IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CRYSTAL ROBERTSON, on behalf of herself and her minor child D.R.; ELIZABETH DAGGETT, on behalf of herself and her minor child H.D.; JOANN MCCRAY, on behalf of herself and her minor child J.C.; VERONICA GUERRERO, on behalf of herself and her minor child A.F.; MARCIA CANNON-CLARK AND DAVID CLARK, on behalf of themselves and their minor child B.R.C; and THE ARC OF THE UNITED STATES, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	Case No. 1:24-cv-00656 (PLF)

**REPLY BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

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INTRODUCTION

Plaintiffs' requested certified class is straightforward: all students with disabilities aged 3-22 who require transportation from the District to attend school and have experienced and will continue to experience the District's failure to provide safe, reliable, and appropriate transportation during a specific time period. This specific class meets the four requirements of Rule 23(a) and can be certified as hybrid class under Rule 23(b)(2) and (b)(3).

First, the putative class is too numerous for individualized litigation to be practicable. Of the over 4,000 students the District is required to transport to and from school, Plaintiffs have already submitted affidavits from 20 impacted parents, and the court may draw the reasonable inference that hundreds to thousands of other students with disabilities (including those sharing buses with the students who already involved in this case) have been subjected to the District's deficient practices. That the class is defined to include those aggrieved by the District's actions does not impact the numerosity analysis. The proposed class is not just all those who "suffered a violation of the same provision of law," *Wal-Mart Stores Inc. v. Dukes*, 564 U.S. 338, 350 (2011), but those who suffered it in the same way: their rights were violated because the District failed to transport the students to and from school safely, reliably, and appropriately. Second, and relatedly, commonality is satisfied here because the District's policy and practice of having a deficient transportation system amounts to a systemic failure to implement students' IEPs, a denial of FAPE, and discriminatory treatment. Third, the claims of the putative class representatives are typical of the claims of the class. The putative class representatives have alleged the same claims and suffer the same, ongoing injury as all putative class members. Fourth, the putative class representatives will fairly and adequately protect the interests of the class because their interests are aligned and the putative class representatives have already demonstrated their willingness to vigorously pursue their claims.

Plaintiffs satisfy the requirements of Rule 23(b)(2) because their requested relief is specific and tailored to the needs of the class. Plaintiffs request injunctive relief to address the District's ongoing IDEA violations related to its transportation failures. Plaintiffs' claims for compensatory education satisfy Rule 23(b)(3) because common issues predominate and a class action is the superior method to resolve their claims. For these reasons, and the reasons articulated in Plaintiffs' Memorandum in Support of its Motion for Class Certification, the class should be certified.

ARGUMENT

I. The Putative Class Satisfies the Rule 23(a) Requirements for Certification

a. The Putative Class is So Numerous that Joinder of All Members is Impracticable

Plaintiffs readily satisfy the numerosity requirement for class certification. A class of over 40 members satisfies the numerosity requirement. *In re McCormick & Company, Inc., Pepper Products Marketing and Sales Practices Litigation*, 422 F. Supp. 3d 194 (D.D.C. 2019). Here, over 4,000 D.C. students fall within the putative class definition because such students' IEPs require that the District provide them with transportation to and from school. *See* ECF No. 4-48 at 223. This Court need look no further than the extensive number of putative class members subject to the District's failing transportation system to assure itself that numerosity is satisfied. *See Coleman ex rel. Bunn v. District of Columbia*, 306 F.R.D. 68, 76 (D.D.C. 2015) (a court need only find an "approximation of the size of the class, not an 'exact number of putative class members'") (quoting *Pigford v. Glickman*, 182 F.R.D. 341, 347 (D.D.C. 1998)).

Additional characteristics of the class also support numerosity here. While Rule 23(a)(1) is commonly referred to as the "numerosity" requirement, the Rule's "core requirement is that joinder be impracticable." *Id.* Thus, courts consider additional factors like vulnerability, lack of financial resources, and the difficulty of instituting individual suits as relevant to the

impracticability inquiry. *See, e.g., DL v. District of Columbia*, 302 F.R.D. 1, 11 (D.D.C. 2013) (certifying class action under the IDEA, which "ensures a free and appropriate education to the District's youngest and most vulnerable pupils"); *Sherman v. Griepentrog*, 775 F. Supp. 1383, 1389 (D. Nev. 1991) (certifying class in part because class members were disabled individuals).

