8 percent in School Year 2023-2024, as compared to School Year 2022-2023.

47. To decrease the number of total staff required, and to increase route efficiency, OSSE-DOT also made a major pivot to increased use of private route operators.

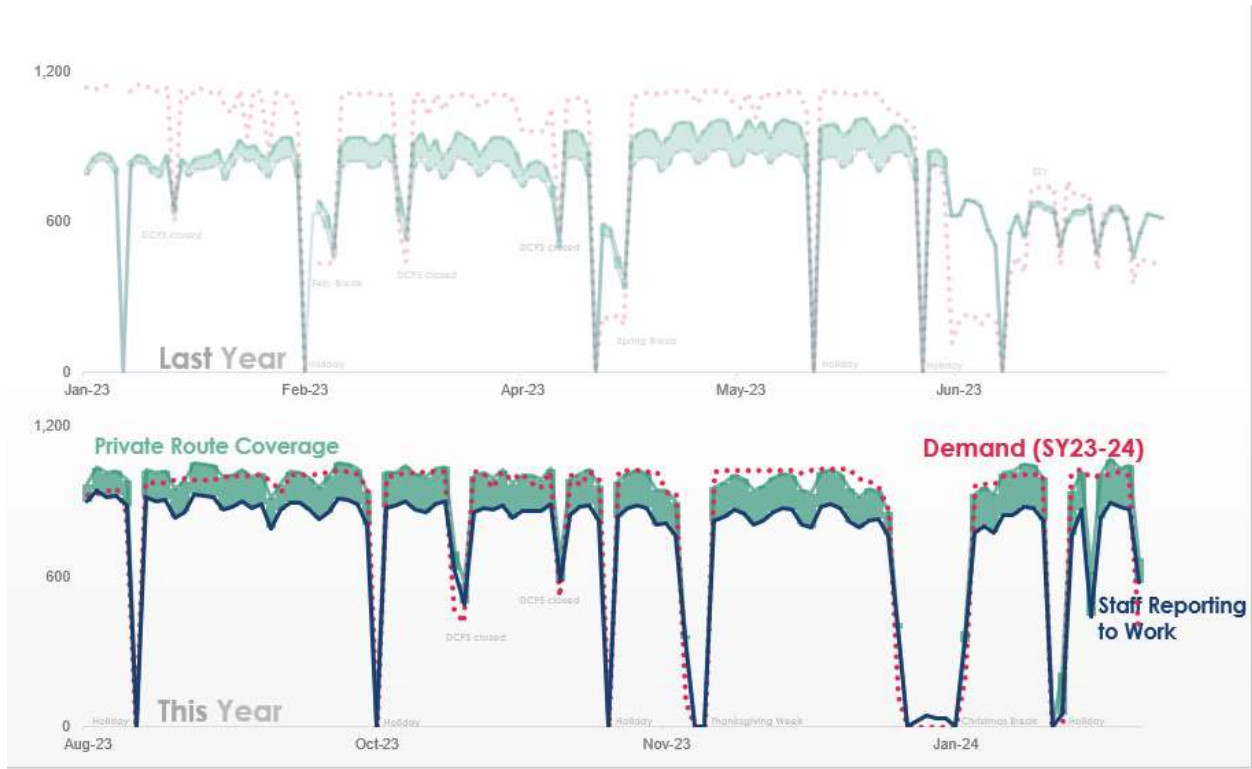
48. In School Year 2022-2023, through emergency contracts, OSSE-DOT brought in six private route vendors to cover service gaps.

49. In advance of School Year 2023-2024, OSSE-DOT signed eight multi-year contracts with private route vendors that OSSE-DOT can utilize for the next several years.

50. Privatization of bus routes not only helps mitigate staffing challenges but also significantly increases efficiency in OSSE-DOT's operation as approximately 20 percent of OSSE-DOT's bus routes have four or fewer students, including routes that travel outside of the District. When OSSE-DOT is able to transfer a route with a single-riding student to a private vendor, OSSE-DOT can utilize the same bus and staffing to transport up to 14 students on a different route.

51. As of January 2023, OSSE-DOT transported 29 students using private contractors. As of March 2024, that number was more than 300.

52. The combined effect of these efforts has enabled OSSE to close the demand and supply gap for this School Year:



53. OSSE is also working expeditiously and thoughtfully to redesign its routing system yet again, and to achieve real-time data-tracking and -crunching capabilities.

54. OSSE is continuing to explore new vendors and products that will provide the best fit for OSSE-DOT’s needs.

55. The D.C. Council is directly engaged on this issue and tracking OSSE’s progress toward the development and implementation of a new routing and tracking system. OSSE is under pressure to deliver soon. At the same time, OSSE does not want to repeat the mistakes of the past and cannot short-circuit the time needed to develop and test a new system.

56. In the meantime, OSSE is closely monitoring and communicating to families the best available proxy for real-time delay data. In January 2023, OSSE began tracking and real-

time reporting bus departures from terminals. The information is available to the public online.

See OSSE, *Daily DOT Updates*, available at <https://osse.dc.gov/page/daily-dot-updates>. For each route, the website indicates whether the bus left on-time, is delayed, or the route is cancelled entirely.

57. Due to staffing challenges, some routes were cancelled entirely on certain days in School Year 2022-2023. That has not happened in School Year 2023-2024.

58. In early 2023, this data showed that many routes left the terminal late. The week of January 16, 2023, for example, a daily average of 99 routes left late, yielding an 81 percent on-time departure rate.

59. In School Year 2023-2024, OSSE's on-time departure rates have consistently been around or above 95 percent. Averages are summarized here:

Date	% of on-time bus departure
January 2023	82.0%
February 2023	87.0%
March 2023	94.4%
April 2023	96.3%
May 2023	95.7%
June 2023	97.5%
July 2023	96.4%
August 2023	98.8%
September 2023	96.7%
October 2023	96.7%
November 2023	95.0%
December 2023	95.1%
January 2024	94.9%

60. This number is meaningful because it requires, logically, that a bus, a driver, and any required attendant(s) have been timely identified and assigned to the route.

61. OSSE has also been looking for other ways to increase efficiency and performance across the system.

62. As discussed above, leading up to School Year 2023-2024, OSSE made a concerted effort to increase oversight of and collaboration with LEAs to get more TRFs in on time.

63. Before School Year 2022-2023, LEAs submitted only 1,224 TRFs as of August 1, 2022. This turned out to be only 39 percent of all TRFs needed to start the school year. This led to significant routing delays at the start of the school year.

64. In April 2023, OSSE began publishing a continually updated website with the following data points: 1) the number of anticipated students pending extended school year (ESY) determinations; 2) the number of students who had an active TRF in the previous ESY and have an active TRF in the current term; 3) the number of students eligible for ESY transportation; 4) the number of students with successful TRF submissions to date; 5) the number of students with canceled TRF submissions to date; and 6) the number of students with missing TRF submissions. This portal is online for all to see. *See OSSE, 2024-2025 School Year Transportation Request Form Submissions, available at <https://osse.dc.gov/page/2024-25-school-year-transportation-request-form-submissions>.*

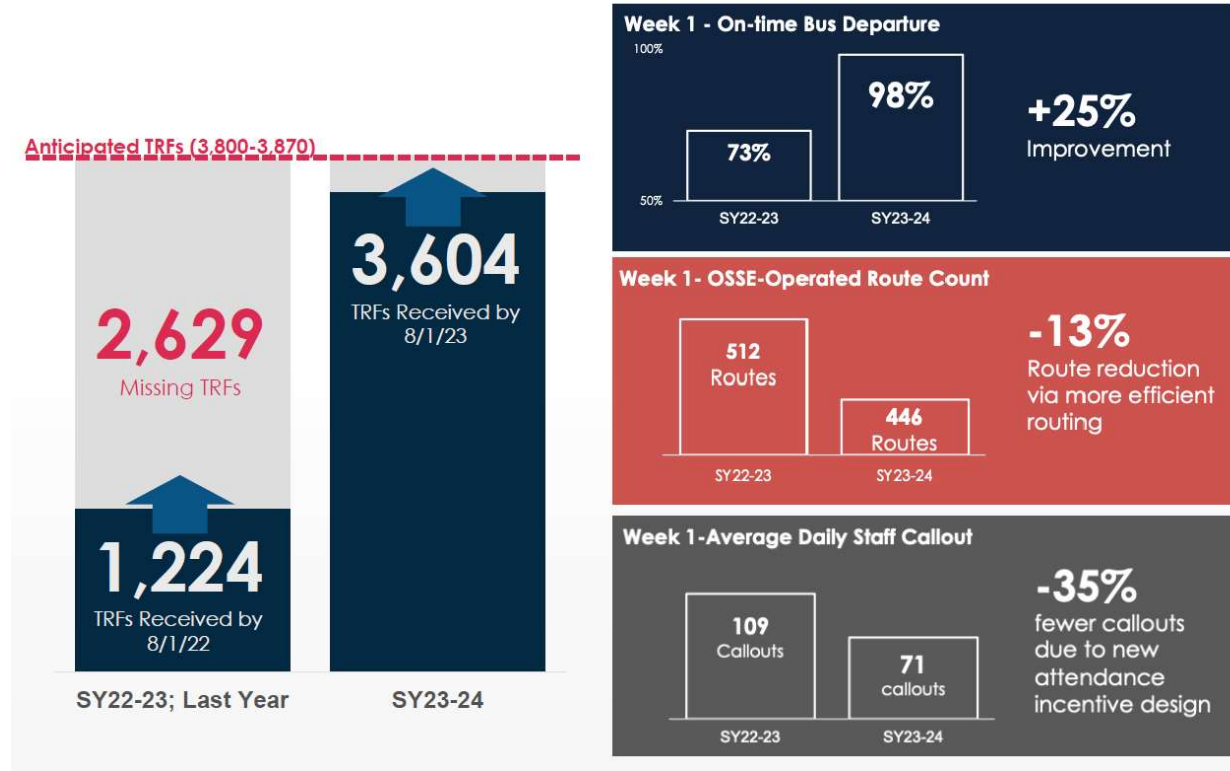
65. Last spring, OSSE met with LEAs to encourage the use of the website and to remedy delays in paperwork processing.

66. Because of this, OSSE received 94 percent of TRFs by the required date for School Year 2023-2024. This change gave OSSE-DOT more granular detail pertaining to

students' transportation needs at an earlier point than in the past and helped OSSE-DOT reduce the number of routes it operates by 13 percent in the current school year. This has led to measurable improvements in providing timely transportation services.

67. This improvement has continued for the upcoming 2024 ESY. For instance, as of this Declaration, DCPS (our largest LEA) submitted over 95% of their expected TRFs. OSSE has also reduced the amount of time it takes to process new TRF information once received. OSSE-DOT is required by its collective bargaining agreement with drivers and attendants to run a bidding process for routes. In the past, this was an in-person and paper-only process that was prone to human error, and it took weeks to complete. In December 2022, OSSE successfully completed the first electronic-only bid process, which produced better results and allowed OSSE to return results the same day.

68. Again, all these efforts have produced good results, including dramatically different performance the first week of this school year:



69. OSSE is also engaging families to be part of the solution. OSSE asked families, for example, to stress to their LEAs this year the need to complete TRFs on time.

70. OSSE regularly meets and works with parents and advocates to identify and discuss concerns or additional suggestions for improvement. One of the Plaintiff’s parents has been a member of OSSE’s Transportation Advisory Council for years.

71. Last December, OSSE began asking all drivers and attendants to communicate delays to families directly via standardized text messages. Because of the collective bargaining agreement, OSSE does not (and cannot) require that staff do this, but many route teams do it. It is my understanding that many families also have text-messaging groups with other families on the same route that they use to communicate travel-time-related updates. In effect, families can privately do what OSSE cannot—as a result of federal privacy protections, OSSE cannot disclose to families who else is on their child’s route, their addresses, or if or when individual students

from other families have been picked up—but families can choose to share that information with each other.

72. This spring, OSSE launched a new program enabling families to self-transport students by choice, and with a \$400 monthly subsidy from OSSE-DOT to cover costs. As of April 2024, about 180 families are self-transporting their student, which has helped improve ride times for all other students.

Executed on: May 15, 2024

A handwritten signature in black ink, appearing to read 'Raphaël Park', written over a horizontal line.

RAPHAEL PARK

EXHIBIT B



Office of the State Superintendent of Education ★ District of Columbia

Special Education Transportation Policy

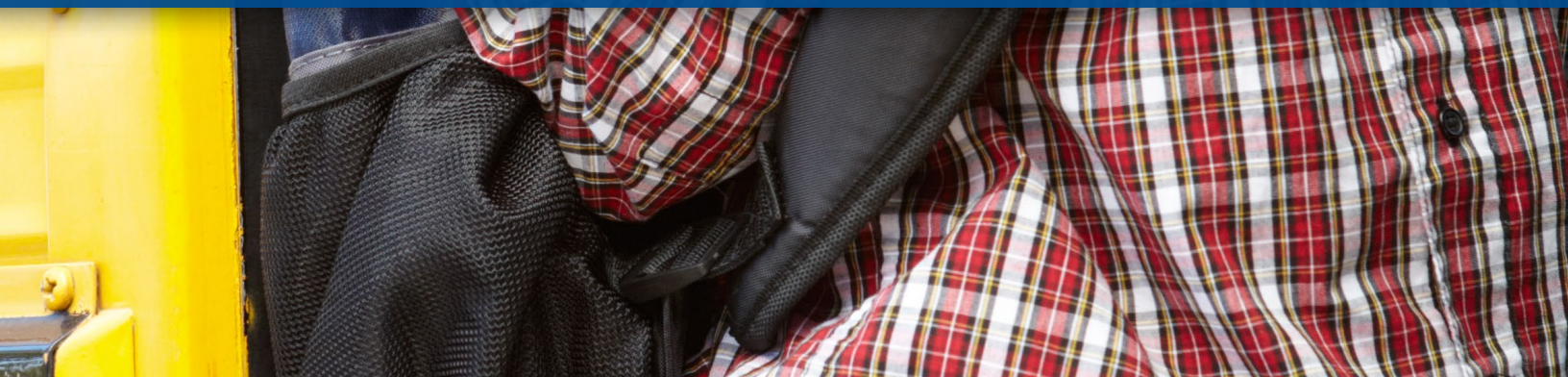
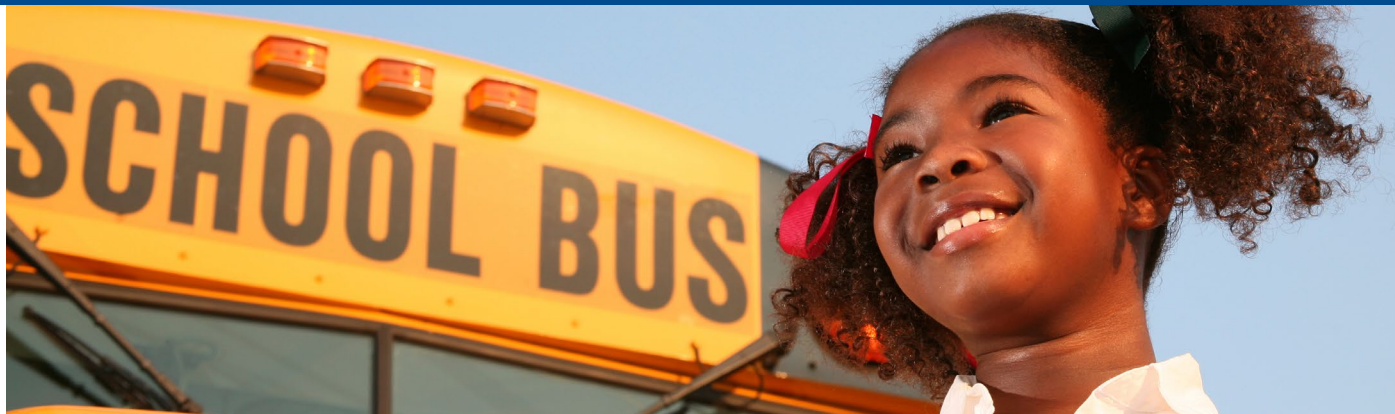


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INTRODUCTION

The purpose of this document is to establish a uniform system of standards and procedures for special education transportation services in the District of Columbia that is consistent with the **Individuals with Disabilities Education Act (IDEA)** requirement to provide a **free, appropriate public education (FAPE)** to all students with disabilities. This purpose is accomplished through:



Establishing state-level criteria that assist Individualized Education Program (IEP) Teams in making appropriate eligibility decisions.



Clarifying local education agency (LEA) responsibilities, and establishing documentation and procedural requirements that enable timely coordination between LEAs and OSSE's Division of Student Transportation (OSSE DOT).



Establishing a bi-annual LEA certification requirement that enables OSSE DOT to prepare for the provision of extended school year (ESY) related transportation services during the summer months and special education transportation services at the start of each school year.

It is the expectation of the Office of the State Superintendent of Education (OSSE) that all LEAs adhere to this Policy. OSSE DOT shall provide special education transportation services to students with disabilities when transportation is appropriately identified and documented on an IEP as a related service under the IDEA. With the exception of the pick-up and drop-off residency address requirement, this Policy is effective as of January 6, 2014. The pick-up and drop-off residency address requirement will become effective at the start of the 2014-2015 school year.

MONITORING AND COMPLIANCE

The **U.S. Department of Education's Office of Special Education Programs (OSEP)** requires that every state education agency (SEA) monitor local educational agencies (LEAs) to ensure compliance with Part B of the Individuals with Disabilities Education Act (IDEA). A finding of LEA noncompliance by OSSE will result in corrective actions for each area of noncompliance and may result in the requirement to submit an improvement plan. OSSE may also recommend or require training and technical assistance for LEA staff when crafting corrective actions. All items of noncompliance shall, by federal law, be corrected within one year of the finding; sustained noncompliance by an LEA may result in sanctions that include potential withholding of Part B grant funding.¹ Consistent with the IDEA and its regulatory framework, all LEAs shall comply with monitoring requirements established annually by OSSE, which include the collection and submission of both quantitative and qualitative data that support monitoring for regulatory

¹ 34 C.F.R. § 300.600(a)(3)

compliance and programmatic quality. Additionally, a subset of LEAs will be selected for OSSE's annual monitoring process. OSSE, in its role as SEA, ensures FAPE by meeting with other public agencies providing education services to children with disabilities to review and discuss the delivery of special education services. If any noncompliance is identified during OSSE's review, the public agency will be asked to take corrective action, as appropriate.

ELIGIBILITY CATEGORIES FOR SPECIAL EDUCATION TRANSPORTATION SERVICES

It is the responsibility of the IEP Team to determine, on an individual basis, whether transportation is required to assist a student with a disability with accessing special education and related services, and if so, how the transportation services should be implemented. The intent behind special education transportation services is to ensure that children with disabilities receive transportation when it is necessary to enable the child to receive FAPE. It is inappropriate for IEP Teams to designate special education transportation services for the primary purpose of facilitating daily attendance or mitigating the increased distance between a student's residence and a school location which results from non-FAPE related parent choice/enrollment decisions.

OSSE has established the following eligibility categories that IEP Teams shall use in making special education transportation eligibility determinations and supporting related services designations. An IEP Team shall find that a student meets the requirements under at least one eligibility category before determining that the student is eligible to receive special education transportation services. LEAs have the duty to reevaluate and document a student's changing needs over time.² Therefore, the IEP Team shall review and determine a student's need for special education transportation at least once annually as part of the IEP process.³



DEFINITION OF TRANSPORTATION IN THE CONTEXT OF SPECIAL EDUCATION

In the context of special education, *transportation* is a related service¹ that includes: travel to and from school and between schools; travel in and around school buildings; and specialized equipment such as special or adapted vehicles,² lifts and ramps, if they are required to provide transportation for a student with a disability.³ Special education transportation services shall be provided in accordance with a student's IEP, and at no cost to the parents of a student.⁴

¹ 34 C.F.R. §300.34(a)

² The IDEA does not require transportation on special or adapted buses for all students with disabilities who are eligible to receive transportation. The use of special or adapted buses is only required where specified by the IEP Team. See 71 Fed. Reg. 46576 (Aug. 14, 2006).

³ 34 C.F.R. §300.34(c)(16)

⁴ 34 C.F.R. §300.34(a); 20 U.S.C. §1412(a)(1)(A); 34 C.F.R. §300.101

Eligibility Category 1: Medically Fragile Students (MFS) Requiring Transportation to Access FAPE

Medically fragile students may be eligible for special education transportation services. In the context of special education transportation services, the term *medically fragile* applies to students who cannot travel safely without a specialized or adapted vehicle due to a documented medical condition.⁴ In the context of special education transportation services, the term *specialized or adapted vehicle* refers to a vehicle that has specialized equipment such as a specialized seat or seatbelt, positioning device, or wheelchair lift/ramp. OSSE DOT is responsible for providing specialized equipment when such equipment is deemed necessary by a student's IEP Team. OSSE DOT is not responsible for providing assistive devices (e.g. wheel chairs, crutches, walkers), which constitute personal equipment belonging to the student. (More information on assistive devices is provided on **page 9 of this Policy.**)

² 34 C.F.R. §§ 300.301 and 300.303

³ 34 C.F.R. § 300.324(b)

⁴ Distance is not an appropriate factor of consideration under the Medically Fragile Student (MFS) eligibility category.