The District contends that "[p]laintiffs have not offered proof of a class so numerous that joinder of all members would be impracticable." *See* ECF No. 38 (Opp'n) at 10. But this argument misstates Plaintiffs' burden at the certification stage. Although Plaintiffs must provide "*some*" evidence that a class is numerous, courts may "draw reasonable inferences from the facts presented to find the requisite numerosity." *In re McCormick & Company*, 422 F. Supp. 3d at 235. Thus, the "numerosity requirement can be satisfied so long as there is a *reasonable basis* for the estimate provided." *Hoyte v. District of Columbia*, 325 F.R.D. 485, 490 (D.D.C. 2017) (quoting *Feinman v. FBI*, 269 F.R.D. 44, 50 (D.D.C. 2010)) (emphasis in original). And should any doubt remain, courts generally "err in favor of certification because a court always has the option to decertify the class if it is later found that the class does not in fact meet the numerosity requirement." *Id.* (quoting *Coleman ex rel. Bunn*, 306 F.R.D. at 76).

Plaintiffs have offered more than a "reasonable basis" for this Court to find that the putative class satisfies the numerosity requirement. Currently, over 4,000 disabled students' IEPs require that the District provide them with transportation to and from school. ECF No. 29-1 (Mot.) at 13. The class includes students who were eligible for those services before this suit was filed and were denied those services. *Id.* at 11. And because students can become eligible for special education transportation at any time, there is an unknown number of future class members, further supporting certification. *Id.* at 13; *see DL*, 302 F.R.D. at 11 ("[F]uture members make joinder inherently impracticable because there is no way to know who they will be."). Class members are vulnerable

and lack resources to bring individual suits. Mot. at 13-14. Plaintiffs have also presented evidence that the District's deficient transportation policies and practices impact all students with disabilities entitled to transportation services, who everyday risk transportation delays, late arrivals to school, and lengthy, unsafe transportation services. *Id.* at 12-14.

In *Coleman ex rel. Bunn*, this Court held that the District's same "numerosity arguments do not raise factual disputes about the number of potential class members; rather, they raise merits-related defenses to their claims." 306 F.R.D. at 77. But such arguments "stray from the purpose of the numerosity analysis." *Id.* The concern of Rule 23(a)(1) is membership in the class, "*not likelihood of success on the merits.*" *Id.* (emphasis added). Thus, the District's argument "put[s] the cart before the horse by asking how many successful class members exist, rather than how many potential class members exist." *Id.* (cleaned up).

Defendant further objects to Plaintiffs' proposed class definition as impermissibly "circular" under *In re White*, 64 F.4th 302, 312 (D.C. Cir. 2023). *See* Opp'n at 8-9. But this argument relies on an incorrect reading of *White*. At no point in *White* did the D.C. Circuit hold that a proposed class definition must be wholly separate from the merits of the underlying lawsuit, as Defendant appears to insist. Indeed, the D.C. Circuit *reversed* this Court's denial of class certification based on the very same "fail-safe class definition" argument that the District advances here. *See White*, 64 F.4th at 315. In other words, the court expressly rejected the argument that class certification should be denied based on a "fail-safe class definition." *Id.* The D.C. Circuit instead found that the "protocol for determining if a class definition is proper is to apply the terms of Rule 23 as written . . . doing so should eliminate most, if not all, genuinely fail-safe class definitions." *Id.* at 314; *see also id.* at 315 ("the textual requirements of Rule 23 are fully capable

of guarding against unwise uses of the class action mechanism"). Plaintiffs have shown, in their Motion and this Reply, that they meet the requirements of Rule 23(a)(1).

b. Plaintiffs' Claims Present Common Questions of Law and Fact

Plaintiffs' claims satisfy Rule 23(a)(2)'s commonality requirement. To demonstrate commonality, Plaintiffs have presented common questions of law and fact that are susceptible to common proof. *See DL v. District of Columbia (DL II),* 860 F.3d 713, 723 (D.C. Cir. 2017). Namely, (1) are Defendant's existing policies and practices related to transportation for students with disabilities deficient?; (2) how are they deficient?; (3) do those deficiencies deny class members a FAPE under the IDEA?; (4) do these deficiencies deny class members the opportunity to benefit from and participate in educational services equal to their non-disabled peers? (5) do these deficiencies deny class members the opportunity to receive educational services in the most integrated setting appropriate to their needs?; and (6) has Defendant failed to reasonably modify its educational programs and activities as needed to avoid discrimination? Mot. at 17-18. Because those common questions exist, and a "true or false" answer to each will "generate common answers for the entire class and resolve issues that are central (and potentially dispositive) to the validity of each plaintiff's claim," commonality is satisfied. *Thorpe v. D.C.*, 303 F.R.D. 120, 146-47 (D.D.C. 2014); *see also DL II*, 860 F.3d at 724-25 (identifying a similar set of true/false questions satisfies commonality for IDEA class action).[1] And a single injunction can remedy the harm alleged in one stroke, which further demonstrates commonality. *See* Mot. at 14-21.

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[1] Defendant's attempt to distinguish this case from *Thorpe* is unavailing. Defendant suggests that *Thorpe* is inapposite because it concerned a discrete set of "transition services" for people with disabilities, and that the "transportation-related services" at issue here are somehow different. Opp'n. at 20, n.8. Defendant once again misunderstands the scope of Plaintiffs' claims, *see* ECF No. 35 at 10-12, and searches for a distinction without a difference. *Thorpe* dealt with related failures across a variety of Medicaid services that the District provides, including long-term personal care services in both institutional and community-based settings. *Thorpe*, 303 F.R.D. at

The series of class decisions in *D.L. v. District of Columbia*, a class action challenging the District's failure to identify, evaluate, and serve young students with disabilities, is instructive. In *DL I*, the D.C. Circuit applied *Wal-Mart* and rejected a class certification under the IDEA because there was no "common 'tru[e] or fals[e]' question [that could] be answered for each of these three different claims of harm that would assist the district court in determining the District's liability as to each group[.]" *DL v. District of Columbia (DL I)*, 713 F.3d 120, 128 (D.C. Cir. 2013). After remand, the D.C. Circuit approved sub-class certifications that included subclasses related to (1) the failure to identify students, (2) the failure to evaluate students, (3) the failure to provide eligibility determinations, and (4) the failure to have policies in place to ensure a smooth transition to pre-school programs. *DL II*, 860 F.3d at 724-25.

Plaintiffs' claims are comparable to *DL II*'s subclass four here: the harm to Plaintiffs stems from "deficient and poorly implemented" policies and practices to provide safe, appropriate, and reliable transportation services to students with disabilities just like the harm DL class members suffered from the District's deficient and poorly implemented services to provide a smooth transition to preschool. Unlike in *DL I,* Plaintiffs here are not, for example, challenging eligibility for transportation services, the appropriateness of the transportation services on each student's IEP, or other "different policies and practices at different stages of the District's" provision of transportation. *DL II*, 860 F.3d at 723 (cleaned up).

126-33. The court ultimately concluded that these claims satisfied commonality based on failures to "implement an effective system of transition assistance" between institutional and community-based services. *Id.* at 146. Likewise, Plaintiffs here detail myriad examples of failure across a single system of transportation services provided by the District of Columbia, just as in *Thorpe*. *Compare id.* at 126-33 *with* Mot. at 10-11.

Defendant, however, likens Plaintiffs' proposed class to the impermissible class certified in *DL I*. Opp'n. at 13-15. Its arguments are unpersuasive. First, Defendant argues that the "child-specific" nature of IDEA claims means that there is no commonality here. *Id.* at 14. This is an overbroad reading. Rather, commonality exists where the plaintiffs "do not seek to litigate the merits of individual, fact-specific IDEA claims—whether a particular IEP was sufficient, for instance—but whether the District generally met its statutory obligations to disabled children under the IDEA." *DL v. District of Columbia*, 302 F.R.D. 1, 13 (D.D.C. 2013), *aff'd*, 860 F.3d 713 (D.C. Cir. 2017). So too here, where Plaintiffs have not alleged the sufficiency of the IEPs, but rather that Defendant has failed to implement the IEPs and provide equal access to education through its failure to provide safe, adequate, and reliable transportation to and from school for students with disabilities. *See* ECF No. 2 at ¶¶ 161-210; Mot. at 20-21. Defendant's overbroad reading of the commonality requirement would essentially mean that no group of Plaintiffs could bring an IDEA class action lawsuit challenging a systemic violation of that law, something the D.C. Circuit explicitly disclaimed in *DL I*. 713 F.3d at 127 ("We do not suggest that widespread policies and practices in violation of the IDEA could never satisfy Rule 23(a)(2)'s commonality requirement after *Wal–Mart*[.]").