Not all students with medical conditions are eligible for special education transportation services under the MFS category. To determine if a student is eligible for special education transportation services under the MFS category, the IEP Team shall review the student's medical history to consider any data that substantiates the existence of a chronic or persistent medical condition. An IEP Team that finds evidence of a documented chronic or persistent medical condition shall assess the impact of the medical condition on the student's ability to travel safely without a specialized or adapted vehicle or specialized medical equipment. IEP Teams should consider factors such as:



The severity of the student's medical condition (*i.e.* Does the student's medical condition require constant monitoring?);



The student's reliance on specialized medical equipment that is not readily transportable in a standard or non-adapted vehicle (*e.g.* oxygen delivery device, tracheotomy tube, feeding tube);



The student's need for health-related services (*e.g.* health-related assistance from an aide, nursing services);



The student's mode of transportation outside of school (*i.e.* Does the student travel safely in standard/non-adapted vehicles or access public transportation during week nights or weekends?); and



The restrictiveness of student activity during the school day (*i.e.* Is it safe for the student to participate in common physical activities during recess or physical education without specialized equipment or the aid of additional school personnel?).

Students who do not have a chronic or persistent medical condition, or who have a medical condition that does not prevent the student from traveling safely in a standard or non-adapted vehicle, are not eligible for special education transportation services under the MFS category.

An IEP Team that determines that a student is eligible for special education transportation services under the MFS category shall provide a written justification for its determination using the appropriate eligibility worksheet in SEDS, indicate its decision in the student's IEP, and substantiate its decision by obtaining a physician's note or by reviewing current medical evaluation data from the past year. The IEP Team shall also determine if the student requires specialized equipment on the OSSE DOT vehicle and/or any additional supporting related services (*e.g.* health services, aide assistance) on a case-by-case basis, and shall similarly document the need for such equipment and/or services by obtaining a physician's note or by reviewing current medical evaluation data from the past year and providing a written justification for the IEP Team's decision. The IEP Team must designate any specialized equipment and/or supporting related services in the student's IEP. The LEA shall upload all documentation into the **Special Education Data System (SEDS)** and the **Transportation Online Tool for Education (TOTE)**, as appropriate, within five (5) business days of the eligibility determination.

In assessing students under the MFS category, the IEP Team should consider whether it is appropriate to transport the student at all. Although uncommon, it is possible that a student's medical condition is so severe that he or she cannot be transported without presenting a serious risk to his or her personal health and safety. Under such circumstances, it may not be appropriate to provide services in a traditional school setting, but rather the student may need to receive services at the family's home, a hospital, or some other facility. In these cases, an IEP Team may determine that the family's home, a hospital, or other facility is the appropriate **least restrictive environment (LRE)** for a student.

Eligibility Category 2: Students Requiring Structured Transportation Supports (STS) to Access FAPE

Students with intellectual/cognitive, emotional, sensory/communication, or physical needs significant enough to prevent safe travel without structured transportation supports may be eligible for special education transportation services. The phrase **structured transportation supports** refers to a non-medical accommodation and/or form of assistance that addresses safety concerns such as unsafe behavior, compromised decision-making, or impaired navigation resulting from the child's disability.⁵

To determine whether a student is eligible for special education transportation services under the STS category, the IEP Team shall review the student's most recent functional assessment and evaluation data. An IEP Team that finds evidence of documented intellectual/cognitive, emotional, sensory/communication, or physical needs, related to disability, shall assess the impact that the disability has on the student's ability to travel safely without structured transportation supports. The IEP Team should consider factors such as:



The severity of the student's disability (*i.e.* Does the manifestation of the student's disability require constant supervision?);



The student's documented deficit in assessing risk or advocating for personal safety;



The student's behavior as it relates to any history of the student being dangerous to self or others;



The student's ability to understand cues and instructions (*e.g.* ability to understand street signs/signals or navigate an established route); and



The student's need for structured transportation supports during travel outside of school (*i.e.* Does the student travel safely without structured transportation supports during week nights or weekends?).

A student who has a disability that does not prevent the student from traveling safely without structured transportation supports is not eligible for special education transportation services under the STS category. An IEP Team that determines that a student is eligible for special education transportation services under the STS category shall provide a written justification for its determination using the appropriate eligibility worksheet in SEDS, indicate its decision in the student's IEP, and substantiate its decision by obtaining a note from an appropriate evaluator or summarizing the nature of the student's disability that warrants the eligibility determination. The IEP Team shall also determine if the student requires specialized equipment on the OSSE DOT vehicle and/or any additional supporting related services (*e.g.* aide assistance) on a case-by-case basis and shall similarly document the need for such equipment and/or services by obtaining an evaluator's note or by reviewing current evaluation data from the past year⁶ and providing a written justification for the IEP Team's decision. The IEP Team must designate any specialized equipment and/or supporting related services in the student's IEP. The LEA shall upload all documentation into SEDS and TOTE, as appropriate, within five (5) business days of the eligibility determination.

⁵ Distance is not an appropriate factor of consideration under the Structured Transportation Supports (STS) eligibility category.

⁶ IEP Teams do not need to order a new evaluation if current evaluation data exists in the student's record that can be accurately summarized.

Eligibility Category 3: Students Accessing Specialized Program (ASP) to Access FAPE

Students who are not eligible under the MFS or STS categories may be eligible for special education transportation services if they are traveling to a school site for the purpose of accessing a specialized program due to an IEP Team placement decision. Students who elect to attend a school or program for non-FAPE related reasons (e.g. parent's school of choice, out of boundary lottery) are not eligible for special education transportation services under the ASP category. District of Columbia Public Schools (DCPS) is responsible for providing transportation to parentally-placed private school students receiving equitable services.

The term **specialized program** refers to a special education instructional setting, within an LEA or nonpublic school, in which the student is instructed apart from the general education population for the majority of the school day (e.g. separate special education classroom, separate school designed specifically for students with disabilities). To determine eligibility under the ASP category, the IEP Team shall review the student's special education record to ascertain whether the student's current program is a specialized program that an IEP Team has determined is the appropriate least restrictive environment (LRE) for the student, as evidenced by **prior written notice (PWN)** documenting the change in placement.⁸ An IEP Team that determines that a student is eligible for special education transportation services under the ASP category shall provide a written justification for its determination using the appropriate eligibility worksheet in SEDS, indicate its decision in the student's IEP, and substantiate its decision by uploading the applicable PWN. The LEA shall upload the PWN and, in the case of placement into a nonpublic program, the OSSE location assignment, into SEDS and TOTE, as appropriate, within five (5) business days of the eligibility determination.



TRAVEL TRAINING

Travel training is specialized instruction¹ that enables students with disabilities who require this instruction to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment.² Both special education transportation and travel training are important services that IEP Teams shall consider when they plan for a student's postsecondary transition needs. IEP Teams must formally consider a student's secondary transition needs when the student turns sixteen (16) years old, or younger, if determined appropriate.³ LEAs are responsible for providing travel training to a student as a part of FAPE if such services are designated on the IEP.

¹ Transportation is included as a related service under the IDEA regulations in **34 CFR § 300.34(a) and (c)(16)**. Travel training is included in the definition of special education in **34 CFR §300.39(a)(2)(ii)**, and is specifically defined in **§300.39(b)(4)**. Travel training is not a related service.

² **34 C.F.R. §§ 300.39(a)(2)(ii) and 300.39(b)(4)**

³ **34 C.F.R. §§ 300.320(b) and 300.43(a)(l)**



METRO FARE CARDS

Students eligible for special education transportation under the ASP category, who are over the age of twelve (12) years old, generally are not transported on an OSSE DOT vehicle and will instead receive Metro fare cards for public transportation (rail or bus). An IEP Team may, however, determine that public transportation is not appropriate due to safety concerns or lack of feasible public transit options. An IEP Team that determines that public transportation is not appropriate for a student over the age of twelve (12) years old, eligible under the ASP category, shall justify in writing the need for OSSE DOT transport.

⁷ **34 C.F.R. § 300.139(b); 71 Fed. Reg. 46596**

⁸ Nonpublic placements should be located as close as possible to the student's home residence. **34 C.F.R. § 300.116(b)(3)**



ORDERED TRANSPORTATION

Court Ordered/IDEA Hearing Officer Determinations (HODs). Special education transportation services that have been ordered by a District of Columbia court, a federal court, or by a hearing officer in an administrative due process case (HOD) fall outside of OSSE's eligibility category framework. Under these circumstances, an IEP Team is required to document in the student's IEP that the student qualifies for special education services through a court order or HOD. The order or HOD must be uploaded to SEDS to fulfill the documentation requirement. Once the court order or HOD expires or ceases to be in effect, an IEP Team shall use OSSE's eligibility determination framework to consider student eligibility for special education transportation services. LEAs are responsible for monitoring court orders and HODs to ensure that a valid court order, HOD, or IEP Team eligibility determination is in effect at all times. If the court order or HOD does not include effective dates or indicate the duration of time for which special education transportation services are ordered, an IEP Team's responsibility to review and determine eligibility for special education transportation services on an annual basis shall resume after one full year of court order/HOD implementation. LEAs are responsible for reimbursement costs related to the provision of special education transportation services that arise out of court orders or HODs that determine that the LEA has failed in its obligation to provide FAPE. If a court order or HOD finds that the student has been denied FAPE by the LEA which is attributable to a failure by OSSE DOT to provide special education transportation services in accordance with the student's IEP, OSSE DOT will be responsible for reimbursing the transportation costs in accordance with the order or HOD.

Settlement Agreements. LEAs must include OSSE DOT in all settlement agreement meetings that involve potential designation of special education transportation services. LEAs are responsible for costs related to the provision of special education transportation services agreed to by the LEA without input or approval by OSSE DOT. LEAs will be invoiced for the costs of transportation arising out of settlement agreements which have been entered into by the LEA without OSSE DOT's written consent. Any designation of special education transportation services that arise out of a settlement agreement must be based upon a determination that the eligibility criteria set forth in this Policy are met. In cases in which the Parties agree that parents should be reimbursed for special education transportation costs related to an LEA's violation of FAPE, LEAs are responsible for these reimbursement costs.



STUDENT CONDUCT ON THE BUS

Repeated student misconduct on the bus may result in revocation of bus services. In such cases, OSSE DOT will send a same-day notice to both the LEA and parent describing the student's misconduct and the resulting consequence. Upon receipt of a notice advising of revocation of bus services or in cases in which similar behavior issues extend into the school day, LEAs are responsible for convening an IEP Team meeting to review the student's IEP to consider the use of positive behavioral interventions, supports, and strategies to address the behavior,¹ and to consider other appropriate disciplinary consequences in accordance with the LEA's code of conduct and the procedural safeguards under IDEA Part B.² DOT will provide alternative transportation in the form of parent reimbursement in any case of revocation from the bus that lasts longer than ten (10) consecutive school days or ten (10) cumulative school days in a school year. In cases of extreme infractions (e.g. possession of a weapon, repeated threats of violence, unsafe behavior that threatens the safety of others or self), OSSE DOT may revoke bus services for the remainder of the school year and provide alternative transportation in the form of **parent reimbursement (more info on page 10)**.

¹ 34 C.F.R. § 300.324(a)(2)

² 34 C.F.R. § 300.530; DOT personnel shall participate in manifestation determination meetings as appropriate.

APPROPRIATE DISCONTINUATION OF TRANSPORT

Health and Safety. OSSE DOT personnel will utilize lifts, ramps, or other mechanized equipment to assist students with wheelchairs. Drivers and attendants are not responsible for providing physical assistance to student passengers other than providing occasional non-intrusive assistance that does not require lifting or carrying the student. OSSE DOT retains the right to assess a student's condition to determine whether the student can be transported safely. OSSE DOT reserves the right to refuse to transport a student on the basis of health and/or safety concerns. In such cases, OSSE DOT shall provide same-day written notification to the parent and LEA with information regarding the basis of its refusal to transport. Upon notification, LEAs have the obligation to reconvene the student's IEP Team to discuss and address the health and/or safety concerns. LEAs will be responsible for providing alternative instructional options in the interim period before the IEP Team reconsiders the student's needs.

Chronic Student Absence from the Bus. To effectively provide special education transportation services, OSSE DOT relies upon student data from LEAs and reviews data regarding student rider attendance on the bus.



After three (3) consecutive school days of student absence from the bus, OSSE DOT will contact the LEA and parents in writing and request information regarding the student's absence. The requested information shall include, as appropriate, an explanation for student rider absence, and any appropriate updated information including any change in the parents' and students' contact information and address. In such cases, LEAs are responsible for communicating with parents to

resolve student rider absence issues and, if appropriate, convene the student's IEP Team to discuss and address any absence/truancy or related service concerns.

After seven (7) consecutive school days of student absence from the bus, and does not receive a sufficient reason for continuing daily transportation in light of the student's absence, OSSE DOT shall send to the LEA and parents a written notification of its intent to cease special

education transportation services including the proposed date of termination.

Following such notification, if OSSE DOT does not receive a response from the parent or LEA within the **following three (3) school days** with regard to continuing transportation, OSSE DOT shall remove the student from the route roster, send a written notice of termination of special education transportation services to the LEA and parents, and cease transportation services.

The LEA is responsible for uploading all notifications into SEDS and TOTE within five (5) business days. The LEA must assess the student's continued eligibility for special education transportation services by convening an IEP Team meeting or completing an IEP amendment to update the student's eligibility status, as appropriate. If the IEP Team determines that the student continues to be eligible for special education transportation services, the IEP Team must maintain and upload documentation related to the reason for the student's continued absence from the bus. If appropriate, a student's IEP Team may reestablish special education transportation services through the IEP process. The process to reestablish special education transportation services includes the same application of state-level eligibility criteria, documentation, and timelines as an initial request for transportation submitted by an LEA.

ADMINISTRATIVE INFORMATION



Assistive Devices. IEP Teams shall indicate any assistive device that the student will utilize during transport on the student's IEP. The term **assistive device** refers to personal equipment such as a wheelchair, walker, or helmet that the student utilizes throughout the school day. It is the responsibility of the parent to provide the student's wheelchair or other assistive devices that the student requires for personal use outside of school. This does not apply if the IEP Team determines that the student needs the assistive device to receive FAPE, and it does not eliminate the LEA's ultimate responsibility of providing assistive devices that are needed to provide FAPE.⁹ OSSE DOT is not responsible for providing assistive devices to students and will not transport students without assistive devices if such a device is specified in the IEP.



Pick-Up and Drop-Off Locations and Times. OSSE DOT will provide one round trip from each student's residence in the District of Columbia to the student's attending school per school day. The student's address provided to OSSE DOT shall match the address used to establish District of Columbia residency.¹⁰ OSSE DOT will not change a student's route to accommodate the student or parent for personal reasons (e.g. accommodations of non-FAPE related child care, one-time or sporadic changes in pick-up or drop-off locations for the student's or parent's convenience). Parents are responsible for making their own arrangements for days that the student needs pick-up and drop-off services from locations other than the address on record with OSSE DOT.



Adult to Adult Transfer. Students who are eligible for special education transportation services under the MFS or STS category and students twelve (12) years of age or younger who are eligible under the ASP category shall be accompanied by an adult at pick-up and drop-off times. If no adult is waiting at the residence identified for drop-off, the student will be transported to the **Child and Family Services Agency (CFSA)** at the end of the route.¹¹ OSSE DOT will attempt to contact the parent to notify him or her that the student can be picked up at the intake center. Students over the age of twelve (12) who are eligible for special education transportation services under the ASP category may be dropped off at the parent's residence without an adult present if the parent submits written permission in advance to OSSE DOT. LEAs must ensure that the appropriate parental consent form is completed and uploaded in TOTE.



Inclement Weather. OSSE DOT will not pick up or drop off students on official school snow days announced by the District of Columbia. When OSSE DOT cannot transport due to poor or unsafe weather conditions, LEAs remain responsible for making up, as appropriate, missed instruction for special education students just as they are responsible for doing so for general education students.



Transportation Outside of the Daily School Route. In addition to the daily school route, OSSE DOT provides transportation for eligible students to activities that are necessary for the provision of FAPE as specified in the student's IEP (e.g. secondary transition activities, education-related activities). To initiate transportation to such activities, LEAs shall submit the appropriate completed special accommodations request within five (5) business days of the IEP Team decision and at least ten (10) business days in advance of the activity. If the activity occurs after school hours, LEAs are responsible for making arrangements for transportation from the activity to the student's residence, subject to reimbursement from OSSE DOT. Just as LEAs are responsible for transporting general education students to field trips, LEAs are also responsible for transporting students with disabilities to field trips, unless the student is eligible for special education transportation under the MFS category and needs specialized equipment/vehicle. LEAs are responsible for providing accommodations, as appropriate, to students with disabilities in order to enable them to be transported with their nondisabled peers (e.g. behavioral assistance for students with significant behavior problems).

⁹See *Letter to Stohrer*, 213 IDELR 209 (OSEP 1989). The LEA may access the student's public or private insurance for the purpose of procuring or seeking reimbursement for procuring assistive devices. See 34 C.F.R. § 300.154(d) & (e).

¹⁰Exceptions and accommodations will be made on case-by-case basis to account for students who are in foster care or living in group homes.

¹¹The intake center is identified in the *OSSE DOT Parent Handbook*. After 6:00 p.m., students are released to *CFSA*.

LEA DOCUMENTATION AND SUBMISSION OF APPROPRIATE FORMS TO OSSE DOT

LEAs shall complete and upload all documentation associated with special education transportation services to **SEDS** and **TOTE** within five (5) business days of the eligibility determination. The LEA shall document in SEDS its reasonable efforts to obtain completed documentation from parents. Reasonable efforts are defined as a minimum of three (3) contact attempts using at least two (2) different modalities (e.g. phone, mailed correspondence, and in-person visits) on three (3) different dates by the LEA.¹² IEPs with incomplete documentation in SEDS may be considered noncompliant for monitoring and auditing purposes.

OSSE DOT will not begin to route a student or initiate transport until all of the required documentation is uploaded in SEDS and TOTE.¹³ All data and supporting documentation must be completed and accurately submitted at least seven (7) business days before the first day of school in order for transportation services to begin on the first day of school. Submissions with less notice than seven (7) business days before the first day of school will be processed on a rolling basis starting on the third day of the school year. LEAs will receive a final roster sheet five (5) business days before the start of school that will list all of the students who will receive special education transportation services starting on the first day of school. LEAs are responsible for contacting the parents of those students for whom transportation services will start after the first day of school to inform the parent of the expected start date.

LEAs are responsible for any delays and expenses that result from failure to submit the necessary data and supporting documentation in a complete and timely manner. OSSE DOT is responsible for ensuring that transportation services are implemented no later than three (3) business days after receiving a complete submission from the LEA initiating transportation or changing the student's school of attendance. After processing the initial transportation request, OSSE DOT will implement any subsequent changes made to the pick-up or drop-off address within ten (10) business days. LEAs shall communicate any subsequent changes in student eligibility status to OSSE DOT by submitting the appropriate documentation in SEDS and TOTE within five (5) business days of the eligibility determination.

¹²34 C.F.R. § 300.322(d)

¹³LEAs are required to submit a completed administrative transportation form with completed documentation for every student determined eligible for special education transportation services. This documentation submission requirement is separate and apart from the bi-annual certification process required that enables OSSE DOT to route students for the purposes of providing transportation during the summer months to support extended school year (ESY) services and transportation for the start of the school year.

Documentation Highlights

LEAs have

5 Business Days

from eligibility determination to upload documents to SEDS and TOTE

All documentation must be submitted at least

7 Business Days

before the first day of school in order for transportation services to begin on the first day of school

LEAs will receive a roster sheet

5 Business Days

before the start of school

OSSE DOT has

10 Business Days

to implement any changes made to pick-up or drop-off addresses after an initial request

Parent Reimbursement

OSSE DOT will reimburse parents for mileage¹ for transportation provided by parents that results from untimely OSSE DOT implementation after the three (3) or ten (10) business day processing period, as applicable. OSSE DOT may reimburse expenses incurred by parents who opt to transport the student in the family vehicle, so long as the parent has obtained formal approval in advance from OSSE DOT to transport the student under a reimbursement agreement.²

¹ Mileage rates set by the U.S. General Services Administration (GSA).

²Bus transportation may not be the most appropriate means of transporting a student. OSSE DOT offers reimbursable transportation methods such as Metro or direct reimbursement to parents who transport their children to school.

Bi-Annual LEA Certification of Eligibility

LEAs are responsible for certifying¹⁴ special education transportation services for students to OSSE DOT twice a year. LEAs shall provide certification to OSSE DOT of all students eligible to receive special education transportation services for **extended school year (ESY) services**,¹⁵ including those students attending nonpublic schools and programs, no later than the first Monday of May every year. LEAs shall provide certification to OSSE DOT of all students eligible to receive special education transportation services for the upcoming school year, including those students attending nonpublic schools and programs,¹⁶ no later than the first Monday of June of the current school year.

Certification is an LEA-level responsibility; nonpublic schools may not submit certification on behalf of LEAs. OSSE DOT will not transport students who do not have completed documentation in SEDS and TOTE (*i.e.* current eligibility determination and supporting documents). LEAs are responsible for the costs of transporting students for whom they have failed to properly or timely certify (*i.e.* students who have completed documentation in SEDS and TOTE).¹⁷ An LEA that fails to properly or timely certify shall continue to be responsible for transportation costs until the LEA completes certification.