Second, Defendant contends that no commonality exists because the alleged violations affect each of the named Plaintiffs and putative class members differently. Opp'n. at 14-15. But class members "need not be identically situated" in order to show commonality. *Borum v. Brentwood Vill., LLC*, 324 F.R.D. 1, 16 (D.D.C. 2018). As the D.C. Circuit has explained, Rule 23(a)(2) "does not require that all questions be common to the class" and "even a single common question will do." *DL I*, 713 F.3d at 128 (citing *Wal-Mart*, 564 U.S. 349-50). This is especially true in the disability context, where class members may have "diverse disabilities and will not all

be affected . . . in the same way" by the failures alleged. *DL*, 302 F.R.D. at 13 (quoting *Brooklyn Ctr. for Independence of the Disabled v. Bloomberg*, 290 F.R.D. 409 (S.D.N.Y. 2012)); *see also* Mot. at 21; *Lane v. Kitzhaber*, 283 F.RD. 587, 598 (D. Or. 2012) ("As in other cases certifying class actions under the ADA and Rehabilitation Act, commonality exists even where class members are not identically situated.").[2]

While Defendant's transportation failures may affect different class members in different ways, *see* Mot. at 21, those failures stem from the same deficient policies and practices that plague the system, including faulty route planning, bus driver and attendant staffing and training, lack of communication with parents, and an inadequate reimbursement program. ECF No. 2 at ¶¶ 161-210. These policies and practices form the basis of the "common 'tru[e] or fals[e]' question[s] [that could] be answered" for the class, as detailed in Plaintiffs' original briefing. *DL I*, 713 F.3d at 128; *see also Brown v. District of Columbia,* 928 F.3d 1070, 1081 (2019); Mot. at 17-18.

Third, Defendant's argument that no common policy or practice exists here, Opp'n at 15, has no merit. As this Court has explained, "it is enough to show that a defendant 'has acted in a consistent manner toward members of the class so that his actions may be viewed as part of a pattern of activity.'" *Bynum v. District of Columbia*, 214 F.R.D. 27, 37 (D.D.C. 2003) (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE §

[2] Defendant asserts that *Lane* should be disregarded because it relied on the original *DL* decision that was overturned by the D.C. Circuit in *DL I* in 2013. Opp'n. at 19. But *Lane* did not base its entire commonality analysis on the District Court's original *DL* decision from 2011. *See Lane*, 283 F.R.D. at 597-98. And courts in this Circuit have cited approvingly to the commonality analysis in *Lane* even after the D.C. Circuit's decision to overturn the class in *DL I*, apparently finding no conflict between *Lane* and *DL I*. *See Thorpe*, 303 F.R.D. at 147 (quoting *Lane* for proposition that commonality is satisfied "despite the individual dissimilarities among class members."); *Pappas*, 2024 WL 1111298 at *8 (rejecting the District's commonality argument and citing approvingly to *Lane*). Moreover, *Lane*'s holding that commonality exists where members are not identically situated does not conflict with caselaw in this Circuit made long after *DL I* that held the same. *Compare Lane*, 283 F.R.D. at 598 *with Borum*, 324 F.R.D. at 16.

1775 (2d ed.1986)) (finding commonality through a policy/practice where prisoners alleged a consistent pattern of unconstitutional double-celling). Here, Plaintiffs have ably identified how Defendant's deficient management of the school transportation system has consistently failed class members, including the Individual Plaintiffs. Mot. at 21. This constitutes a "pattern of activity" that satisfies commonality, even in the absence of a written policy. *Bynum*, 214 F.R.D. at 37; *see also DL II,* 860 F.3d at 724-25 ("[T]he District's policies and practices prevented [toddlers] from entering preschool by age three without interruption in their special education services. This is a common allegation, provable by evidence showing that the District failed to provide smooth transitions to 30 percent of toddlers and remediable by a single injunction requiring annual improvement.").[3] Courts in this Circuit have routinely found that a failure to enact policies that comply with the IDEA and ADA supports a finding of commonality. *See, e.g. DL II*, 860 F.3d at 724-25 (finding commonality where District failed to properly implement IDEA child find requirements); *Brown v. District of Columbia*, 928 F.3d 1070, 1079-82 (D.C. Cir. 2019) (analogizing to *DL* and holding that failure to implement adequate *Olmstead* plan supported finding of commonality); *Pappas v. District of Columbia*, No.19-2800 (RC), 2024 WL 1111298, at *6 (D.D.C. Mar. 14, 2024) (commonality is satisfied where "plaintiffs' challenge to the District's