Transportation Eligibility Certification Deadlines

LEAs shall provide certification* to OSSE DOT of all students (including nonpublic schools and programs) eligible to receive special education transportation services by the following dates:

Extended School Year (ESY)
FIRST MONDAY OF MAY
 EVERY YEAR

Upcoming School Year
FIRST MONDAY OF JUNE
 OF THE CURRENT SCHOOL YEAR

*Certification includes formal confirmation of school calendars and bell times for all schools attended by students receiving special education transportation services, including nonpublic schools and programs, on a yearly basis.



Additional Guidance

This memorandum supersedes all previous policy, memoranda, and/or guidance promulgated by the state educational agency (SEA) on this topic. Please direct any questions regarding the content of this document to Grace Chien, director of policy, at 202-741-5089 or by email at Grace.Chien@dc.gov.

¹⁴The term “certification” refers to the requirement that LEAs provide adequate and timely notice to OSSE of services that result in state-level expenditures. The term “certification” does not imply that LEAs have unilateral decision-making discretion over IEP Team decisions.

¹⁵OSSE DOT will transport to an extended school year (ESY) services program or to and from off-site programs that are necessary for the provision of FAPE as specified in the student’s IEP. OSSE DOT does not provide transportation for summer school.

¹⁶The LEA at which the student is enrolled is responsible for participating in all eligibility determinations and service designations associated with special education transportation services made in IEP Team meetings initiated and convened by nonpublic school personnel. LEAs may participate in IEP Team meetings held at nonpublic schools in-person or through designee of the nonpublic school. Regardless of mode of participation, the LEA remains responsible for being actively involved in all IEP decisions. 34 C.F.R. § 300.325(b)(2)

¹⁷LEAs will not be responsible for the costs associated with eligibility determinations that occur after the certification date due to feasibility issues (*e.g.* students who transfer to the LEA after the certification date).



**Office of the State Superintendent of Education
Division of Student Transportation (OSSE-DOT)**

Government of the District of Columbia
810 1st Street, NE, 4th Floor, Washington, DC 20002

Phone: 202-576-6228 • TTY: 711 • Email: osse.dot@dc.gov

Policy last updated
November 6, 2013

EXHIBIT C

Working Economics Blog

Posted November 14, 2023 at 11:58 am by **Sebastian Martinez Hickey** and **David Cooper**

The school bus driver shortage remains severe

Without job quality improvements, workers, children, and parents will suffer



When students returned to school in August and September, **numerous media** reports drew attention to school bus driver shortages across the country. The turbulence resulting from these shortages has at times been dramatic. In Louisville, Kentucky, school district leaders **fumbled the rollout** of an expensive new routing software intended to reduce the number of school bus drivers needed, leading to misplaced students and forcing the school district to halt classes for more than a week. Meanwhile, in New York City, the union contract for school bus drivers expired, with contentious negotiations resulting in a **narrowly averted** strike.

School bus drivers remain a vital part of the education system. **Roughly half** of school children rely on bus services to get to school. Interrupted services and instability can disrupt learning time and contribute to absenteeism. Reduced bus services can be a particularly challenging hurdle for children with disabilities, who sometimes **travel far distances** for specialized education. With many students and families already trying to recover from challenges and **learning disruptions caused by the pandemic**, it is more important than ever to have services as basic as bus transportation to school functioning effectively.

Bus driver employment has improved, but remains woefully inadequate

Figure A shows 12-month rolling averages of K–12 school bus driver employment. The figure shows employment broken out by whether the bus driver is a state and local government employee (i.e., they're employed by the school district or other relevant state or local public agency) or a private-sector employee (i.e., the school district contracts bus service to a private

company or the bus driver works for a private school). The data show that school bus driver employment continues to be far below pre-pandemic levels. There were approximately 192,400 bus drivers working in K–12 schools in September 2023, down 15.1% from September 2019. Employment for state and local government school bus drivers has fallen 13.6% to 156,600 workers over the same period, while private school bus driver employment has declined 21.5% from 43,300 workers to around 34,000.¹

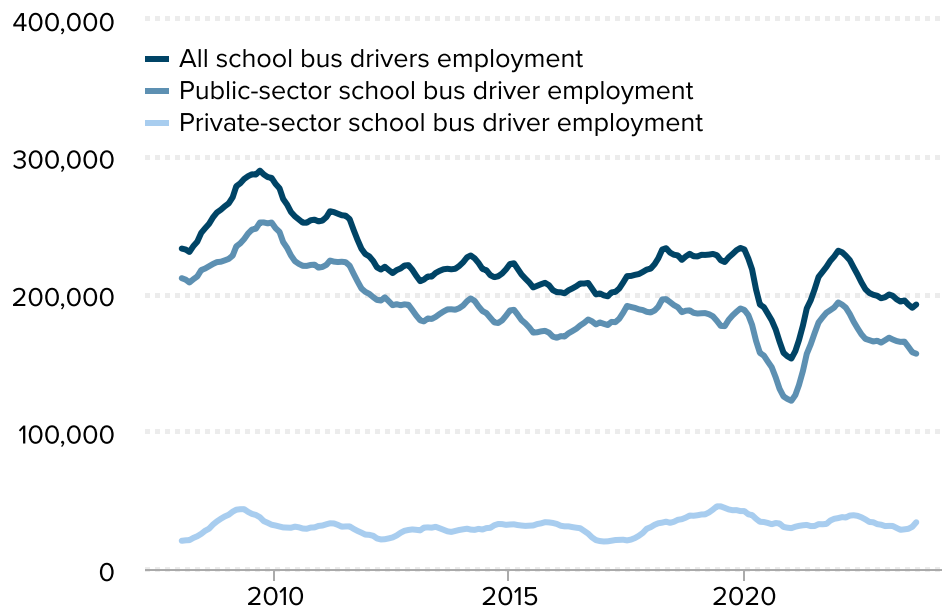
Although school bus driver employment has increased from its trough in the pandemic (when it was down 32.5%), states and local governments have much to do to return school bus driver numbers to adequate levels. Figure A shows that even before the pandemic, the number of bus drivers working in elementary and secondary schools had not returned to levels that existed during the Great Recession. Approximately 290,000 bus drivers were employed in the fall of 2009, but those employment levels declined 21.8% by 2019. This marked decline reflects the results of austerity and budget cuts beginning in the early 2010s.

During the same period, student enrollment at public K–12 schools grew by 1.4 million. Like other **public education workers**, public school bus drivers are being asked to do more with less overall capacity. Asking fewer bus drivers to pick up more students means longer routes, earlier morning pick-ups, and later drop-offs. These burdensome logistics can increase the likelihood of a student missing school time and diminish their chances of participating in other activities—not to mention the additional burden they can place on parents trying to coordinate work schedules.

FIGURE A

School bus driver employment is still struggling to recover to pre-pandemic levels

State and local government (public sector) and private-sector school bus driver employment in elementary and secondary schools, 2008–2023



Notes: 12-month rolling averages of monthly CPS employment data. Does not include school bus drivers who are federally employed, self-employed, or unpaid family workers. Does not include school bus drivers employed in other industries.

Source: EPI analysis of CPS microdata.

Bus drivers tend to be older and are paid dismal weekly wages

Although the worst health threats of the pandemic have abated, school bus drivers are still sharply impacted by the pandemic's fallout. School bus drivers tend to be significantly older than the typical worker. In 2021, 72.6% of state and local government school bus drivers were age 50 and older, compared with 37.5% of state and local government employees and 30.8% of private-sector workers. The age makeup of the school bus driver workforce made these workers more vulnerable to the effects of COVID, contributing to workers leaving the profession and being reluctant to return. Since the return to in-person schooling, bus drivers also report increased **confrontations** with students and parents.

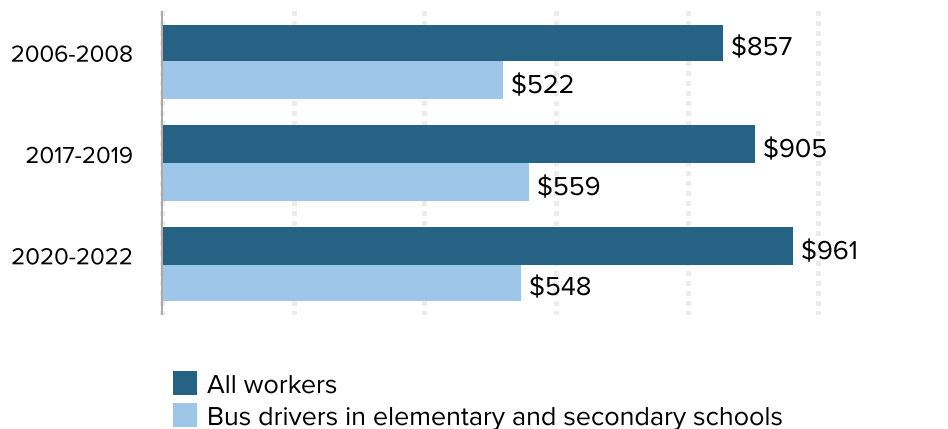
However, many of the challenges of the profession predate COVID. For one, school bus driver wages are far lower than most other workers, according to our analysis of Current Population Survey (CPS) microdata. The typical school bus driver earned \$20.00 an hour in 2022, which is 16.8% less than the median wage for all workers in the economy (\$24.04). However, the

average public school bus driver works only around 32 hours per week, meaning that the weekly wages for bus drivers are significantly lower than the hourly wage might imply. School bus drivers often are not full-time employees and instead work a “split-shift” **schedule** coinciding with the beginning and end of the school day. **Figure B** shows that, in 2022, the median school bus driver earned \$548 in weekly wages, which is approximately 43.0% less than the median weekly wage for all workers (\$961).

FIGURE B

School bus drivers earn 43% less in weekly wages than the typical worker and have not seen significant wage increases since the financial crisis

Three-year averages of real weekly median wages of school bus drivers and all workers, 2006–2008, 2017–2019, and 2020–2022



Note: All wage values in 2022 dollars.

Source: EPI analysis of CPS ORG microdata.

Since the Great Recession, hourly wages of school bus drivers have struggled to keep pace with median worker wage growth. **Figure C** shows that real hourly wages for the median worker grew 5.3% between 2008 and 2019, while growth was only 1.5% for school bus drivers. During the same period, weekly wage growth for school bus drivers (7.0%) slightly outpaced the median (5.6%). This is because school bus driver hours grew modestly over the decade, presumably because employment decreases and student enrollment increases required more hours of work to be filled by fewer workers. From 2019 to 2022, hourly wages for school bus drivers increased by 4.9%, a welcome increase over the post-Great Recession period but still lagging median worker wage growth (5.7%).

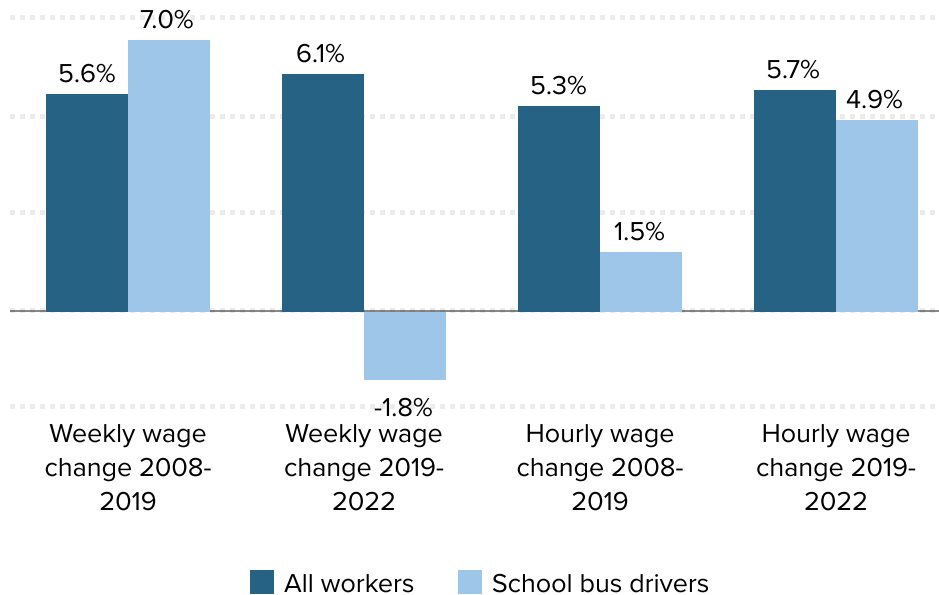
Further wage increases are badly needed for a profession that must recruit new workers, especially since current low wages mean many bus drivers live in poverty. In 2021, 7.8% of school bus drivers had incomes below the poverty line, which is greater than the 5.6% share of

private-sector workers in poverty and more than double the 3.4% of public sector workers in poverty.²

FIGURE C

Wage growth for school bus drivers has been slow since the financial crisis

Percent change in real hourly and weekly wages for all workers and school bus drivers, 2008–2019 and 2019–2022



Source: EPI analysis of CPS ORG microdata.

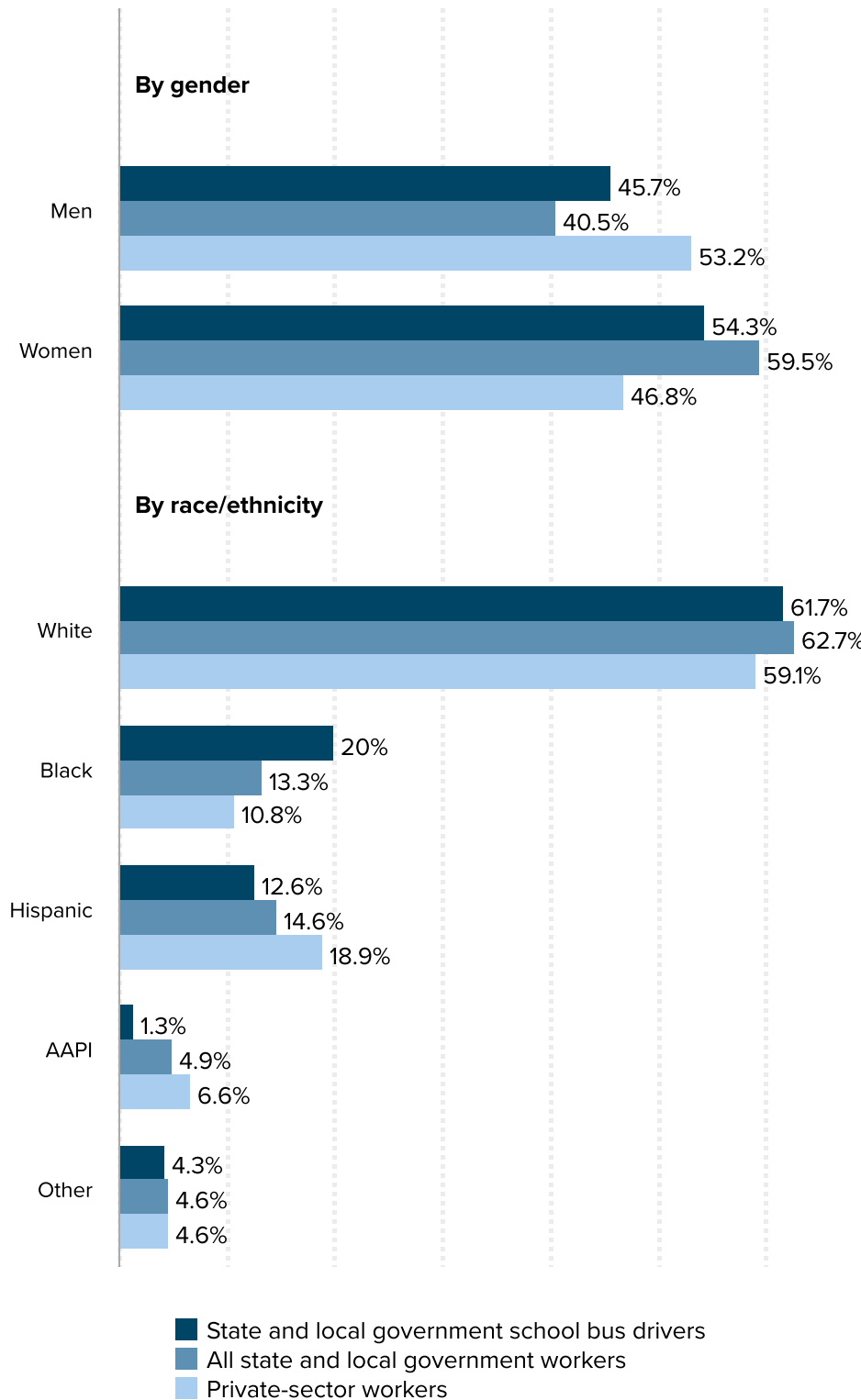
Improving bus driver jobs and solving staffing shortages are not only important for the welfare and success of students, but also for advancing racial and gender equity. **Figure D** shows that like other public-sector workers, school bus drivers are disproportionately Black and women workers. In 2021, 20.0% of state and local government school bus drivers were Black, compared with 13.3% of all state and local government employees and 10.8% of private-sector workers.³ Women are more concentrated in the school bus driver profession than in the private-sector workforce, but not at such high levels as in the overall public sector. More than half (54.3%) of state and local government school bus drivers are women, compared with 46.8% of all private-sector workers and 59.5% of all state and local government workers.

The concentration of Black workers and women in public school bus driving reflects the public sector historically offering more **equitable opportunities** for women and people of color. In particular, state and local government jobs are subject to equal opportunity and affirmative action regulations that have been shown to be effective anti-discrimination policies.

FIGURE D

Public school bus drivers are more likely to be women and Black workers than workers in the private sector

Share of state and local government school bus drivers, all state and local government workers, and private-sector workers by gender and race/ethnicity



Note: AAPI stands for Asian American and Pacific Islander.

An effective public education system depends on critical support staff to run effectively. The current bus driver shortage is a result of more than a decade of disinvestment in these professionals. The unfair burden of these disruptions is most damaging to the education and well-being of the students who need it the most, particularly students with disabilities. In light of these disruptions, **it is imperative that state and local policymakers, school districts, and communities act** to fairly compensate and invest in their bus drivers and other school support staff.

Notes

1. The data in Figure A is restricted to bus drivers reporting that they work in elementary and secondary schools. This classification leaves out a significant number of school bus drivers but is the only way to examine trends in school bus driver employment before 2018. Prior to 2018, there was only a single Census Occupation Classification code for bus drivers, with no differentiation between school bus drivers and other types of bus drivers. The 2018 codes added separate Census codes for school bus drivers and “transit and intercity” bus drivers. With the updated classification, we can identify that around 33% of school bus drivers do not work in the elementary and secondary school industry. Table 1 shows that the majority of these school bus drivers work in “bus service and urban transit.” In 2019, there were more than 106,000 school bus drivers employed in “bus service and urban transit,” around 30% of the total number of school bus drivers. Unlike school bus drivers in elementary and secondary schools, “bus service and urban transit” school bus drivers are more likely to be private-sector workers. In 2019, 83.5% of these workers were in the private sector, compared with 17.4% of school bus drivers classified in elementary and secondary schools. “Bus service and urban transit” school bus driver employment was also significantly harmed by the pandemic. From 2019 to 2021 (the most recent ACS data available), employment for this subset of school bus drivers fell 18.7%, compared with 16.5% for all school bus drivers. For now, the pandemic does not seem to have significantly changed the share of workers who are privately or publicly employed. The share of school bus drivers who are state and local government employees increased slightly between 2019 and 2021 from 59.2% to 62.2% since private school bus driver employment fell more steeply during the pandemic.
2. EPI analysis of American Community Survey microdata.
3. In 2021, 17.8% of private school bus drivers were Black.

TABLE 1

Employment and change in employment for school bus drivers by class of worker and selected industries

Industry group	Class of worker	2019		2021		2019 to 2021 percent change in employment
		Count	Share of total	Count	Share of total	
All school bus drivers	Private	134,220	39.0%	102,459	35.7%	-23.7%
	S&L	203,436	59.2%	178,615	62.2%	-12.2%
	Other	6,094	1.8%	6,002	2.1%	-1.5%
	Total	343,750	100.0%	287,076	100.0%	-16.5%
"Elementary and secondary schools" bus drivers	Private	39,779	17.4%	31,163	16.2%	-21.7%
	S&L	186,299	81.5%	159,614	82.8%	-14.3%
	Other	2,382	1.0%	1,962	1.0%	-17.6%
	Total	228,460	100.0%	192,739	100.0%	-15.6%
"Bus service and urban transit" school bus drivers	Private	88,541	83.5%	66,261	76.9%	-25.2%
	S&L	14,258	13.4%	16,164	18.8%	13.4%
	Other	3,218	3.0%	3,754	4.4%	16.7%
	Total	106,017	100.0%	86,179	100.0%	-18.7%

Notes: S&L stands for state and local government. "Other" includes self-employed workers, federal employees, and unpaid family workers. "Elementary and secondary schools" bus drivers includes both "school bus drivers" and "transit and intercity bus drivers."

Source: EPI analysis of American Community Survey microdata.

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EXHIBIT D

Democracy Dies in Darkness

With too few bus drivers, schools struggle to get kids to class



By [Donna St. George](#)

September 2, 2023 at 6:00 a.m. EDT

The opening of school started with a crisis in the Maryland suburbs. Children in Howard County waited for buses that sometimes arrived an hour late, or did not show up at all.

It looked like a straightforward first-day stumble. But by evening, Howard County had canceled 20 of its bus routes — not for a day, but for the whole week. Its two-term superintendent and its California-based bus contractor were soon under fire. And on Friday, the district’s chief operating officer resigned.

“There has to be some accountability,” said Ruchir Bakshi, a father of two daughters who lives in Columbia, sharing the frustrations of hundreds of other families. More than 1,000 signed a petition calling for Superintendent Michael Martirano to resign.

This week’s fury in Howard County is a chapter in a larger saga. Districts have struggled — and often failed — to find enough people to drive their students to school. In many school systems, the problem defies easy solutions, and the consequences have occasionally been dire.

Chicago’s public school system, with about half of the drivers it needed, said in July that it would have to limit its service to specific categories of children, including those with disabilities. For some others, it offered fare cards to use public transportation.

Officials in Charlottesville told parents that 12 routes would start the year unserved. And in Louisville, opening-day misfires kept some students from getting home until almost 10 p.m. The city canceled more than a week of school for a logistical reset.

New York City’s bus trouble may extend into September: Drivers serving the nation’s largest school system are threatening to strike Tuesday, the first day of classes. Chancellor David C. Banks and Mayor Eric Adams outlined a backup plan that would include Uber and Lyft rides for students with disabilities and migrant children.

While bus driver shortages are generating many of the problems, other difficulties have come up, including those involving contracts with private bus companies. (Some districts own buses and employ drivers directly; others use contractors.) In New York City, the issue is an impasse in labor negotiations between private companies and the union for their drivers.

“This has been an unusually high profile year,” said Molly McGee Hewitt, chief executive of the National Association for Pupil Transportation, which represents school districts across the country. There is little recent data on driver shortages, Hewitt said, but she sees the picture as uneven: acute in some places and almost nonexistent in others.

Maryland is a case in point. In the state’s largest school system, Montgomery County, bus driver slots are filled this year, with backups ready if needed. But Howard County, a high-performing district of more than 57,000 students nestled between Baltimore and Washington, did not avoid the tumult that led to calls for its leader’s resignation this week.

And neighboring Prince George’s County, the state’s second-largest school system, counts more than 210 vacancies within its pool of 1,200 bus drivers. Another 217 bus routes there are being covered by drivers who run extra routes as the school system continues to recruit more operators, said Raven Hill, a spokeswoman for Prince George’s schools.

Erica L. Groshen, economic adviser to Cornell University’s ILR School and former commissioner of the federal Bureau of Labor Statistics, said economists are more likely to think of job shortages as “a wage shortfall,” especially for positions that don’t require lengthy training. A pay hike may be in order, she said.

Other creative solutions are out there too, she said: searching for applicants in different populations, improving working conditions and benefits, finding other ways to distribute the work among employees.

“I suspect maybe school systems have been underpaying drivers for a very long time and maybe they need to look at that,” she said. Perhaps, she added, “the chickens have come home to roost.”

Some debated how closely the troubles are tied to driver shortages.

Zum Transportation, the contractor involved in Howard County’s issues, is based on the West Coast and is fairly new to yellow-bus transportation, observed Curt Macysyn, executive director of the National School Transportation Association. His trade group represents bus companies.

“The challenges that the district is seeing with Zum may be the manifestation of their newness with respect to the district,” he said. “It’s kind of easy to paint this across the country as a consistent bus driver shortage problem but, really, everything is localized.”

Bus operators were in short supply after the early months of the pandemic, Macysyn said, but now the issues are not widespread. Localized shortages were evident before the pandemic, he added.

Louisville school officials said this week that they hired a company to redesign bus routes with fewer drivers, more bus runs and a greater spread of start and dismissal times. But that meant longer and less-familiar routes for drivers, and the school district did not build in time for extra stops. Superintendent Marty Pollio called the result a “transportation disaster” for the 96,000-student system and apologized, saying the implementation was poor.

Louisville schools spokesman Mark Hebert said after the chaos on Aug. 9, school was out until Aug. 18 for elementary schools and Aug. 21 for middle and high schools.

Still, Hebert said the system’s biggest issue is lack of bus drivers. It needs at least 100 more, he said. Some students are getting home as late as 6:30 or 7 p.m., when the last dismissal is at 4:20 p.m. The superintendent has said it will take major changes to get the system functioning well. One option on the table: cutting back on the number of students eligible for bus transportation.

Schools in Charlottesville are steadily pulling students off wait lists for bus transportation, and they recently raised bus driver pay to about \$21.50 an hour, the highest in the area, said Phil Giaramita, spokesman for Albemarle County Public Schools.

The waitlist for would-be bus riders has dropped from close to 1,000 to under 700, he said, and the district expects a couple hundred more students to come off the list in the next two weeks. In the sprawling county of 720 square miles, bus transportation is critical, Giaramita said.

“We’re making a lot of progress getting back to where we should be,” he said.

In Maryland, Howard County parents vented Thursday night at a school board meeting, some calling for an end to Zum’s \$27-million contract to drive almost half of the system’s students.

Zum CEO Ritu Narayan said in an interview Friday that bus routes were not digitized in advance by the district and that 20 bus drivers did not show up Monday. Zum also inherited a 100-driver deficit from previous contractors, she said. Still, she said, the problems will be short-lived.

“When all of the things are together, I can assure that this community will see such a big difference,” she said.

Martirano faced the issue again at Thursday’s meeting. He noted the importance of getting students to school when attendance had dropped from the same period last year. “It is not lost on me,” he said, “that as we start the year talking about the importance of attendance, that Howard County failed as a school system to provide on-time, reliable transportation to many of our students.”

EXHIBIT E

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION
1050 First Street NE, 3rd Floor
Washington, D.C. 20002

CRYSTAL ROBERTSON,)
on behalf of)
D.R., Petitioner,)
)
v.)
)
DISTRICT OF COLUMBIA)
OFFICE OF THE STATE)
SUPERINTENDENT OF)
EDUCATION,)
Respondent.)

ADMINISTRATIVE DUE PROCESS COMPLAINT

Introduction

1. The District of Columbia Office of the State Superintendent for Education (“OSSE”) is systemically failing to provide consistent, reliable, and safe school transportation to students with disabilities who the District agrees require special education transportation in order to access an appropriate education. School bus routes are cancelled and severely delayed, and on any given day, students may be dropped off hours after school starts or not be picked up at all. Petitioner’s child, D.R., has even been taken to the wrong school.

2. OSSE’s Division of Transportation (“OSSE DOT”) serves all District students who require special education transportation. This equates to over 3,800 students with disabilities, more than half of whom reside in Wards 7 and 8. *See* Government of the District of Columbia, *OSSE Responses to Fiscal Year 2022 Performance Oversight Questions* at 231 (Feb. 24, 2023). As of January 31, 2023, 66 students in foster care are receiving OSSE transportation services. *Id.* at 72.

3. As detailed below, OSSE's actions and inactions are violating the law and causing severe and irreparable harm to the Petitioner and D.R. As a result of OSSE's failure to provide consistent, reliable, and safe transportation, D.R. has been denied a Free Appropriate Public Education ("FAPE"). D.R. is missing critical education and related services, all of which are necessary for him to receive FAPE as guaranteed under the Individuals with Disabilities Education Act ("IDEA").

4. Additionally, OSSE DOT's failure to provide transportation to D.R. is depriving him of equal access to his education as his typically developing peers, in violation of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act ("Section 504"), and the DC Human Rights Act ("DCHRA").

5. OSSE's ongoing violations of the law also denies FAPE to all students with disabilities aged 3-22 who are eligible for IDEA services who (1) were, as of or after August 31, 2021, are, or will be in the future entitled to receive transportation related services from OSSE DOT, and/or (2) did not, or will not receive transportation services from OSSE DOT.

6. This failure, which has been building since the termination of the *Petties*¹ consent decree, became an acute crisis in the beginning of January 2023. At that time, OSSE changed its bus routing system, throwing transportation for students with disabilities into disarray, with hundreds of students over multiple routes experiencing significant delays and cancellations. The delays and cancellations continue to this day.

¹ On January 29, 1995, in the U.S. District Court for the District of Columbia, minor students eligible for special education and their parents sued the District's public school system, sought a preliminary injunction, and sought to certify a class of students with disabilities who were entitled to or received special education instruction and services from the District of Columbia Public Schools ("DCPS"). *Petties v. District of Columbia*, 888 F. Supp. 165 (D.D.C. 1995). One issue in the case was transportation for IDEA-eligible students. *Id.* In August of 2000, the parties entered into a consent order whereby Defendant was obligated to hire a "transportation coordinator" and, in 2002, a Special Master was appointed to oversee special education transportation in the District. *Petties v. District of Columbia*, 211 F. Supp. 2d 141 (D.D.C. 2002). The Special Master remained in place for ten years until the case was dismissed in December 2012.

7. The IDEA and its implementing regulations require that “[a] free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive” 20 U.S.C. § 1412(a)(1)(A); *see also* 20 U.S.C. § 1400(d)(1)(A); 5-E D.C.M.R. § 3002.1(a). In order to provide FAPE, the provision of special education and related services, including special education transportation, must be made in conformity with each student’s IEP. 20 U.S.C. § 1401(9)(D).

8. Moreover, OSSE DOT’s failure to provide transportation violates its responsibilities as a State Educational Agency (“SEA”). *See* 34 C.F.R. § 300.277(b) (requiring the SEA to provide special education and related services as the SEA considers appropriate provided the services are provided in accordance with this section).

9. As detailed below, OSSE’s actions and inactions are violating the law, and causing severe and irreparable harm to D.R.

10. OSSE DOT’s systemic failure to provide consistent, reliable, and safe transportation is also depriving all students with disabilities aged 3-22 who are eligible for transportation services who (1) were, as of or after August 31, 2021, are, or will be in the future entitled to receive transportation from OSSE DOT, (2) did not, are not, or will not receive transportation services of equal access to their education as their typically developing peers.

11. Petitioner, on behalf of D.R. and similarly situated students, seeks declaratory, injunctive, and other equitable relief ordering Defendants to immediately provide appropriate transportation for eligible special education students and other relief described below.

Jurisdiction

12. Petitioner has jurisdiction to bring this Complaint under the IDEA, 20 U.S.C. § 1400 *et seq.*, its implementing regulations at 34 C.F.R. Part 300, and the District of Columbia

Municipal Regulations, D.C. MUN. REG. tit. 5 § 3000 *et seq.* This administrative Office of Dispute Resolution has jurisdiction pursuant to the IDEA, 20 U.S.C §§ 1400-1487, as amended in 2004, and 28 U.S.C. § 1331.

Parties

13. Ms. Crystal Robertson, Petitioner, is the legal guardian of D.R., who is a 10-year-old District resident with a disability. D.R. is eligible for special education and related services under the IDEA as a student diagnosed with Autism Spectrum Disorder (ASD or Autism) as defined in 34 C.F.R. § 300.8(c)(1). D.R. is enrolled at Ludlow-Taylor Elementary School, a DCPS school, and is in fourth grade. At Ludlow-Taylor, D.R. is in a full-time special education classroom for students with autism and receives 120 minutes of speech-language pathology services per month and 27 hours of specialized instruction outside of the general education curriculum per week. D.R. has an IEP that provides for transportation as a related service. His transportation is provided by an OSSE DOT school bus.

14. D.R. lives at 507 Hilltop Terrace SE, Washington, D.C. 20019.

15. D.R. has had special education services with transportation on his IEP since he started school in prek-3. His current IEP, dated April 22, 2022, provides for transportation as a related service.

16. Respondent OSSE is the State Education Agency and bears the ultimate responsibility for ensuring FAPE is made available to eligible District residents. *See* 34 C.F.R. 300.101. Through its Division of Transportation (DOT), OSSE provides transportation to eligible students.

Facts

OSSE DOT Systemic Failures

17. OSSE DOT, according to their website, is required to provide safe, reliable, and efficient transportation services that positively support learning opportunities for eligible students from the District of Columbia, yet since the beginning of the 2022-2023 school year and intensifying in or around January 2023, hundreds of students, including D.R., have been left behind.

18. At the start of the 2022-2023 school year, OSSE adopted a new school bus routing system. According to OSSE, that new routing system failed to provide reliable transportation for students.

19. On or around January 9, 2023, OSSE again changed the school bus routing system, reverting back to the routing system that had been used in prior school years, supposedly to respond to the problems under the newly adopted system. However, this change resulted in massive disruptions to school bussing for special education students.

20. Each day since around January 9, a significant number of bus routes have been delayed or cancelled. OSSE DOT is tracking daily bus delays and cancellations, and posting these daily on their website, Daily DOT Updates, <https://osse.dc.gov/page/daily-dot-updates>, and on their Twitter feed, <https://twitter.com/OSSEDC>.

21. The number and type of service interruptions vary daily. For example, on or around January 17, 106 morning routes were impacted and students experienced up to 90-minute delays and cancellations for morning services. On or around January 26, 77 morning routes were impacted, including two routes which were unable to be serviced at all. On the same day, two afternoon routes were cancelled, and thirteen afternoon routes were significantly delayed.

22. From the week of January 16 through the week of February 13, OSSE's reports demonstrate that the daily average number of late morning routes ranged from 52-99.

23. OSSE's own reports show that students arrive late at school more than 19% of the time.² OSSE DOT's failure to provide consistent, reliable, and safe transportation services is well-documented in the news.³

24. Parents and students face uncertainty about when—or whether—their legally-mandated transportation will show up. Parents are unable to track their student's bus through GPS and must rely on information provided by OSSE to know when, or if, their student's bus will show up. This is highly disruptive for students and parents alike.

Failure of OSSE DOT to Provide Safe, Reliable, Efficient Transportation to D.R.

25. Transportation is a critical related service that enables D.R. to receive FAPE because Ms. Robertson works between 45 and 60 minutes from her home and relies on OSSE-provided transportation to bring D.R. to and from school. Without transportation services, D.R. is unable to attend school unless Ms. Robertson leaves work early or takes time off of work to transport D.R. to and from school or, in the alternative, locates a trusted adult familiar with D.R.'s autism to transport D.R. to and from school.

26. D.R. receives transportation through OSSE DOT on a school bus.

² Government of the District of Columbia, *OSSE Responses to Fiscal Year 2022 Performance Oversight Questions* at 240 (Feb. 24, 2023).

³ See Sam P.K. Collins, *D.C. Parents Demand Clarity from OSSE on Continuing Bus Delays*, WASH. INFORMER (Mar. 14, 2023); Delia Goncalves, *'We Deserve Better' DC Parents Say Unreliable Bus Service Harms Students with Special Needs*, WUSA (Mar. 1, 2023); Mariel Carbone, *DC Parents Say School Bus Delays, Cancellations Persist Weeks into New Year*, DC NEWS NOW (Feb. 15, 2023); Theresa Vargas, *D.C. is Failing Disabled Students Who Rely on Buses to Get to School*, WASH. POST (Feb. 8, 2023); John Henry, *Weeks Later, DC's School Bus Delays Persist*, WUSA (Jan. 30, 2023); Sam P.K. Collins, *Bus Service Changes Highlight Woes of Special-Needs Students*, WASH. INFORMER (Jan. 25, 2023); Martin Austerhuhle, *Students with Disabilities Face Barrage of School Bus Delays in D.C.*, DCIST (Jan. 20, 2023); Sam Ford, *Bus Assigned to Take Special Needs DC Student to School Regularly Late; Mother Fed Up*, WJLA (Sept. 19, 2022); Sam Ford, *DC Mom Spends \$80/Day to Take Son from Southeast to Special Ed Classes in Georgetown*, WJLA (Sept. 1, 2022).

27. During the 2022-2023 school year and 2023 Extended School Year, OSSE DOT transportation has taken D.R. to the wrong school, dropped D.R. off at home hours past the scheduled drop-off time, and forced Ms. Robertson to take off work to transport D.R. to and from school or pay for alternative transportation.

School Year 2022-2023

28. D.R.'s IEP for the 2022-2023 school year included transportation to and from school via bus provided by OSSE DOT. D.R.'s bus was scheduled to pick him up between 7:15 a.m. and 7:45 a.m., but the bus almost never arrived within that time window.

29. D.R. was late to school over ten times during the 2022-2023 school year because OSSE DOT failed to pick D.R. up on time.

30. During the 2022-2023 school year, Ms. Robertson worked in Bethesda, Maryland, well over an hour and a half away from Ludlow-Taylor, was not always able to transport D.R. to or from school when OSSE transportation failed to arrive, and therefore had to rely on her children and niece to assist her.

31. D.R. was scheduled to be picked up by his bus at 7:30 a.m. and get to school by 8:30 a.m. to begin the school day at 8:45 a.m. during the 2022-2023 school year. The official start of the school day was 8:45 a.m. On at least ten to fifteen days when D.R. was late for school, he was not picked up until after 9:00 a.m., arriving at school between 9:00 and 10:00 a.m. On numerous other days, he was picked up on time, but he arrived significantly after the school's start time. Because of the inconsistency in bus service, D.R. often missed school-provided breakfast and suffered increased anxiety due to his need for a repeatable routine.

32. On the first day of the 2022-2023 school year, D.R. was taken to the wrong school by the bus driver instead of his home school, Ludlow-Taylor. D.R. was missing for approximately

three hours before Ludlow-Taylor staff located him and notified Ms. Robertson. D.R. did not arrive at Ludlow-Taylor until around 1:00 p.m. From the time he was picked up in the morning until noon, no one at OSSE or DCPS could tell Ms. Robertson where her son was.

33. On other days when the school bus failed to arrive on time, Ms. Robertson either had to order an Uber or Lyft to take D.R. to school or D.R. would miss school entirely. Because D.R. needed to be accompanied by an adult in an Uber, Ms. Robertson's adult son rode in the Uber with D.R., which often required Ms. Robertson's son to miss at least a portion of his workday.

34. On one occasion in or around September 2022, D.R.'s family members were stationed at different addresses in the city where D.R. might be dropped off due to uncertainty created by OSSE bussing inconsistencies. Specifically, Ms. Robertson traveled to Northwest D.C. to where D.R.'s late mother formerly lived in anticipation of D.R. being dropped off there. Ms. Robertson learned that D.R. would be dropped off at his late mother's address after calling the school when D.R. did not arrive home on the afternoon bus. After this incident, D.R. felt faint, was visibly upset, and took several hours to recover once Ms. Robertson retrieved him.

35. On multiple occasions, Ms. Robertson received phone calls from Ludlow-Taylor staff notifying her that D.R.'s bus did not pick him up from school. On those days, because Ms. Robertson was required to commute such a long distance from work to retrieve D.R. from Ludlow-Taylor, D.R. did not arrive home until approximately 7:00 p.m.

36. On one occasion during the 2022-23 school year, OSSE's recordkeeping failures caused harm to D.R. when D.R. was dropped off at his deceased mother's former address following OSSE's failure to update D.R.'s address in their systems.

37. On another occasion during the 2022-23 school year, OSSE's recordkeeping failures caused further harm to D.R. when Ms. Robertson received a call from her son notifying

her that D.R.'s bus driver would not release D.R. into the care of Ms. Robertson's son. Ms. Robertson asked her son to give the cell phone to the bus driver so she could speak directly to the bus driver. Ms. Robertson then gave a verbal authorization for D.R. to be released to Ms. Robertson's son, but the bus driver still refused. The bus driver then suggested that an adult neighbor, who the family did not know, take D.R. into their care. Ms. Robertson's mother was required to take D.R. off the bus.

38. Throughout the 2022-23 school year, D.R. was stressed, showed signs of anxiety, and was scared to ride the bus due to OSSE's failures. Because of his disability, D.R. needs to know exactly what his schedule will be and can have difficulty redirecting if his schedule changes unexpectedly. On days when the bus schedule changed and/or was inconsistent, D.R.'s ability to access his education was impacted for the entire day, causing him to experience extreme anxiety.

School Year 2023-2024

39. D.R.'s IEP for the 2023-24 school year includes transportation to and from school via bus provided by OSSE DOT.

40. On the first day of the 2023-2024 school year, Ms. Robertson was required to leave work and take D.R. to school because D.R. was not picked up by the bus. Ms. Robertson called OSSE and was put on hold. OSSE then claimed that the bus arrived between 8:45 and 9:00 a.m. despite being scheduled to pick D.R. up at 7:50 a.m. OSSE was aware that the bus was late by more than one hour, but Ms. Robertson was not informed. As a result, D.R. missed critical educational time.

41. During the second week of school, D.R.'s bus failed to pick him up for school three times, requiring Ms. Robertson to take time off work to transport D.R. to school. Over the course

of the first two weeks of school during the 2023-2024 school year, Ms. Robertson was late to work at her new job every day until around the September 11 and 12 school days.

42. On or around September 19 and 20, the school bus failed to arrive on time and D.R. did not arrive at school until almost 11:00 a.m. Ms. Robertson contacted OSSE seeking a solution, but OSSE was unable to offer one. Because D.R. was late for school, he missed breakfast and his morning classes.

43. When Ms. Robertson has contacted OSSE about bussing failures, she is placed on hold for 45 minutes to one hour before speaking to an OSSE representative. Ms. Robertson is required to call OSSE at least three to four times per week regarding bussing failures.

44. On or around September 22, an OSSE representative notified Ms. Robertson that D.R.'s morning pickup time would be changed from 7:50 a.m. to 6:50 a.m., but the bus failed to arrive. The schedule changes left D.R. panicked, pacing back and forth, and continually looking out the window while waiting for the bus to arrive.

45. On or around September 24, Ms. Robertson received approximately five to six text messages from OSSE that bus routes and bus drivers would change, but OSSE failed to indicate a new pickup time or bus number.