[3] As it did in its opposition brief, Defendant may quibble about this analogy to a pre-*Wal-Mart* decision outside of the IDEA/ADA context. Opp'n. at 19, n.7. In fact, this Court's post-*Wal-Mart* decisions in the ADA/IDEA context have relied on both pre-*Wal-Mart* decisions and class certification decisions that do not involve the ADA/IDEA at all, including many of the cases Plaintiffs cite to in their original brief on class certification. *See, e.g. In Re District of Columbia*, 792 F.3d 96, 102 (D.C. Cir. 2015) (citing *Parsons v. Ryan*, 754 F.3d 657, 686 (9th Cir. 2014)); *DL*, 302 F.R.D. at *16 (citing *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 58-59 (3d Cir. 1994)); *Pappas,* 2024 WL 1111298 at *10 (citing *Bynum*, 214 F.R.D. at 312); *see also* ECF No. 29-1 at 15, 22 (citing above cases). These decisions should not be dismissed out of hand, as courts in this Circuit have continued to rely on them even after the Supreme Court's decision in *Wal-Mart*. *See also Lane*, 283 F.R.D. at 597 ("Defendants do not contend, nor can they, that *Wal-Mart* overruled all prior cases and now bars certifying class actions by persons with differing disabilities[.]").

overarching policy failure generated a common question the answer to which would drive the litigation."); *see also G.T. by Michelle v. Bd. of Educ. of Cnty. of Kanawha*, No. 2:20-cv-00057, 2021 WL 3744607, at *12-14 (S.D. W. Va. Aug. 24, 2021), *appeal pending*, No. 21-260 (4th Cir.) (commonality satisfied when "(e)ach student will need a different set of supports, but [the] case is not about the behavioral supports that should be provided to the individual students within the proposed class. It is about the procedures that KCS uses, or does not use, to develop and implement those supports. Injunctive relief related to district-wide policies, procedures, and resources would resolve the claims for the class as a whole."). Thus, insofar as Plaintiffs' allegations rest on Defendant's failure to have sufficient policies to provide appropriate transportation, that also supports a finding of commonality. ECF No. 2 at ¶¶ 161-203; Mot. at 15-18.[4]

Fourth, Defendant contends that this case is like the class invalidated in *Wal-Mart,* claiming that Plaintiffs have not shown a consistent pattern of discrimination enough to violate the IDEA. Opp'n. at 17-18. However, the D.C. Circuit explained the differences between a class of IDEA plaintiffs and the putative class of plaintiffs in *Wal-Mart* in *DL II*. Because *Wal-Mart* involved Title VII employment claims, the "crux of the inquiry is 'the reason for a particular employment decision.'" *DL II*, 860 F.3d at 725 (quoting *Wal-Mart*, 564 U.S. at 352). In contrast, because the IDEA imposes an affirmative obligation on the District to serve all children with disabilities and

[4] Defendant asserts that Plaintiffs' claims cannot be supported by the "common proof" required to assert commonality. Opp'n. at 15, n.5. Plaintiffs offered examples of the types of documents in Defendant's possession that would show common proof, and Defendant's only response is to dismiss those examples out of hand. *Compare id. with* ECF No. 29-1 at 18-19. As no discovery has occurred in this case, Defendant's argument about the weight of evidence reaches the merits of this case, which are not dispositive on a motion to certify. *See Moore v. Napolitano*, 269 F.R.D. 21, 27 (D.D.C. 2010). For provisional certification alongside a motion for preliminary injunction, it is enough to show a common question without offering common proof, as that proof can be supplied after a full decision on the merits. *See Charles H. v. District of Columbia*, No. 1:21-cv-00997, 2021 WL 2946127 at *13 (D.D.C. June 16, 2021) (provisionally finding commonality based on policy alone and noting without deciding need for common proof).

"[u]nlike Title VII liability, IDEA liability does not depend on the reason for a defendant's failure and plaintiffs need not show why their rights were denied to establish that they were." *Id.* at 725. As a result, "*Wal-Mart*'s analysis of commonality in the Title VII context thus has limited relevance here." *Id.*