46. On or around the morning of September 25, Ms. Robertson received a text message from OSSE stating that D.R.'s bus would pick him up 45 minutes to one hour early. Because OSSE had previously failed to pick D.R. up at the new 6:50 a.m. pickup time, Ms. Robertson did not know how early the bus would arrive. Despite the text message from OSSE, the bus did not pick D.R. up until 8:00 a.m., which is later than D.R.'s original pickup time.

47. Based on her experience with OSSE DOT, Ms. Robertson does not believe OSSE DOT's failures will be fixed any time soon.

Harms to D.R.

48. As a result of OSSE's failure to provide transportation, D.R. missed over ten to fifteen days of school and was extremely late for school, arriving around 10:00 a.m. at least ten to fifteen times during the 2022-2023 school year. In addition, there were numerous days where he was picked up late in the morning and arrived at school late. This missed education as a result of OSSE's failures deprived D.R. of FAPE.

49. There were also several occasions where he was not picked up from the school in the afternoon, requiring Ms. Robertson to find alternative transportation for him.

50. D.R.'s IEP requires 27 hours of specialized instruction per week and 120 minutes of speech-language pathology per month outside of the general curriculum, which D.R. is denied in whole or in part on days where OSSE fails to provide bussing or provides delayed bussing. D.R. experiences feelings of panic when his routine changes and does not calm down for significant periods of time. On days when the bus is late, D.R. will pace back and forth and continually look out the window while waiting for the bus to arrive. On the days he does make it to school late, he is not able to access his education fully because he struggles to adjust to the schedule changes. The stress of the inconsistent bus service makes it difficult for him to access his education.

51. OSSE's failure to provide transportation has also impacted Ms. Robertson and her family. Ms. Robertson's family has been terrified, distressed, and panicked about whether D.R. will get to and from school. If D.R.'s bus does not arrive, or does not arrive on time, Ms. Robertson must leave work and travel between 45 and 60 minutes to her house to take D.R. to school. If Ms. Robertson relies on her niece to make sure D.R. safely gets on the bus, Ms. Robertson's niece will also miss class time.

52. Ms. Robertson used personal funds securing alternative transportation for D.R. and submitted a reimbursement request, which was acknowledged by OSSE on or around January 25, 2023, but has not received a reimbursement. Ms. Robertson also used personal funds to order rideshare services through Uber and Lyft to take D.R. to school on several occasions.

53. The failure to provide D.R. with transportation, which is required by D.R.'s IEP, has denied D.R. FAPE.

Claims

54. The IDEA and its implementing regulations require that “[a] free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 22.” 20 U.S.C. § 1412(a)(1)(A); *see also* 20 U.S.C. § 1400(d)(1)(A); 5-E D.C.M.R. § 3002.1(a).

55. In order to provide FAPE, the provision of special education and related services, including transportation, must be made in conformity with each student's IEP. 20 U.S.C. § 1401(9)(D).

56. As set forth in paragraphs 17 to 47, OSSE is failing to implement D.R.'s IEP by failing to provide consistent, reliable, and appropriate transportation to D.R. This failure deprives D.R. of FAPE.

57. As set forth in paragraphs 17 to 47, OSSE is failing to provide consistent, reliable, and appropriate transportation to students similarly situated to D.R. This failure has deprived these similarly situated students of FAPE.

Relief

Individual Relief

58. As relief for OSSE's denial of FAPE to D.R., Petitioner respectfully requests that this Hearing Officer:

- a. Declare that OSSE's actions denied D.R. FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law;
- b. Order OSSE to provide consistent, reliable, and appropriate transportation to and from school in conformity with D.R.'s IEP;
- c. Order OSSE to authorize comprehensive independent education evaluations for D.R., including but not limited to psychoeducational evaluations, speech-language evaluations, assistive technology evaluations, occupational therapy evaluations, and neuropsychological evaluations;
- d. Award compensatory education services including tutoring and related services from a provider of Petitioner's choice;
- e. Award reimbursement for the cost of transporting D.R. to and from school on the days in which Petitioner was forced to provide transportation because of OSSE's failures;
- f. Order OSSE to effectively communicate with D.R.'s family regarding any changes to special education transportation including, but not limited to, changes to D.R.'s route, delays, and cancellations;
- g. Award reasonable attorneys' fees and costs incurred during the litigation of this Complaint; and
- h. Award other relief as the Hearing Officer may deem appropriate.

Systemic Relief

59. As relief for OSSE's denial of FAPE to D.R. and all similarly situated students, Petitioner respectfully requests that this Hearing Officer:

- a. Declare that OSSE's actions denied D.R. and all similarly situated students FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law;
- b. Order OSSE to develop and implement adequate and effective policies and procedures to provide D.R. and other students with disabilities eligible for transportation services as part of their IEPs with consistent, reliable, and safe transportation to and from school;
- c. Order OSSE to provide consistent, reliable, and appropriate transportation to and from school to students similarly situated to D.R. in conformity with their IEPs;
- d. Order OSSE to effectively communicate with the families of students similarly situated to D.R. regarding any changes to special education transportation including, but not limited to, changes to the students' route, delays, and cancellations;
- e. Award reasonable attorneys' fees and costs incurred during the litigation of this Complaint; and
- f. Award other relief as the Hearing Officer may deem appropriate.

Respectfully submitted,

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EXHIBIT F

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION**
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Washington, D.C. 20002

ELIZABETH DAGGETT,)
on behalf of H.D.,)
Petitioner,)
v.)
)
)
DISTRICT OF COLUMBIA)
OFFICE OF THE STATE)
SUPERINTENDENT OF)
EDUCATION,)
)
Respondent.)
_____)

ADMINISTRATIVE DUE PROCESS COMPLAINT

Introduction

1. The District of Columbia Office of the State Superintendent of Education (“OSSE”) is systemically failing to provide consistent, reliable, and safe transportation to students with disabilities who the District agrees require special education transportation in order to access an appropriate education. School bus routes are cancelled and severely delayed, and, on any given day, students may be dropped off hours after school starts or not be picked up at all.

2. OSSE’s Division of Transportation (“OSSE DOT”) serves all District students who require special education transportation. This equates to over 3,800 students with disabilities, more than half of whom reside in Wards 7 and 8. *Government of the District of Columbia, OSSE Responses to Fiscal Year 2022 Performance Oversight Questions*, p. 231 (Feb. 24, 2023.) As of Jan. 31, 2023, 66 students in foster care are receiving OSSE-DOT transportation

services. *Government of the District of Columbia, OSSE Responses to Fiscal Year 2022 Performance Oversight Questions*, p. 72 (Feb. 24, 2023).

3. As detailed below, OSSE's actions and inactions are violating the law and causing severe and irreparable harm to Petitioner's son, H.D.. As a result of OSSE's failure to provide consistent, reliable, and safe transportation, H.D. is denied a Free Appropriate Public Education (FAPE). Students with disabilities are missing critical education and related services, all of which are necessary for them to receive FAPE as guaranteed under the Individuals with Disabilities Education Act ("IDEA").

4. Additionally, OSSE DOT's failure to provide transportation to H.D. is depriving him of equal access to his education as his typically developing peers, in violation of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act ("Section 504"), and the DC Human Rights Act ("DCHRA").

5. OSSE's ongoing violations of the law also deprive all students with disabilities aged 3-22 who are eligible for IDEA services who (1) were, as of or after August 31, 2021, are, or will be in the future entitled to receive transportation related services from OSSE DOT, (2) did not, are not, or will not receive transportation services from OSSE DOT of a FAPE.

6. This failure, which has been building since the termination of the *Petties*¹ consent decree, became an acute crisis in the beginning of January 2023. At that time, OSSE changed its bus routing system, throwing transportation for students with disabilities into disarray, with

¹ On January 29, 1995, in the U.S. District Court for the District of Columbia, minor students eligible for special education and their parents sued the District's public school system, sought a preliminary injunction, and sought to certify a class of students with disabilities who were entitled to or received special education instruction and services from the District of Columbia Public Schools ("DCPS"). *Petties v. District of Columbia*, 881 F. Supp. 63 (D.D.C. 1995). One issue in the case was transportation for IDEA eligible students. *Petties v. District of Columbia*, 888 F. Supp. 165 (D.D.C. 1995). In August of 2000, the parties entered into a consent order whereby Defendant was obligated to hire a "transportation coordinator" and, in 2002, a Special Master was appointed to oversee special education transportation in the District. *Petties v. District of Columbia*, 211 F. Supp.2d 141 (D.D.C. 2002). The Special Master remained in place for ten years until the case was dismissed in December 2012.

hundreds of students over multiple routes experiencing significant delays and cancellations, the delays and cancellations continue to this day.

7. The IDEA and its implementing regulations require that “[a] free appropriate public education is available to all children with disabilities residing in the State. . . .” 20 U.S.C. § 1412(a)(1)(A). *See also* 20 U.S.C. § 1400(d)(1)(A). In the District, this obligation extends to all students with disabilities aged three to twenty-two. 5-E D.C.M.R. § 3002.1(a). In order to provide FAPE, the provision of special education and related services, including special education transportation must be made in conformity with each student’s IEP. 20 U.S.C. § 1401(9)(D).

8. Moreover, OSSE DOT’s failure to provide transportation violates its responsibilities as a State Educational Agency (“SEA”). *See* 34 C.F.R. § 300.277(b) (requiring the SEA to provide special education and related services as the SEA considers appropriate provided the services are provided in accordance with this section.)

9. As detailed below, OSSE’s actions and inactions are violating the law, and causing severe and irreparable harm to H.D.

10. OSSE DOT’s systemic failure to provide consistent, reliable, and safe transportation is also depriving all students with disabilities aged 3-22 who are eligible for transportation services who (1) were, as of or after August 31, 2021, are, or will be in the future entitled to receive transportation from OSSE DOT, (2) did not, are not, or will not receive transportation services of equal access to their education as their typically developing peers.

11. Petitioner, on behalf of H.D. and similarly situated students, seeks declaratory, injunctive, and other equitable relief ordering Defendants to immediately provide appropriate transportation for eligible special education students and other relief described below.

Jurisdiction

12. Petitioner has jurisdiction to bring this Complaint under the IDEA, 20 U.S.C. § 1400 *et seq.*, its implementing regulations at 34 C.F.R. Part 300, and the District of Columbia Municipal Regulations, D.C. MUN. REG. tit. 5 § 3000 *et seq.* This Office of Dispute Resolution has jurisdiction pursuant to the IDEA, 20 U.S.C §§ 1400-1487, as amended in 2004, and 28 U.S.C. § 1331.

13. Petitioner Elizabeth Daggett is the parent of H.D., who is a 12-year-old District resident with disabilities including a rare chromosomal disorder, Christianson Syndrome, which causes global developmental delays, epilepsy, and Attention Deficit Hyperactivity Disorder. H.D. is eligible for special education and related services under the IDEA as a student with an “Other health impairment” as defined in 34 C.F.R. § 300.8(c)(9). H.D. has an IEP that provides for transportation as a related service.

Facts

OSSE DOT Systemic Failures

14. OSSE DOT, according to their website, is responsible for providing safe, reliable, and efficient transportation services that positively support learning opportunities for eligible students from the District of Columbia, yet since at least the beginning of January, hundreds of students, including H. D., have been left behind.

15. At the start of the 2022-2023 school year, OSSE adopted a new school bus routing system. According to OSSE, that new routing system failed to provide reliable transportation for students.

16. On January 9, 2023, OSSE again changed the school bus routing system, reverting back to the routing system that had been used in prior school years, supposedly to respond to the

problems under the newly adopted system. However, this change resulted in massive disruptions to school bussing for special education students.

17. Each day since January 9, a significant number of bus routes have been delayed or cancelled. OSSE DOT is tracking daily bus delays and cancellations, and posting these daily on their website, Daily DOT Updates, <https://osse.dc.gov/page/daily-dot-updates>, and on their Twitter feed, <https://twitter.com/OSSEDC>.

18. The number and type of service interruptions vary daily. For example, on January 17, 106 morning routes were impacted and students experienced up to 90 minutes delays and cancellations for morning services. On January 26, 77 morning routes were impacted, including two routes which were unable to be serviced at all. On the same day, two afternoon routes were cancelled and thirteen afternoon routes were significantly delayed.

19. From the week of January 16 through the week of February 13, OSSE's reports demonstrate that the daily average number of late morning routes ranged from 52-99.

20. OSSE's own reports show that students are arriving late to school as much as 19% of the time. *Government of the District of Columbia, OSSE Responses to Fiscal Year 2022 Performance Oversight Questions*, p. 240 (Feb. 24, 2023). OSSE DOT's failure to provide consistent, reliable, and safe transportation services is well-documented in the news.²

² See Sam P.K. Collins, "D.C. Parents Demand Clarity from OSSE on Continuing Bus Delays," *The Washington Informer* (Mar. 14, 2023); Delia Goncalves, "'We deserve better' DC parents say unreliable bus service harms students with special needs," *WUSA* (Mar. 1, 2023); Mariel Carbone, "DC parents say school bus delays, cancellations persist weeks into new year," *DC News Now* (Feb. 15, 2023); Theresa Vargas, "D.C. is failing disabled students who rely on buses to get to school," *The Washington Post* (Feb. 8, 2023); John Henry, "Weeks later, DC's school bus delays persist," *WUSA* (Jan. 30, 2023); Sam P.K. Collins, "Bus Service Changes Highlight Woes of Special-Needs Students," *The Washington Informer* (Jan. 25, 2023); Martin R4B-23-0306 – OSSE DOT Oversight Page 2 Auster Muhle, "Students With Disabilities Face Barrage Of School Bus Delays In D.C.," *WAMU* (Jan. 20, 2023); Sam Ford, "Bus assigned to take special needs DC student to school regularly late; mother fed up," *WJLA* (Sept. 19, 2022); Sam Ford, "DC mom spends \$80/day to take son from Southeast to special ed classes in Georgetown," *WJLA* (Sept. 1, 2022); Theresa Vargas, "For disabled D.C. students, an uncertain wait on school buses remains," *The Washington Post* (Aug. 31, 2023); Mariel Carbone, "DC parents worry busing blunders will continue into new school year," *DC News Now* (Aug. 25, 2023).

21. Parents and students face uncertainty about when – or whether – their legally-mandated transportation will show up. Parents are unable to track their student's bus through GPS and must rely on information provided by OSSE to know if and when their bus will show up. This is highly disruptive for students and parents alike.

Failure of OSSE DOT to Provide Safe, Reliable Efficient Transportation to H.D.

22. H.D. is a 12-year-old boy diagnosed with multiple health complications and disabilities, including Christianson Syndrome (a rare genetic disorder), global developmental delays, ADHD, and epilepsy. As a result of his multiple disabilities, H.D. requires several timely medications each day, is non-verbal, and requires constant outside attention to his needs as a result of Christianson Syndrome. His global developmental delays include intellectual delays, physical disabilities, and delays in activities of daily living such as toileting.

23. Christianson Syndrome is a rare genetic condition with a number of complications. Chief among them is that H.D. does not experience physical feelings in the same way as the general population, including an unusually high pain tolerance. This difference in feeling makes it difficult for H.D. to communicate ubiquitous feelings such as hunger, thirst, or the need to use the bathroom. However H.D. is not immune to the effects being hungry or thirsty. If H.D. does not have enough to drink or eat during the day, he can become agitated and act out by tantruming.

24. H.D. was first identified as a student with a disability eligible for services under the IDEA on December 31, 2013. His current IEP, dated October 31, 2022, provides for transportation as a related service. He has had transportation as a related service since he turned three years old. In all that time, OSSE DOT has continuously failed to provide safe, reliable, efficient transportation for H.D.

25. Transportation is a critical related service that enables H.D. to receive FAPE because H.D. is a "Medically Fragile Student," according to his IEP. H.D. is non-verbal, wears a diaper, and needs a harness to be transported safely. This harness – issued by OSSE DOT - requires a specialized anchor that is not available via public transportation or ridesharing apps. Reliable transportation is critical for H.D. because his medical diagnoses require a consistent schedule to ensure he receives his medications at the proper times, especially his ADHD medication because H.D. is hyperkinetic and has issues sleeping if he does not receive his doses in a timely manner. H.D. is also non-verbal and cannot communicate his feelings or needs, including the time for medication, his hunger, or his thirst at any given time.

26. H.D. attends, and at all times relevant to this complaint attended, school at St. Coletta of Greater Washington and lives in Ward 5 with his parents and two siblings. H.D.'s parents work full-time. His siblings attend two different schools and participate in extracurricular activities. With his sister too young to walk herself to and from school, timely transportation to and from school is essential for his family to function. When the legally mandated bus fails to arrive in a timely manner, H.D.'s parents must decide who is going to take an hour off work for the round-trip to get H.D. to school.

27. St. Coletta's school day starts at 8:30am each day and ends at 3:00pm on Monday, Tuesday, Thursday, and Friday. On Wednesday the school closes early at 12:30pm. H.D. is supposed to be provided timely special education transportation services each day so that he arrives to school on time to start the day at 8:30 and arrives home within a reasonable amount of time.

28. Timely arrival and scheduling are essential to H.D. and Petitioner's lives. If H.D.'s bus is late, he attempts to escape the house looking for the bus. This necessitates Petitioner deadbolting her own front door to ensure H.D.'s safety and securing a qualified babysitter to be at

her home any time H.D. may arrive home. As a result of OSSE DOT's tardiness on numerous afternoons, Petitioner has incurred the cost of a babysitter while H.D. was not home.

29. Petitioner's family only has one car. This car must be used for both Petitioner and her husband to transport each of their three children. The car can only be used to transport one of her children, including H.D., at a time to the three separate schools they attend.

30. For Petitioner and H.D., OSSE DOT transportation was inconsistent and unreliable throughout the 2022-2023 school year and 2023 Extended School Year.

31. Based on experience, Petitioner also reasonably assumes that OSSE DOT transportation will be inconsistent and unreliable for the 2023-2024 school year.

32. Thus far, only one week into the school year, the bus has failed to arrive with the safety harness anchor for H.D. Because of this, Petitioner had to drive H.D. to school herself and he arrived at school at 9:15 a.m.: 45 minutes after school had started. Additionally, Petitioner was informed by OSSE DOT that a replacement bus would be sent with a proper harness anchor. The bus did not arrive, and at least did not arrive in anything resembling a timely manner.

School Year 2022-2023

33. H.D.'s transportation was unreliable throughout the 2022-2023 school year, causing him to miss school and depriving him of a FAPE. When H.D. is late for school he is denied educational services, related services, and access to his peers.

34. During the 2022-2023 school year, H.D.'s bus was severely late in picking him up to take him to school or dropping him off at home many times, often with inconsistent or nonexistent notification of Petitioner that there would be delays. The failure to notify Petitioner resulted in interruptions to her work, her husband's work, and disruptions to the lives of H.D.'s siblings.

35. Specifically, H.D. was regularly dropped off at home at the end of the school day between 4:30-4:45pm, meaning H.D. was on the bus for at least an hour and a half from the school's 3:00 pm end of day. Due to H.D.'s Christianson Syndrome, he cannot feel or express thirst or hunger and he cannot eat or drink on the bus. As a result of his delayed return home on the bus, H.D. has arrived home dehydrated and with a soiled diaper. H.D. would also be so distressed from dehydration due to the long bus ride that he would act out when he returned home.

36. Additionally, a few times during the 2022-2023 school year, H.D.'s bus was cancelled completely because the bus did not have an anchor for H.D.'s harness, and therefore could not safely transport him. This occurred throughout the school year and deprived H.D. of an appropriate education.

37. Once, on February 10, 2023, H.D. did not arrive home until after 5:10 pm because, due to the lack of a harness anchor, the bus left him behind at school without OSSE DOT notifying Petitioner. Luckily, a staff member from St. Coletta's was able to wait with H.D. at school until his parents could pick him up.

38. Other times, when H.D.'s bus was not on time in the morning, his schedule and his entire family's schedule would be disrupted. As an example, once his older brother had an 8:00 am doctor's appointment and H.D.'s bus did not arrive on time. As a result, Petitioner had to remain at home with H.D. waiting for his bus. Petitioner was late to work and H.D. was late to school.

39. OSSE DOT's failures cause frequent disruptions like this one for H.D. and his family, impacting not only his education but the entire family's daily schedule.

40. H.D.'s bus was also often cancelled or late with little to no notice to Petitioner. OSSE's website has often said that bus is delayed, in one instance it said 30 minutes late, but

Petitioner had to drive H.D. to school because the bus failed to arrive after 30 minutes. In another instance, on February 10, 2023, H.D.'s bus never arrived, and Petitioner was not notified in any way.

41. H.D. cannot travel using ridesharing services or public transportation due to his safety harness, which cannot be anchored into public transportation or standard cars. Petitioner's only alternative to OSSE services to get H.D. to school is to drive him herself.

42. Petitioner and her husband have missed work and had to drive H.D. into school, or picked him up from school, herself at least 25 occasions, often with inconsistent or unreliable updates from OSSE DOT. The week of January 9, 2023, Petitioner both dropped off and picked up H.D. to school a total of at least five times. In one instance, on January 11, 2023, Petitioner checked OSSE's website to find H.D.'s bus was out of service. The site then updated to say that the bus would be 30 minutes late, failed to arrive after 30 minutes, and ultimately resulted in Petitioner having to wait for a bus that would never come and drive H.D. in herself. This impacted Petitioner's ability to participate in her job, as attending meetings or just accomplishing work in the morning is never reliable due to the flux of H.D.'s transportation situation.

43. Petitioner and her family are also impacted by OSSE's delays in her ability to easily care for the house outside of her full-time job. Because her other children need to be picked up, especially if H.D.'s brother has baseball, then there is no time to begin cooking dinner at a reasonable time. Instead, Petitioner must play a scheduling game with three schools to ensure all her children are home safely and enough work has been done for her job. This added stressor is exacerbated by paying a babysitter who sometimes is not needed.

Extended School Year 2023

44. H.D. is entitled to extended school year services, including special education transportation. Unfortunately, similar issues with timing and communication arose during the summer as during the school year, resulting in a deprivation of FAPE for H.D.

45. OSSE DOT's failure to notify Petitioner of route delays and changes were pervasive and continual throughout the summer. In one instance, on July 24, H.D.'s bus arrived 50 minutes later than it was supposed to. Petitioner received no notice that H.D.'s route was impacted, despite OSSE DOT detailing five other routes that were delayed. As a result, H.D. was late to school, like many other mornings.

46. Often throughout the summer H.D. would arrive home between 4:45pm-5pm: almost two hours later than he was scheduled to arrive home. As with the previous school year, H.D. would sometimes arrive home with a soiled diaper, dehydrated, or having missed one of his medication doses.

47. H.D. was emotionally distraught from the long rides. Petitioner and her family had to calm H.D. down and then ascertain whether he was dehydrated, hungry, or upset from sitting in a soiled diaper.

48. Petitioner's husband had to miss at least part of work to drive H.D. in 2-3 times over the summer. Petitioner's husband also works full time and has a schedule that is less flexible, and therefore less conducive, to reacting to OSSE DOT's failure to provide timely and adequate transportation for H.D.

49. As a result of OSSE DOT's failures during the extended school year, H.D. was deprived of a FAPE.

School Year 2023-2024

50. H.D. is entitled to special education transportation for the 2023-24 school year.

51. School began for H.D. at St. Coletta's the week of August 28, 2023, and the problems from last year and the summer have come in tow.

52. The first day of school the bus did not include the safety harness anchor and could not transport him. This event caused H.D. to act out due to the disruption in his schedule, which in turn impacted Petitioner's ability to get to work in a timely manner. H.D. was forced to wait longer, however, because Petitioner's husband used the family car to drop her other two children off before finally being able to drive H.D. to school. This resulted in H.D. arriving to school almost an hour late on the first day. The delay also increased stress for H.D. who attempted to leave the house several times when the bus was delayed.

53. On September 11, 2023, H.D.'s morning bus route did not run and his father had to drive him to school, where he arrived late. H. D.'s entire family had to rearrange their plan for the morning to ensure his siblings got to school as well. Then, adding insult to injury, his bus home did run in the afternoon either.

54. Petitioner called the Parent Resource Center on September 11, 2023, in an attempt to find out what happened to H.D.'s bus. When she asked to file a complaint because there was no bus service that day, she was told she wasn't even permitted to file a complaint until the bus failed to arrive on at least three different days.

55. The manner in which H.D. has been arriving home has also been of concern. Rather than rectify the problem and deliver H.D. home at the slated time, he has been arriving home wearing two diapers: in case he is on the bus so long that one is insufficient.

56. Petitioner also anticipates and fears further problems this year. As previously mentioned above, both Petitioner and her husband work full time and sometimes must travel for work. When this happens, they must enlist the help of neighbors: neighbors who do not always have the flexibility to take mornings off work if H.D.'s bus is not timely.

57. As a result of OSSE's failure to provide transportation, H.D. has missed whole or half days of school and has been deprived of a FAPE. Further, due to OSSE's failure to timely deliver H.D. home, he has excess energy, is agitated, and is more likely to lash out and tantrum, a further disruption to Petitioner and H.D.'s routines.

58. OSSE's failure to provide transportation has also impacted Petitioner's family. When Petitioner is able to drive H.D. to school, she incurs the cost of gas. This cost has not been reimbursed by OSSE DOT in any way. Petitioner has also endured stress for the education of her other children, who do not attend St. Coletta, and deciding which child is going to be late to school because H.D.'s bus has not been on time.

59. Petitioner also incurs the cost of a babysitter to help get H.D. off the bus and watch him until Petitioner or her husband gets home. When H.D. is not delivered home in a timely manner, Petitioner still must pay the babysitter for the time waiting on OSSE DOT to drop H.D. off, even though the babysitter does not have anyone to watch. On Wednesday's, Petitioner hires a babysitter for five hours (from 1-6pm) to help with H.D. Sometimes H.D. arrives home after Petitioner, meaning the babysitter was paid and did not help the family watch H.D. as a direct result of OSSE DOT's continual and pervasive failures.

60. Petitioner further must make decisions and endure stress for her and her husband because they only have one family car and wake up without knowing whether they will be able to make it to work on time or whether one will have to drive H.D. into school.

61. The failure to provide H.D. with transportation, which is required by H.D.'s IEP, has denied H.D. FAPE and deprives him of equal access to his education as his non-disabled peers.

Claims

62. The IDEA and its implementing regulations require that "[a] free appropriate public education is available to all children with disabilities residing in the State..." 20 U.S.C. § 1412(a)(1)(A). See also 20 U.S.C. § 1400(d)(1)(A). In the District, this obligation extends to all students with disabilities ages three to twenty-two. 5-E D.C.M.R. § 3002.1(a).

63. In order to provide FAPE, the provision of special education and related services, including transportation, must be made in conformity with each student's IEP. 20 U.S.C. § 1401(9)(D).

64. As set forth in paragraphs 20 to 59, OSSE is failing to implement H.D.'s IEP by failing to provide consistent, reliable, and appropriate transportation to H.D. This failure deprives H.D. of FAPE.

65. As set forth in paragraphs 12 to 19, OSSE is failing to provide consistent, reliable, and appropriate transportation to students similarly situated to H.D. This failure has deprived these similarly situated students of a FAPE.

Relief

Individual Relief

66. As relief for OSSE's denial of FAPE to H.D., Petitioner respectfully requests that this Hearing Officer:

- a. Declare OSSE's actions denied H.D. FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law;
- b. Order OSSE to provide consistent, reliable, and appropriate transportation to and from school in conformity with H.D.'s IEP.

- c. Order OSSE to authorize comprehensive independent education evaluations for H.D. including but not limited to vocational evaluations, psychoeducational evaluations, speech-language evaluations, assistive technology evaluations, occupational therapy evaluations, and neuropsychological evaluations.
- d. Award compensatory education services including tutoring and related services from a provider of Petitioner's choice;
- e. Award reimbursement for cost of transporting H.D. to and from school on the days in which Petitioner was forced to provide transportation because of OSSE's failures;
- f. Order OSSE to effectively communicate with H.D.'s family regarding any changes to special education transportation including, but not limited to, changes to the student's route, delays, and cancellations;
- g. Award reasonable attorneys' fees and costs incurred during the litigation of this Complaint; and
- h. Award other relief, as the Hearing Officer may deem appropriate.

Systemic Relief

67. As relief for OSSE's denial of FAPE to H.D. and all similarly situated students, Petitioner respectfully requests that this Hearing Officer:
- a. Declare OSSE's actions denied H.D. and all similarly situated students FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law;
 - b. Order OSSE to develop and implement adequate and effective policies to provide H.D. and other students with disabilities eligible for transportation services as part of their IEPs with consistent, reliable, and safe transportation to and from school;
 - i. Order OSSE to provide consistent, reliable, and appropriate transportation to and from school to students similarly situated to H.D. in conformity with their IEPs;
 - c. Order OSSE to effectively communicate with the families of students similarly situated to H.D. regarding any changes to special education transportation including, but not limited to, changes to the students route, delays, and cancellations;
 - d. Award reasonable attorneys' fees and costs incurred during the litigation of this Complaint; and

e. Award other relief as the Hearing Officer may deem appropriate.

Respectfully submitted,

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EXHIBIT G

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION**

1000 First Street NE, 3rd Floor
Washington, D.C. 20002

DAVID CLAR AND)
MARCIA CANNON-CLAR ,)
on behalf of B.R.C.,)
Petitioners,)
v.)
)
)
)
DISTRICT OF COLUMBIA)
OFFICE OF THE STATE)
SUPERINTENDENT OF)
EDUCATION,)
)
Respondent.)
)

ADMINISTRATIVE DUE PROCESS COMPLAINT

Introduction

1. The District of Columbia Office of the State Superintendent of Education (OSSE) is systemically failing to provide consistent, reliable, and safe transportation to students with disabilities whom the District agrees require special education transportation in order to access an appropriate education. School bus routes are cancelled and severely delayed, and, on any given day, students may be dropped off hours after school starts or may not be picked up at all.

2. As detailed below, OSSE's actions and inactions are violating the law, and causing severe and irreparable harm to Petitioners and B.R.C. As a result of OSSE's failure to provide consistent reliable transportation, in both the 2022-2023 and 2023-2024 school year, B.R.C. has been late to school, or missed school entirely, and has

thereby been denied a Free Appropriate Public Education (FAPE). Due to the lack of transportation and the resulting absence or tardiness, B.R.C. missed critical education and related services, all of which are necessary for her to receive a FAPE as guaranteed under the Individuals with Disabilities Act (IDEA).

3. Moreover, OSSE Division of Transportation (OSSE DOT)'s failure to provide transportation violates its responsibilities as a State Educational Agency (SEA). *See* 34 C.F.R. 300.2 (b) (requiring the SEA to provide special education and related services as the SEA considers appropriate so long as the services are provided in accordance with this section).
 4. Additionally, OSSE DOT's failure to provide transportation to B.R.C. is depriving her of equal access to her education as her typically developing peers, in violation of the Americans with Disabilities Act (ADA), Section 04 of the Rehabilitation Act (Section 04), and the DC Human Rights Act (DCHRA).
 5. OSSE's failures from September 2022 to the present are particularly egregious, and yet, OSSE DOT continues to fail to provide appropriate, safe, consistent transportation services to B.R.C., depriving her of a FAPE. OSSE DOT serves all District students who require special education transportation. This equates to over 3,000 students with disabilities, more than half of whom reside in Wards and .
- Office of the State Superintendent of Education, *OSSE Responses to Fiscal Year 2022 Performance Oversight Questions*, GOVT OF D.C. at 231 (Feb. 24, 2023), <https://osse.dc.gov/page/responses-fiscal-year-2022-performance-oversight-questions> (hereinafter OSSE 2022 Performance Oversight Responses). As of

January 31, 2023, sixty six students in foster care are receiving OSSE DOT transportation services. *Id.* at .

- . OSSE s transportation failures, and resulting ongoing violations of the law, deprive all IDEA eligible students ages three to twenty two, who (1) were, as of or after August 31, 2021, are, or will be entitled to receive transportation related services from OSSE DOT, and (2) did not, are not, or will not receive transportation services from OSSE DOT, of a FAPE.
- . This failure, which has been building since the termination of the *Petties*¹ consent decree, became an acute crisis in the beginning of January 2023. At that time, OSSE changed its bus routing system, throwing transportation for students with disabilities into disarray, resulting in hundreds of students over multiple routes experiencing significant delays and cancellations. These delays and cancellations continue to this day.
- . The IDEA and its implementing regulations require that a free appropriate public education is available to all children with disabilities residing in the State. . . . 20 .S.C. 1412(a)(1)(A); *see also* 20 .S.C. 1400(d)(1)(A). In the District, this obligation extends to all students with disabilities ages three to twenty two. E.D.C.M.R. 3002.1(a). In order to provide a FAPE, the provision of special education and related services, including special education transportation, must be

¹ On January 2, 2012, in the U.S. District Court for the District of Columbia, minor students eligible for special education and their parents sued the District s public school system, sought a preliminary injunction, and sought to certify a class of students with disabilities who were entitled to, or received, special education instruction and services from the District of Columbia Public Schools (DCPS). *Petties v. District of Columbia*, 2012 F. Supp. 1 (D.D.C. 12-01-001). One issue in the case was transportation for IDEA eligible students. *Id.* at 11. In August of 2000, the parties entered into a consent order whereby Defendant was obligated to hire a transportation coordinator and, in 2002, a Special Master was appointed to oversee special education transportation in the District. *Petties v. District of Columbia*, 211 F. Supp. 2d 141, 141 (D.D.C. 2002). The Special Master remained in place for ten years until the case was dismissed in December 2012.

made in conformity with each student's Individualized Education Program (IEP).
20 U.S.C. 1401(d).

- OSSE DOT's systemic failure to provide consistent, reliable, and safe transportation is also depriving all transportation eligible students with disabilities of the ages three to twenty-two, who (1) were, as of or after August 31, 2021, are, or will be entitled to receive transportation from OSSE DOT, and (2) did not, are not, or will not receive transportation services, of equal access to their education as their typically developing peers.
10. Petitioners, on behalf of B.R.C. and similarly situated students, seek declaratory, injunctive, and other equitable relief ordering Defendants to immediately provide appropriate transportation for eligible special education students and other relief described below.

Jurisdiction

11. Petitioners have jurisdiction to bring this Complaint under the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and the District of Columbia Municipal Regulations, D.C. Mun. Reg. tit. 3000 et seq. This administrative Office of Dispute Resolution has jurisdiction pursuant to the IDEA, 20 U.S.C. 1400-1414, as amended in 2004, and 20 U.S.C. 1331.
12. Petitioners David and Marcia Cannon Clark are the parents of B.R.C., a seven-year-old District resident diagnosed with hydrocephalus, a neurological disorder that caused a cyst to develop in B.R.C.'s head, resulting in the buildup of fluid in her brain, which impacts her brain development. As a result, B.R.C.'s mobility is impaired, and she uses a wheelchair. B.R.C. is eligible for special education and

related services under the IDEA as a student diagnosed with other health impairments as defined in 34 C.F.R. 300. (c)(). B.R.C.'s current IEP for the 2023-2024 school year, as well as all of her prior IEPs since 201 , provide transportation as a related service.

Facts

OSSE DOT's Systemic Failures

13. OSSE DOT is responsible for providing safe, reliable, and efficient transportation services that positively support learning opportunities for eligible students from the District of Columbia, *see* Office of the State Superintendent of Education, *Department of Student Transportation: Motor Vehicle Operator*, GOVT OF D.C., <https://osse.dc.gov/page/department-student-transportation-motor-vehicle-operator-text>. The mission of OSSE DOT, from the District of Columbia (last visited Dec. , 2023), yet since at least the beginning of January, hundreds of students, including B.R.C., have been left behind.
14. At the start of the 2022-2023 school year, OSSE adopted a new school bus routing system. According to OSSE, that new routing system failed to provide reliable transportation for students. *See* OSSE 2022 Performance Oversight Responses at 230-31.
15. On January , 2023, OSSE again changed the school bus routing system, reverting back to the routing system that had been used in prior school years, supposedly to respond to the problems incurred under the newly adopted system. However, this change resulted in massive disruptions to school bussing for special education students.

- 1 . The number and type of service interruptions vary daily. For example, on January 1, 2023, 10 morning routes were impacted, and students experienced up to 10 minute delays or experienced cancelations of their morning transportation services. On January 2, 2023, seventy seven morning routes were impacted, including two routes which were not serviced at all. On the same day, two afternoon routes were cancelled, and thirteen afternoon routes were significantly delayed.
- 1 . From January 1, 2023 to February 1, 2023, OSSE's reports demonstrate that on average, fifty three to ninety nine morning routes were late each school day. *See* OSSE 2022 Performance Oversight Responses at 234. Indeed, OSSE's own reports show that students arrive late to school more than nineteen percent of the time. *Id.* at 240. OSSE DOT's failure to provide consistent, reliable, and safe transportation services is well documented in the news.²
- 1 . Parents and students face uncertainty about when or whether their legally mandated transportation will show up. Parents are forced to rely on information provided by OSSE, but often B.R.C.'s parents called and OSSE had no estimate of the expected arrival time of the bus or knowledge of if the bus was coming at all. This is highly disruptive for students and parents alike.

² *See* Sam P. Collins, *D.C. Parents Demand Clarity from OSSE on Continuing Bus Delays*, WASH. INFORMER (Mar. 14, 2023); Delia Goncalves, *'We Deserve Better' DC Parents Say Unreliable Bus Service Harms Students with Special Needs*, WASH. POST (Mar. 1, 2023); Mariel Carbone, *DC Parents Say School Bus Delays, Cancelations Persist Weeks Into New Year*, DC NEWS NOW (Feb. 1, 2023); Theresa Vargas, *D.C. is Failing Disabled Students who Rely on Buses to get to School*, WASH. POST (Feb. 1, 2023); John Henry, *Weeks later, DC's School Bus Delays Persist*, WASH. POST (Jan. 30, 2023); Sam P. Collins, *Bus Service Changes Highlight Woes of Special-Needs Students*, WASH. INFORMER (Jan. 2, 2023); Martin Austerhuhle, *Students With Disabilities Face Barrage Of School Bus Delays In D.C.*, WASH. POST (Jan. 20, 2023); Sam Ford, *Bus Assigned to Take Special Needs DC Student to School Regularly Late; mother fed up*, WASH. POST (Sept. 1, 2022); Sam Ford, *DC Mom Spends \$80/day to Take Son from Southeast to Special Ed. Classes in Georgetown*, WASH. POST (Sept. 1, 2022).

Failure of OSSE DOT to Provide Safe, Reliable Efficient Transportation to B.R.C.

19. B.R.C. attends School Within a School at Goding, a DCPS school, and lives at 1212 12th Street NW, Washington, D.C. 20011. B.R.C. also attended School Within a School at Goding for the 2022-2023 school year.
20. Petitioners David and Marcia Cannon Clark are the parents of B.R.C., a seven-year-old District resident diagnosed with hydrocephalus, a neurological disorder that caused a cyst to develop in B.R.C.'s head, resulting in the buildup of fluid in her brain, which impacts her brain development. B.R.C. also suffers from seizures as a result of her condition. To help manage her condition, B.R.C. has had a ventricular shunt installed, which releases some of the built-up fluid. Further, B.R.C. has cortical visual impairment, meaning B.R.C. is unable to see beyond nine inches in front of her, and she has limited motor abilities. B.R.C. has an IEP dated November 2, 2023 that requires transportation as a related service. This IEP also requires a nurse to accompany her on her transportation due to her medical needs.
21. B.R.C. was first identified as a student with a disability eligible for services under the IDEA in November 2011. This IEP provided for transportation by OSSE DOT and for a nurse to accompany her on the bus, as has each IEP subsequently.
22. Respondent OSSE is the SEA and bears the ultimate responsibility for ensuring a FAPE is made available to eligible District residents. *See* 34 C.F.R. 300.101. Through its Division of Transportation (DOT), OSSE provides transportation to eligible students.

Failure of OSSE DOT to Provide Safe, Reliable, and Efficient Transportation to Petitioners

2022-2023 School Year

23. During the 2022-2023 school year, B.R.C.'s IEP provided her with wheelchair accessible OSSE bus transportation with a nurse. During that 2022-2023 school year, transportation was extremely unreliable, causing B.R.C. to either arrive late at school and home, or alternatively, to miss school entirely.
24. During the 2022-2023 school year, the morning pickup window for B.R.C. was between 1 a.m. and 4 a.m. and the afternoon drop off window was between 3:10 p.m. and 3:40 p.m.
25. At least three times per week during February to May of the 2022-2023 school year, the bus was either late or did not arrive. When the bus was late or did not arrive, the Petitioners called the OSSE Parent Call Center, i.e., Petitioners called the OSSE Parent Call Center at least three times per week. Each time Petitioners called, they waited on hold at least 4 minutes before speaking to a customer service representative.
26. During the 2022-2023 school year, Ms. Cannon Clark often drove B.R.C. to school when the bus was late or did not arrive to ensure that B.R.C. did not miss school. For example, Ms. Cannon Clark drove B.R.C. to school at least three times per week from February 2022 to early May 2022 because the bus did not arrive.
27. On or about March 1, 2023, Petitioners filed a grievance with OSSE but saw no improvement in the bussing service, which continued to arrive up to two hours late at least once per week. Petitioners never received any formal response to their grievance from OSSE.

2. During the 2022-2023 school year, from on or about February 2022 to early May 2022, approximately three times per week, OSSE failed to service B.R.C.'s bus route reportedly because OSSE was unable to secure a nurse for the bus, which meant that B.R.C. was not provided any form of transportation to or from school on these days. On other occasions, OSSE did not pick B.R.C. up because there were too many children using wheelchairs occupying the bus and the bus could only accommodate a limited number of children who rode in wheelchairs. So, even though B.R.C. was routed to that specific bus, she was unable to ride it, requiring Ms. Cannon Clark to drive B.R.C. to school so that B.R.C. would not miss school. Ms. Cannon Clark was notified about these incidents with the bus by OSSE transportation.

2. Because the OSSE transportation was so unreliable, for a period of time beginning in February of the 2022-2023 school year, Ms. Cannon Clark was forced to drive B.R.C. This put her job into jeopardy. On or around May 2023, Petitioners submitted a reimbursement request to OSSE for personal funds used in transporting B.R.C. to school. OSSE did not reimburse Petitioners for their costs for transportation until approximately October of 2023, which was an unreasonable delay in reimbursement.

2023 Extended School Year

30. B.R.C.'s Extended School Year (ESY) transportation plan for the summer of 2023 was to receive bussing to and from school through the OSSE bus service. The ESY occurred for approximately four weeks from 8:30 a.m. to 12:00 p.m.

31. B.R.C.'s OSSE transportation was scheduled to arrive for pickup between 1 a.m. and 4 a.m.

32. However, OSSE buses either picked up B.R.C. at 10:00 a.m. or failed to show up entirely. To avoid B.R.C. missing school, Petitioners transported B.R.C. to school, even though it meant they were late to their own jobs.

2023-2024 School Year

33. B.R.C.'s 2023-2024 school year transportation plan is to receive bussing to and from school through the OSSE bus service.

34. School began for B.R.C. at School within School at Goding the week of August 2, 2023, and OSSE's transportation issues have continued.

35. B.R.C.'s school day begins at 7:30 a.m. and ends at 3:00 p.m. B.R.C.'s school bus is scheduled to pick her up between 1 a.m. and 4 a.m.

36. OSSE has not consistently complied with this schedule. For example, one day in the beginning of the 2023-2024 school year, B.R.C.'s bus was scheduled to pick her up at 1:14 a.m. By at least 1:30 a.m., the bus had not arrived, and OSSE DOT had not provided an estimated arrival time for B.R.C.'s bus. Petitioners were left with no other option and had to take her to school themselves.

37. As another example, one morning during the 2023-2024 school year B.R.C.'s school bus was scheduled to pick her up by 4 a.m., but the bus did not arrive by then. Petitioners then resorted to taking B.R.C. to school themselves since there was no communication or estimated arrival time from OSSE DOT regarding her scheduled transportation. Petitioners noted that the OSSE bus did not arrive at their home until after 10:00 a.m. on that day, well after they dropped off B.R.C.

Har to B.R.C.

- 3 . In addition to her full time special education placement, B.R.C. s IEP provides for 240 minutes per month of occupational therapy (OT), 240 minutes per month of physical therapy (PT), and 120 minutes per month of speech language pathology, which are critically important services for B.R.C. as she is globally developmentally delayed, nonmobile, and needs to exercise her full range of motion daily. When OSSE fails to provide transportation, or the transportation is delayed, B.R.C. misses instructional time and does not have access to these services. On days here B.R.C. is late to school, her scheduled breakfast time is disrupted and she must eat late when she arrives, which causes resulting delays and missed instruction for the remainder of the day.
- 3 . Even though B.R.C. is nonverbal, B.R.C. is able to communicate through sounds and other signals and will communicate agitation when the bussing service does not arrive or arrives late. B.R.C. is used to a consistent routine and becomes agitated with changes of routine. B.R.C. communicates to Petitioners and B.R.C. s nurse that she enjoys riding the bus to school and engaging with other children and teachers.
40. In addition to communicating agitation, B.R.C. also relies on consistent transportation to school because she takes medication on a schedule, which is disrupted by OSSE s bussing failures.
41. The failure to provide B.R.C. with transportation, which is required by B.R.C. s IEP, has denied B.R.C. a FAPE and deprives her of equal access to her education as her non disabled peers.

Claims

42. The IDEA and its implementing regulations require that a free appropriate public education is available to all children with disabilities residing in the State 20 .S.C. 1412(a)(1)(A) *see also* 20 .S.C. 1400(d)(1)(A). In the District, this obligation extends to all students with disabilities ages three to twenty-two. E.D.C.M.R. 3002.1(a).
43. In order to provide a FAPE, the provision of special education and related services, including transportation, must be made in conformity with each student's IEP. 20 .S.C. 1401() (D).
44. As set forth, OSSE failed to implement B.R.C.'s IEP by failing to provide consistent, reliable, and appropriate transportation to B.R.C. This failure deprives B.R.C. of a FAPE.
45. As set forth, OSSE is failing to provide consistent, reliable, and appropriate transportation to students similarly situated to B.R.C. This failure has deprived these similarly situated students of a FAPE.

Relief

46. As relief for OSSE's denial of a FAPE to B.R.C., Petitioner respectfully requests that this Hearing Officer
- a. Declare OSSE's actions denied B.R.C. a FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law
 - b. Order OSSE to provide consistent, reliable, and appropriate transportation to and from school in conformity with B.R.C.'s IEP

- c. Order OSSE to authorize comprehensive independent education evaluations for B.R.C., including but not limited to vocational evaluations, psychoeducational evaluations, speech language evaluations, assistive technology evaluations, occupational therapy evaluations, and neuropsychological evaluations
- d. Award compensatory education services including tutoring and related services from a provider of Petitioner's choice
- e. Award reimbursement for the costs of transporting B.R.C. to and from school on the days in which Petitioner's were forced to provide transportation because of OSSE's failures
- f. Order OSSE to effectively communicate with B.R.C.'s family regarding any changes to special education transportation including, but not limited to, changes to the student's route, delays, and cancellations
- g. Declare OSSE's actions denied B.R.C. and all similarly situated students a FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law
- h. Order OSSE to develop and implement adequate and effective policies to provide B.R.C. and other students with disabilities eligible for transportation services as part of their IEPs with consistent, reliable, and safe transportation to and from school
- i. Order OSSE to provide consistent, reliable, and appropriate transportation to and from school to students similarly situated to B.R.C. in conformity with their IEPs

- . Order OSSE to effectively communicate with the families of students similarly situated to B.R.C. regarding any changes to special education transportation including, but not limited to, changes to the students route, delays, and cancellations
- k. Award reasonable attorney's fees and costs incurred during the litigation of this complaint
- l. Award reasonable expert fees and costs incurred during the litigation of this complaint
- m. Award other relief as the Hearing Officer may deem appropriate.

Respectfully submitted,

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EXHIBIT H

**DISTRICT OF COLUMBIA
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OFFICE OF DISPUTE RESOLUTION
1050 First Street NE, 3rd Floor
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VERONICA GUERRERO,
On behalf of A.F.,)
 Petitioner,)
 v.)
)
)
 and)
)
DISTRICT OF COLUMBIA)
OFFICE OF THE STATE)
SUPERINTENDENT OF)
EDUCATION,)
)
 Respondents.)
_____)

ADMINISTRATIVE DUE PROCESS COMPLAINT

Introduction

1. The District of Columbia Office of State Superintendent of Education (“OSSE”) is systemically failing to provide consistent, reliable, and safe school transportation to students with disabilities who require transportation in order to access an appropriate education. School bus routes are cancelled and severely delayed, and on any given day, students may be dropped off hours after school starts or not be picked up at all.

2. As detailed below, OSSE’s actions and inactions are violating the law and causing severe and irreparable harm to Petitioner’s son, A.F. As a result of OSSE’s failure to provide consistent, reliable, and safe transportation, A.F. was unable to attend school for approximately fifteen (15) days in the 2022-2023 school year, and was denied a Free Appropriate Public Education (“FAPE”). Beyond these absences, there were numerous instances where the bus was

late or delayed, forcing the Petitioner to drive A.F. to school. This resulted in A.F. arriving late and missing part of his school day. Consequently, A.F. missed critical education and related services, including physical and occupational therapy, all of which are necessary for him to receive a FAPE as guaranteed under the Individuals with Disabilities Education Act (“IDEA”).

3. Moreover, OSSE Department of Transportation’s (“DOT”) failure to provide transportation violates its responsibilities as a State Educational Agency (“SEA”). *See* 34 C.F.R. § 300.277(b) (requiring the SEA to provide special education and related services as the SEA considers appropriate provided the services are provided in accordance with this section.)

4. Additionally, OSSE DOT’s failure to provide transportation to A.F. deprives him of equal access to his education as his typically developing peers, in violation of the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act (“Section 504”), and the DC Human Rights Act (DCHRA).

5. While OSSE’s failures during the 2022-2023 school year are particularly egregious, they are not the extent of OSSE’s failures with relation to A.F. OSSE DOT continues to fail to provide appropriate, safe, consistent transportation services to A.F. and these failures deprive him of a FAPE.

6. OSSE’s Division of Transportation (“OSSE DOT”) serves over 3,800 students with disabilities, more than half of whom reside in Wards 7 and 8. *Government of the District of Columbia, OSSE Responses to Fiscal Year 2022 Performance Oversight Questions*, p. 231 (Feb. 24, 2023.) As of Jan. 31, 2023, 66 students in foster care are receiving OSSE-DOT transportation services. *Government of the District of Columbia, OSSE Responses to Fiscal Year 2022 Performance Oversight Questions*, p. 72 (Feb. 24, 2023).

7. OSSE's ongoing violations of the law also deprive all students with disabilities aged 3-22 who are eligible for IDEA services who (1) were, as of or after August 31, 2021, are, or will be in the future entitled to receive transportation related services from OSSE DOT, and (2) did not, are not, or will not receive transportation services from OSSE DOT of a FAPE. These students are similarly deprived of equal access to their education as their non-disabled peers in violation of the ADA and DCHRA.

8. This failure, which has been building since the termination of the *Petties*¹ consent decree, became an acute crisis in the beginning of January 2023. At that time, OSSE changed its bus routing system, throwing transportation for students with disabilities into disarray, with hundreds of students over multiple routes experiencing significant delays and cancellations. The delays and cancellations continue to this day.

9. As detailed below, OSSE's actions and inactions are violating the law, and causing severe and irreparable harm to A.F. As a result of OSSE's failure to provide consistent, reliable, and safe transportation, A.F. has been, and is continuing to be, denied a FAPE.

10. Petitioner, on behalf of A.F., and similarly situated students, seeks declaratory, injunctive, and other equitable relief ordering Defendants to immediately provide appropriate transportation for eligible special education students and other relief described below.

¹ On January 29, 1995, in the U.S. District Court for the District of Columbia, minor students eligible for special education and their parents sued the District's public school system, sought a preliminary injunction, and sought to certify a class of students with disabilities who were entitled to or received special education instruction and services from the District of Columbia Public Schools ("DCPS"). *Petties v. District of Columbia*, 881 F. Supp. 63 (D.D.C. 1995). One issue in the case was transportation for IDEA eligible students. *Petties v. District of Columbia*, 888 F. Supp. 165 (D.D.C. 1995). In August of 2000, the parties entered into a consent order whereby Defendant was obligated to hire a "transportation coordinator" and, in 2002, a Special Master was appointed to oversee special education transportation in the District. *Petties v. District of Columbia*, 211 F. Supp.2d 141 (D.D.C. 2002). The Special Master remained in place for ten years until the case was dismissed in December 2012.

Jurisdiction

11. Petitioner has jurisdiction to bring this Complaint under the IDEA, 20 U.S.C. § 1400 *et seq.*, its implementing regulations at 34 C.F.R. Part 300, and the District of Columbia Municipal Regulations, D.C. MUN. REG. tit. 5 § 3000 *et seq.* This Office of Dispute Resolution has jurisdiction pursuant to the IDEA, 20 U.S.C. §§ 1400-1487, as amended in 2004, and 28 U.S.C. § 1331.

12. Petitioner Veronica Guerrero is the parent of A.F., a 14-year-old District resident with a disability. A.F. is eligible for special education and related services under the IDEA as a student with autism as defined in 34 C.F.R. § 300.8(c)(9). A.F.'s current Individualized Education Program (IEP), dated May 10, 2023 (hereinafter, "May 2023 IEP"), provides for transportation as a related service required due to his medical conditions. Specifically, A.F. requires specialized equipment which includes a ramp lift, a specialized seatbelt and harness, a stroller and a dedicated aide throughout the entire duration on the bus for A.F.'s safety

Facts

OSSE DOT Systemic Failures

13. OSSE DOT, according to their website, is supposed to provide safe, reliable, and efficient transportation services that positively support learning opportunities for eligible students from the District of Columbia, yet since at least the beginning of the 2022-23 school year, hundreds of students, including A.F., have not been provided transportation services as required.

14. At the start of the 2022-2023 school year, OSSE adopted a new school bus routing system. According to OSSE, that new routing system failed to provide reliable transportation for students.

15. Transportation worsened after January 9, 2023. On January 9, 2023, OSSE again changed the school bus routing system, reverting to the routing system that had been used in prior school years, supposedly to respond to the problems under the newly adopted system. However, this change resulted in massive disruptions to school bussing for special education students.

16. Each day since January 9, a significant number of bus routes have been delayed or cancelled. OSSE DOT is tracking daily bus delays and cancellations, and posting these daily on their website, Daily DOT Updates, <https://osse.dc.gov/page/daily-dot-updates>, and on their X (formerly known as Twitter) feed, X, <https://twitter.com/OSSEDC>.

17. The number and type of service interruptions vary daily. For example, on January 17, 106 morning routes were impacted, and students experienced up to 90-minute delays and cancellations for morning services. On January 26, 77 morning routes were impacted, including two routes which were unable to be serviced at all. On the same day, two afternoon routes were cancelled, and thirteen afternoon routes were significantly delayed.

18. From the week of January 16 through the week of February 13, OSSE's reports demonstrate that the daily average number of late morning routes ranged from 52-99.

19. OSSE's own reports show that students are arriving late to school more than 19% of the time. *Government of the District of Columbia, OSSE Responses to Fiscal Year 2022 Performance Oversight Questions*, p. 240 (Feb. 24, 2023), OSSE DOT's failure to provide consistent, reliable, and safe transportation services is well-documented in the news.²

² See Sam P.K. Collins, "D.C. Parents Demand Clarity from OSSE on Continuing Bus Delays," *The Washington Informer* (Mar. 14, 2023); Delia Goncalves, "'We deserve better' DC parents say unreliable bus service harms students with special needs," *WUSA* (Mar. 1, 2023); Mariel Carbone, "DC parents say school bus delays, cancellations persist weeks into new year," *DC News Now* (Feb. 15, 2023); Theresa Vargas, "D.C. is failing disabled students who rely on buses to get to school," *The Washington Post* (Feb. 8, 2023); John Henry, "Weeks later, DC's school bus delays persist," *WUSA* (Jan. 30, 2023); Sam P.K. Collins, "Bus Service Changes Highlight Woes of Special-Needs Students," *The Washington Informer* (Jan. 25, 2023); Martin R4B-23-0306 – OSSE DOT Oversight Page 2 Austeruhle, "Students With Disabilities Face Barrage Of School Bus Delays In D.C.," *WAMU* (Jan. 20, 2023); Sam

20. Parents and students face uncertainty about when – or whether – their legally-mandated transportation will show up. Parents are directed to track their student’s bus through an OSSE DOT supported website, which often provides inaccurate information relating to bus arrivals and departures.

OSSE DOT’s Failure to Provide Safe, Reliable Efficient Transportation to Petitioner

21. A.F. attends St. Coletta of Greater Washington and lives at 6030 8th St NW Washington, DC 20011.

22. A.F. was first identified as a student with a disability eligible for services under the IDEA when he was approximately three (3) years old and was diagnosed with Autism Spectrum Disorder. A.F. also has a seizure disorder.

23. St. Colleta’s is an ungraded school. Based on the May 2023 IEP, A.F. receives specialized instruction outside general education for 28.5 hours per week; speech therapy for 1 hour per week; occupational therapy for 30 minutes per week; physical therapy for 30 minutes per month; and behavior support services 30 minutes per month. A.F. is also required to have assistive technology for communication through a high-tech speech-generative device (SGD) with English and Spanish languages. A.F. is able to walk without physical assistance throughout his school environment. However, A.F. requires constant supervision and verbal encouragement. At times, A.F. will lower himself to the floor in refusal or will climb on nearby equipment in an unsafe manner. The IEP provides for a dedicated on-school aide for 30 hours per week.

Ford, “Bus assigned to take special needs DC student to school regularly late; mother fed up,” WJLA (Sept. 19, 2022); Sam Ford, “DC mom spends \$80/day to take son from Southeast to special ed classes in Georgetown,” WJLA (Sept. 1, 2022); Theresa Vargas, “For disabled D.C. students, an uncertain wait on school buses remains,” The Washington Post (Aug. 31, 2023); Mariel Carbone, “DC parents worry busing blunders will continue into new school year,” DC News Now (Aug. 25, 2023).

24. A.F.'s May 2023 IEP also provides for special transportation as a related service. The vehicle must be equipped with a ramp lift and a specialized seatbelt. The IEP further specifies that A.F. must be transported in an adaptive stroller and a harness to and from school to ensure he remains seated, as A.F. will sometimes attempt to get out of his seat belt or harness. The IEP also requires a dedicated aide to sit next to A.F. to ensure his safety on the bus to and from school and to provide him with support throughout his entire duration on the bus. The IEP team recommends that this dedicated aide is trained in order to positively support A.F.'s transition to and from the bus. The May 2023 IEP specifies that A.F. should not ride the bus for longer than one (1) hour, with five (5) minutes of additional wait time/hand to hand transfer.

25. Transportation is a critical related service that enables A.F. to receive a FAPE due to A.F.'s health conditions. In addition to autism, A.F. also has a seizure disorder which requires special transportation in an adaptive stroller, and a dedicated aide sitting next to A.F. to ensure his safety on the bus to and from school.

26. A.F. receives transportation through OSSE DOT. For Petitioner, OSSE DOT transportation was inconsistent and unreliable throughout the 2022-23 school year. Based on this, Petitioner also reasonably assumes that OSSE DOT transportation will be inconsistent and unreliable in the current 2023-2024 school year. To date, for the 2023-24 school year, the bus has arrived late or failed to show up on at least three (3) separate occasions.

School Year 2022-2023

27. For the 2022-2023 school year, A.F.'s IEP, dated May 3, 2022 (hereinafter, "May 2022 IEP"), mandated that he receive special education transportation with a specialized seatbelt and harness. The May 2022 IEP also recommended a dedicated aide sitting next to A.F. throughout

the entire duration on the bus to ensure his safety to and from school and ensure that A.F.'s remains in the harness.

28. Near the start of the 2022-23 school year, A.F. had a seizure while riding on the bus. A.F. has had a diagnosis of seizure disorder, and OSSE DOT has been aware of this, but OSSE DOT has not implemented a plan to manage any seizures that A.F. might suffer while riding the bus. The bus driver informed A.F.'s school of the incident, but neither the driver nor OSSE DOT informed Petitioner. Petitioner became aware of this incident through A.F.'s school and OSSE failed to inform Petitioner of any actions taken to care for A.F. on the bus. Notably, even after Petitioner complained to OSSE DOT about this incident through the Parent Call Center, OSSE DOT took no action. Petitioner is not aware of any seizure plan that has been or will be implemented to address A.F.'s diagnosis.

29. Since January 1, 2023, A.F.'s special education transportation has been late or cancelled multiple days. As a result of OSSE DOT's bus failing to arrive or pick up A.F. in a timely manner, based on current school attendance records for school year 2022-2023, A.F. was absent for four (4) days of school, arrived late on multiple occasions and as a result missed required therapy sessions.

30. Beyond these absences, there were instances where the bus was late or delayed, forcing the Petitioner to drive A.F. to school. This resulted in A.F. arriving late and missing part of his school day. Even on days when the bus arrived on time, on several occasions, A.F. was unable to ride on the bus because the bus did not have the equipment and harness required for A.F. to safely ride to and from school. For example, on August 29, 2022, school attendance records show that the bus arrived on time but it did not have the appropriate belt to attach the required

harness, causing A.F. to miss school for that day. As a result of OSSE' DOT failure in providing appropriate and safe school transportation, A.F. was unable to attend school that day.

31. OSSE DOT's bus frequently dropped A.F. off late at home and caused A.F. to be in on the bus for many multiple hours. For example, on March 8, 2023, the school dismissed the students at 12:00 p.m. and A.F. was not dropped off at home until 2:00 p.m. As a result of OSSE DOT's bus dropping A.F. off at home late after school, A.F. has missed physical therapy on approximately six (6) occasions and occupational therapy on approximately three (3) occasions. These are essential services for his development.

32. Besides the unreliability of OSSE DOT's bus, the bus provided to A.F. during 2023 does not have a working air conditioner, which causes A.F. to arrive home sweaty, overheated, and upset.

School Year 2023-2024

33. For the school year 2023-2024, A.F.'s May 2023 IEP mandates he receive transportation through OSSE DOT with an aide accompanying him to provide for his medical needs. The aide must also ensure his safety on the bus to and from school, since A.F. will sometimes attempt to get out of the seat belt/harness required for his transportation. In addition to the required harness and adaptive stroller listed in the May 2022 IEP, the May 2023 IEP indicates that A.F.'s needs transportation equipped with a ramp lift, and requires hand to hand support with 5 additional minutes of wait time. The IEP also establishes that A.F. should not ride the bus for longer than one (1) hour. Given the prior failures of OSSE transportation, Petitioner is very concerned about the reliability and safety of the OSSE DOT transportation.

34. OSSE's failures to provide appropriate transportation have continued in the 2023-2024 school year. As an example, on September 11, 2023, the bus did not show up on time to pick

up A.F.; Petitioner drove A.F. to school in order to avoid missing additional school days. The bus eventually showed up at Petitioner's home, but Petitioner had already left to drive A.F. to school to ensure that A.F. was on time for school. On November 28 and 29, 2023, the bus did not arrive at all. OSSE's failure forced Petitioner to drive A.F. to school and penalized A.F. by marking him as late on both days. According to current school attendance records, since the beginning of the 2023-2024 school year, on at least three (3) separate occasions the bus has not shown up at A.F.'s home, which has caused him to miss school entirely.

35. A.F. also continues to spend more time than permitted by his IEP on the bus. The IEP mandates that A.F. cannot be on the bus for longer than one hour. On September 21, 2023, the bus dropped off A.F. at home at almost 6:00 p.m., and the school day had ended at 2:45 p.m., which means that he spent more than three (3) hours on the bus.

Harms to A.F.

36. OSSE DOT's transportation issues negatively affect his meaningful progress in school and therapy. As a result of OSSE's failure to provide transportation, A.F. is negatively impacted and disappointed each time he misses school. A.F. has trouble sleeping, gets aggressive and upset when he misses school and does not have a routine. In addition to the hours of school that A.F. has missed when the bus was late, A.F. has missed approximately fifteen (15) of school because OSSE DOT would not provide adequate transportation, including the required harness, which he needs to be safely transported. Because of OSSE DOT's failures, A.F. frequently arrives at school late, misses valuable classroom time, and is dropped off at home late after school, missing physical and occupational therapy sessions.

37. OSSE's failure to provide transportation has also impacted Petitioner's family. At times, Petitioner's family has had to provide transportation to A.F. on days when OSSE DOT fails to provide timely transportation. Petitioner has to drive forty-five (45) minutes each way to take A.F. to school after taking another child to a school near their home. Petitioner is constantly worried about A.F.'s safety on the bus due to the poor conditions and unreliable transportation offered by OSSE DOT.

38. The failure to provide A.F. with transportation, which is required by A.F.'s IEP, has denied A.F. a FAPE.

OSSE's Failure to Provide Notice to Petitioner in Spanish

39. OSSE is required to provide the prior written notice and the procedural safeguards notice, in the native language of the parent. 34 C.F.R. §§ 300.504(c) and (d). In addition, Section 300.304(c)(1)(ii), requires that assessments and other evaluation materials used to assess a child be provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do, unless it is clearly not feasible to so provide or administer. In addition, Washington, D.C. Public Schools (DCPS) regulations require that parents are given a meaningful opportunity to participate in their child's educational programming regardless of their ability to speak English. *See* D.C. Code §§ 2-1931, et seq.

40. A.F. and his family, including Petitioner, are native Spanish speakers. OSSE has been aware that A.F. and his family are native Spanish speakers since 2011, when A.F. was first identified as a student eligible for services under the IDEA.

41. OSSE's knowledge of Petitioner's language needs is evident because OSSE sends selected communications to Petitioner in Spanish.

42. Yet, OSSE sent and continues to send Petitioner critical busing updates in English. These texts provide critical information to Petitioner about A.F.'s bussing services including information about early pick-ups, delays, cancellations, and how to seek reimbursement in the event Petitioner must secure other transportation for A.F. to attend school.

43. During a meeting to discuss transportation on or about April of 2023, OSSE disclosed that it does not have the capacity to text in any language other than English.

44. This failure has negatively affected A.F.'s education and deprived him of a FAPE because Petitioner does not know about changes to his bussing services and so he has missed the bus and school as a result.

Claims

45. The IDEA and its implementing regulations require that “[a] free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21” 20 U.S.C. § 1412(a)(1)(A). See also 20 U.S.C. § 1400(d)(1)(A); 5-E D.C.M.R. § 3002.1(a).

46. In order to provide a FAPE, the provision of special education and related services, including transportation, must be made in conformity with each student's IEP. 20 U.S.C. § 1401(9)(D).

47. As set forth, OSSE is failing to implement A.F.'s IEPs for the statutory period by failing to provide consistent, reliable, and appropriate transportation to A.F. This failure deprives A.F. of a FAPE.

Relief

Individual Relief

48. As relief for OSSE's denial of a FAPE to A.F., Petitioner respectfully requests that this Hearing Officer:

- a. Declare OSSE's actions and inactions denied A.F. a FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law;
- b. Order OSSE to provide consistent, reliable, and appropriate transportation to and from school in conformity with A.F.'s IEP.
- c. Order OSSE to authorize comprehensive independent education evaluations for A.F. including but not limited to vocational evaluations, psychoeducational evaluations, speech-language evaluations, assistive technology evaluations, occupational therapy evaluations, and neuropsychological evaluations.
- d. Award compensatory education services including tutoring and related services from a provider of Petitioner's choice;
- e. Order OSSE to effectively communicate with A.F.'s family regarding any changes to special education services and transportation including, but not limited to, changes to the student's route, delays, and cancellations in Spanish;
- f. Declare OSSE's actions denied A.F. and all similarly situated students a FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law;
- g. Order OSSE to develop and implement adequate and effective policies to provide A.F. and other students with disabilities eligible for transportation services as part of their IEPs with consistent, reliable, and safe transportation to and from school;
- h. Order OSSE to provide all communications in languages as needed by the parent to be able to meaningfully participate
- i. Award reasonable attorneys' fees and costs incurred during the litigation of this Complaint;
- j. Award reasonable experts' fees and costs incurred during the litigation of this Complaint; and
- k. Award other relief as the Hearing Officer may deem appropriate.

Respectfully submitted,

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EXHIBIT I

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION**

1000 First Street NE, 3rd Floor
Washington, D.C. 20002

Joann McCray,
On behalf of .C.,)
Petitioner,)
v.)
)
)

)
DISTRICT OF CO MBIA)
OFFICE OF THE STATE)
SUPERINTENDENT OF)
ED CATION,)
)
Respondent.)
)

ADMINISTRATIVE DUE PROCESS COMPLAINT

Introduction

1. The District of Columbia Office of State Superintendent of Education (OSSE) is systemically failing to provide consistent, reliable, and safe school transportation to students with disabilities who require transportation in order to access an appropriate education and receive a free appropriate public education (FAPE). School bus routes are cancelled and severely delayed, and on any given day, students may be dropped off hours after school starts or not be picked up at all.

2. OSSE s Division of Transportation (OSSE DOT) serves all District students who require special education transportation. This equates to over 3,000 students with disabilities, more

than half of whom reside in Wards 4 and 5.¹ Sixty six of those students are students in foster care.²

3. As detailed below, OSSE's actions and inactions are violating the law and causing severe and irreparable harm to Petitioner's son, J.C., a student with autism. As a result of OSSE's failure to provide consistent, reliable, and safe transportation, J.C. has missed countless hours of school that he will never be able to get back and has denied a Free Appropriate Public Education (FAPE). J.C. missed critical education and related services, all of which are necessary for J.C. to receive FAPE as guaranteed under the Individuals with Disabilities Education Act (IDEA).

4. Having a reliable routine and consistent schedule can create a sense of security for children with autism. When J.C.'s routine is disrupted, he becomes easily agitated and confused as to why his day is not going according to routine. The disruptions to his routine can cause him to become dysregulated and interfere with his ability to learn.

Moreover, OSSE DOT's failure to provide transportation violates its responsibilities as a State Educational Agency (SEA). See 34 C.F.R. 300.2 (b) (requiring the SEA to provide special education and related services as the SEA considers appropriate provided the services are provided in accordance with this section.).

This failure, which has been building since the termination of the *Petties* consent decree, became an acute crisis in the beginning of January 2023 when OSSE changed its bus

¹ Government of the District of Columbia, OSSE Responses to Fiscal Year 2022 Performance Oversight Questions, p. 231 (Feb. 24, 2023.)

² Government of the District of Columbia, OSSE Responses to Fiscal Year 2022 Performance Oversight Questions, p. 2 (Feb. 24, 2023.)

³ On January 2, 2019, in the U.S. District Court for the District of Columbia, minor students eligible for special education and their parents sued the District's public school system, sought a preliminary injunction, and sought to certify a class of students with disabilities who were entitled to or received special education instruction and services from the District of Columbia Public Schools ("DCPS"). *Petties v. District of Columbia*, 1 F. Supp. 3 (D.D.C. 19). One issue in the case was transportation for IDEA eligible students. *Petties v. District of Columbia*, 1 F.

routing system, throwing transportation for students with disabilities into disarray, with hundreds of students over multiple routes experiencing significant delays and cancellations to this day.

. The IDEA and its implementing regulations require that a free appropriate public education is available to all children with disabilities residing in the State... 20 U.S.C. 1412(a)(1)(A). *See also* 20 U.S.C. 1400(d)(1)(A). In the District, this obligation extends to all students with disabilities ages three to twenty-two. E.D.C.M.R. 3002.1(a). In order to provide FAPE, the provision of special education and related services, including special education transportation must be made in conformity with each student's IEP. 20 U.S.C. 1401(c)(1)(D).

. Additionally, OSSE DOT's failure to provide transportation to these students is depriving them of equal access to their education as their typically developing peers, in violation of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504), and the DC Human Rights Act (DCHRA).

. OSSE's ongoing violations of the law also denies FAPE to all students with disabilities aged 3-22 who are eligible for IDEA services who (1) were, as of or after August 31, 2021, are, or will be in the future entitled to receive transportation related services from OSSE DOT, and (2) did not, or do not in the future receive transportation services from OSSE DOT.

10. Petitioner, on behalf of DC and similarly situated students, seeks declaratory, injunctive, and other equitable relief ordering Respondents to immediately provide appropriate transportation for eligible special education students and other relief described below.

J Jurisdiction

Supp. 1 (D.D.C. 1999). In August of 2000, the parties entered into a consent order whereby Defendant was obligated to hire a transportation coordinator and, in 2002, a Special Master was appointed to oversee special education transportation in the District. *Petties v. District of Columbia*, 211 F. Supp.2d 141 (D.D.C. 2002). The Special Master remained in place for ten years until the case was dismissed in December 2012.

11. Petitioner has jurisdiction to bring this Complaint under the IDEA, 20 U.S.C. 1400 *et seq.*, its implementing regulations at 34 C.F.R. Part 300, and the District of Columbia Municipal Regulations, D.C. MUN. REG. tit. 3000 *et seq.* This Office of Dispute Resolution has jurisdiction pursuant to the IDEA, 20 U.S.C. 1400-1414, as amended in 2004, and 2 D.C. 1331.

Parties

12. Petitioner Joann McCray is the parent of J.C., who is an 11 year old District resident with a disability. J.C. is eligible for special education and related services under the IDEA as a student with autism as defined in 34 C.F.R. 300. (c)(1). J.C. is enrolled at Children's Guild Public Charter School and is in sixth grade. J.C. has an IEP that provides transportation as a related service.

13. Respondent OSSE is the State Education Agency and bears the ultimate responsibility for ensuring FAPE is made available to eligible District residents. *See* 34 C.F.R. 300.101. Through its Division of Transportation (DOT), OSSE provides transportation to eligible students.

Facts

14. J.C. attends school at Children's Guild Public Charter School and lives at 3000 Stanton Rd Southeast Apt 101, Washington, DC 20020.

15. J.C. was first identified as a student with a disability eligible for services under the IDEA on January 1, 2014. Since that time, and at all times relevant to this complaint, J.C.'s IEP required Respondent to provide special education transportation as a related service.

16. Transportation is a critical related service that enables J.C. to receive FAPE because J.C. cannot get to school and therefore cannot access his education without it.

OSSE DOT Systemic Failures

19. OSSE DOT, according to their website, is supposed to provide safe, reliable, and efficient transportation services that positively support learning opportunities for eligible students from the District of Columbia, yet each day hundreds of students, including S.E., have been left behind.

20. At the start of the 2022-2023 school year, OSSE adopted a new school bus routing system. According to OSSE, that new routing system failed to provide reliable transportation for students.

21. On January 1, 2023, OSSE again changed the school bus routing system, reverting back to the routing system that had been used in prior school years, supposedly to respond to the problems under the newly adopted system. However, this change resulted in massive disruptions to school bussing for special education students.

22. Each day since January 1, a significant number of bus routes have been delayed or cancelled. OSSE DOT is tracking daily bus delays and cancellations, and posting these daily on their website, Daily DOT updates, <https://osse.dc.gov/page/daily-dot-updates>, and on their Twitter feed, <https://twitter.com/OSSEDC>.

23. The number and type of service interruptions vary daily. For example, on January 1, 10 morning routes were impacted and students experienced up to 60 minutes delays and cancellations for morning services. On January 2, 11 morning routes were impacted, including two routes which were unable to be serviced at all. On the same day, two afternoon routes were cancelled and thirteen afternoon routes were significantly delayed. These daily disruptions are ongoing.

22. From the week of January 1 through the week of February 13, OSSE's reports demonstrate that the daily average number of late morning routes ranged from 2 . OSSE's own reports show that students are arriving late to school more than 1 of the time.⁴ OSSE DOT's failure to provide consistent, reliable, and safe transportation services is well documented in the news, including coverage of the ongoing systemic failures impacting students with disabilities during the 2023-2024 school year.

23. Parents and students face uncertainty about when or whether their legally mandated transportation will show up. Parents are unable to track their student's bus through GPS and must rely on information provided by OSSE to know if and when their bus will show up. This is highly disruptive for students and parents alike.

Failure of OSSE DOT to Provide Safe, Reliable Efficient Transportation to J.C. Derives J.C. of a FAPE

24. Since December 2022, J.C. attends Children's Guild Public Charter School. Prior to that he attended District of Columbia Public Schools Hardy Middle School. At all times relevant to this complaint, J.C. resides at 300 Stanton Road Southeast Apartment 101, Washington, DC 20020

⁴Government of the District of Columbia, OSSE Responses to Fiscal Year 2022 Performance Oversight Questions, p. 240 (Feb. 24, 2023).

See Sam P. Collins, D.C. Parents Demand Clarity from OSSE on Continuing Bus Delays, *The Washington Informer* (Mar. 14, 2023); Delia Goncalves, We deserve better: DC parents say unreliable bus service harms students with special needs, *WASA* (Mar. 1, 2023); Mariel Carbone, DC parents say school bus delays, cancellations persist weeks into new year, *DC NewsNow* (Feb. 1, 2023); Theresa Vargas, D.C. is failing disabled students who rely on buses to get to school, *The Washington Post* (Feb. 1, 2023); John Henry, Weeks later, DC's school bus delays persist, *WASA* (Jan. 30, 2023); Sam P. Collins, Bus Service Changes Highlight Woes of Special Needs Students, *The Washington Informer* (Jan. 2, 2023); Martin R4B 23-030 OSSE DOT Oversight Page 2; Austermuhle, Students With Disabilities Face Barrage Of School Bus Delays In D.C., *WAMU* (Jan. 20, 2023); Sam Ford, Bus assigned to take special needs DC student to school regularly late: mother fed up, *WASA* (Sept. 1, 2022); Sam Ford, DC mom spends 10 day to take son from Southeast to special ed classes in Georgetown, *WASA* (Sept. 1, 2022); Theresa Vargas, For disabled D.C. students, an uncertain wait on school buses remains, *Washington Post*, (Aug. 31, 2023).

2 . Transportation is a critical related service that enables .C. to receive FAPE because .C. cannot get to school and therefore cannot access his education without it.

2 . For Petitioner, OSSE DOT transportation has been inconsistent and unreliable throughout the 2021 2022, 2022 2023, and 2023 2024 school years. Based on this, Petitioner also reasonably assumes that OSSE DOT transportation will be inconsistent and unreliable in the future.

School year 2021 2022

2 . .C. s IEP for the 2021 2022 school year mandated that he receive transportation via bus through OSSE DOT.

2 . The bus arrived late at least once a week, disrupting .C. s schedule and causing him to regress due to missing his special education and related services and depriving him of a FAPE.

2 . This disruption significantly increased during the 2022 2023 school year.

School year 2022 2023

30. .C. s IEP for the 2022 2023 school year mandated that he receive transportation via bus through OSSE DOT.

31. On December , 2022, .C. transferred from Hardy Middle School to Children s Guild Public Charter School under an emergency transfer. OSSE DOT informed Petitioner that it takes ten days for a student s bus stop information to be uploaded into their system, thus Petitioner would have to find alternative transportation for .C. until the completion of the ten day period. However, following completion of such 10 day period, from the end of December 2022 until the middle of January 2023, OSSE DOT claimed that .C. s bus stop was not uploaded into their

system, despite Children's Guild Public Charter School submitting J.C.'s bus stop into the system. As a result, J.C. missed critical education and related services and was deprived of a FAPE.

32. Since then, J.C.'s special education transportation was consistently inconsistent. Throughout the 2022-2023 school year the bus would randomly arrive more than forty minutes late at least two to three times a week. School began at 8:30am, the bus was scheduled to arrive between 7:22-7:24am, however it often arrived between 7:11-7:20am causing J.C. to arrive at school after 10:00am and miss most morning classes.

33. As a result of this missed or late transportation, J.C. has had several breakdowns, during which J.C. screams and flails his body. When these incidents occur, J.C.'s education is significantly disrupted and OSSE DOT's failure to provide reliable and timely transportation deprives him of a FAPE.

34. On some occasions the bus would arrive before its scheduled time. Whenever the bus arrives early it is supposed to stay until 7:22am, however the bus would not always wait until 7:22am and instead left J.C. behind on multiple occasions causing J.C. to miss school or arrive very late due to Petitioner having to arrange alternative transportation.

35. As a result of a lack of safe, reliable, appropriate special education transportation, J.C. missed his special education and related services and was deprived of a FAPE.

School Year 2023-2024

36. J.C.'s 2023-2024 school year IEP continues to mandate that he receive transportation through OSSE DOT. Unfortunately, the lack of appropriate special education transportation continues as well. J.C.'s transportation continues to arrive much earlier or much later than designated, thus Petitioner is unable to predict when the bus will arrive, resulting in

consistent disruptions in .C.'s schedule due to OSSE DOT's failure to arrive or pick up .C. in a timely manner.

3 . As a result of OSSE's failure to provide transportation, .C. has missed multiple full days of school and many morning classes, depriving him of a FAPE.

3 . As a child with autism, .C.'s routine is a vital part of ensuring he has a successful day. .C. wants to attend school but is traumatized each time he misses class due to OSSE DOT failures to provide appropriate transportation. .C.'s behavior has been significantly impacted by the inconsistent transportation schedule. If there is a disruption on the bus, .C. will have a meltdown, often biting and kicking others. .C. did not engage in this type of behavior prior to the disruptions caused by OSSE DOT. When .C. arrives at school late, he has a meltdown because he misses breakfast and morning meetings and is unavailable for learning, depriving him of a FAPE.

3 . OSSE's failure to provide transportation has also impacted Petitioner's family. The disruptions to .C.'s routine were so profound that Petitioner often had to resort to a ride sharing service to drive .C. to school when OSSE DOT failed to provide timely transportation. The ridesharing service costs approximately \$10 per day and Petitioner has not received any reimbursement from OSSE DOT for those costs. Petitioner cannot get a job that starts before 7:00am because Petitioner does not know if the bus is going to arrive to pick up .C. on time, and Petitioner cannot work late because Petitioner has to be home for the bus to drop off .C. Ultimately, Petitioner felt no choice but to purchase a car so that .C. could be driven to school if needed instead of paying nearly \$10 a day for a ridesharing service.

40. The failure to provide .C. with transportation, which is required by .C.'s IEP, has denied .C. FAPE.

41. Given the prior failures of OSSE transportation, Petitioner is concerned about the reliability of the OSSE DOT transportation in the future.

Claims

42. The IDEA and its implementing regulations require that a free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21 20 .S.C. 1412(a)(1)(A). See also 20 .S.C. 1400(d)(1)(A) E D.C.M.R. 3002.1(a).

43. In order to provide FAPE, the provision of special education and related services, including transportation, must be made in conformity with each student's IEP. 20 .S.C. 1401() (D).

44. As set forth, OSSE is failing to implement .C.'s IEP by failing to provide consistent, reliable, and appropriate transportation to .C. This failure deprives .C. of FAPE.

45. OSSE is systemically failing to provide FAPE to similarly situated students to .C. with IEPs who require special education transportation. These systemic failures deprive similarly situated students of a FAPE.

Relief

Individual Relief

46. As relief for OSSE's denial of FAPE to .C., Petitioner respectfully requests that this Hearing Officer

- a. Declare OSSE's actions denied .C. FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law
- b. Order OSSE to provide consistent, reliable, and appropriate transportation to and from school in conformity with .C.'s IEP

- c. Order OSSE to authorize comprehensive independent education evaluations for .C. including but not limited to vocational evaluations, psychoeducational evaluations, speech language evaluations, assistive technology evaluations, occupational therapy evaluations, and neuropsychological evaluations
- d. Award compensatory education services including tutoring and related services from a provider of Petitioner's choice
- e. Award reimbursement for cost of transporting .C. to and from school on the days in which Petitioner was forced to provide transportation because of OSSE's failures
- f. Award reasonable attorneys' fees and costs incurred during the litigation of this Complaint and
- g. Award other relief, as the Hearing Officer may deem appropriate

Systemic Relief

- 4. As relief for OSSE's denial of FAPE to .C. and all similarly situated students,

Petitioner respectfully requests that this Hearing Officer

- a. Declare OSSE's actions denied .C. and all similarly situated students FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law
- b. Order OSSE to develop and implement adequate and effective policies to provide .C. and other students with disabilities eligible for transportation services as part of their IEPs with consistent, reliable, and safe transportation to and from school
- c. Order OSSE to provide adequate, reliable, safe, appropriate special education transportation to .C. and similarly situated students
- d. Award reasonable attorneys' fees and costs incurred during the litigation of this Complaint and
- e. Award other relief as the Hearing Officer may deem appropriate.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CRYSTAL ROBERTSON, *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

No. 1:24-cv-00656-PLF

ORDER

Upon consideration of Plaintiffs' Motion for a Preliminary Injunction (Motion), Defendant's Opposition, and the entire record, it is this _____ day of _____, 2024:

ORDERED that Plaintiffs' Motion is **DENIED**.

Date: _____

HON. PAUL L. FRIEDMAN
United States District Judge