The District's uniform failure to provide an adequate transportation system to students with disabilities violates students' statutorily defined rights under the IDEA, regardless of why they were violated or the degree of harm they inflicted, which satisfies the commonality standard set out in *DL II.* ECF No. 4-1 at 19-23; Mot. at 21; *DL II*, 860 F.3d. at 725; *see also* ECF No. 4-6, Daggett HOD at 9 ("Courts are clear that it is 'the proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement'. . . . Notably, there is 'no requirement that the child suffer educational harm in order to find a violation' in a failure to implement claim.") (citations omitted). And, unlike *Wal-Mart*, where employment decisions were made by thousands of individual hiring supervisors, Defendant cannot argue that it does not control the transportation system at issue here. *Compare* ECF No. 4-1 at 3, 6-18 *with DL*, 302 F.R.D. at 13-14 (noting that "the fact that the development and administration of the District's IDEA procedures are centralized in two closely-related agencies—District of Columbia Public Schools ("DCPS") and the Office of the State Superintendent of Education ("OSSE") distinguishes this case from *Wal-Mart.*" Because "disabled children in the District are subject to failures and inadequacies caused by the same agency," IDEA claims are not like the more diffuse Title VII claims at issue in *Wal-Mart*); *see also G.T.,* 2021 WL 3744607 at *12 (distinguishing *Wal-Mart* because of the "scale and scope" of the proposed class of disabled students versus the proposed class in *Wal-Mart*, which "consisted of 1.5 million women

who worked in 3,500 Wal-Mart stores nationwide."). Accordingly, Defendant's attempted comparison to the facts of *Wal-Mart* should be rejected.

Finally, commonality is satisfied because a single injunction can remedy the harm. *See* Mot. at 20-21. In *DL II*, the D.C. Circuit approved a finding of commonality where the district court issued a "single injunction requiring annual improvement" against the District of Columbia. *See DL II*, 860 F.3d at 725. As discussed further below, the injunction requested by Plaintiffs will remedy the class-wide harm. *See* Sec. II, *infra*. Plaintiffs meet the commonality requirement.

c. The Claims of the Class Representatives are Typical of the Claims of the Class

Defendant's argument that Plaintiffs' claims are not typical is just a "commonality challenge in a new guise." *DL II*, 860 F.3d at 725-26. As long as there is a "sufficient nexus" between the named Plaintiffs' claims and those of the putative class, like there is here, there is typicality between them. *Id.* at 726 (quoting *DL*, 302 F.R.D. at 14). The Individual Plaintiffs' claims are typical when they are "based on the same legal theory as the claims of other class members" and the "injuries arise from the same course of conduct that gives rise to the other class members' claims." *Coleman through Bunn v. District of Columbia*, 306 F.R.D. 68, 83 (D.D.C. 2015) (quoting *Bynum*, 214 F.R.D. at 35). Typicality, like commonality, is not destroyed by factual variations between named plaintiffs, as "the Rule requires that named plaintiffs' claims be typical, not identical[.]" *DL*, 302 F.R.D. at 14. As a result, typicality is satisfied "where at least one named plaintiff has a claim relating to each challenged practice for which relief is [sought]." *Stewart v. Rubin*, 948 F. Supp. 1077, 1088 (D.D.C. 1996), *aff'd* 124 F.3d 1309 (D.C. Cir. 1997). In other words, "a representative's claims are typical when [t]he plaintiffs allege that their injuries derive from a unitary course of conduct by a single system." *Coleman*, 306 F.R.D. at 83 (quoting *Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997)) (internal quotation marks omitted).

Plaintiffs easily meet this standard. The Individual Plaintiffs have alleged the same claims and have suffered the same injury as all class members—namely Defendant's continued failure to provide safe, reliable, and appropriate transportation to students with disabilities and the resulting deprivation of FAPE, denial of equal access to education, and unnecessary segregation. *See* ECF No. 4-3, Decl. of Elizabeth Daggett, at ¶¶ 39-45; ECF No. 4-22, Decl. of Crystal Robertson, at ¶¶ 26, 34; ECF No. 4-14 Decl. of Marcia Cannon-Clark at ¶¶ 19, 27-30; ECF No. 4-18, Decl. of Joann McCray at ¶¶ 34-37; Decl. of Veronica Guerrero, ECF No. 4-9, at ¶¶ 13, 21, 23, 32, 36 ("Plaintiff Declarations") and ECF No. 4-41, Decl. of Mariyam Koumba ¶¶ 6-8; ECF No. 4-30, Decl. of Melinda Woods, at ¶¶ 4-5; ECF No. 4-33, Decl. of Elizabeth Mitchell, ¶¶ 4-6, 10-11; ECF No. 4-35, Decl. of Stephanie Maltz, ¶¶ 4-6, 8-10, 12; ECF No. 4-38, Decl. of Jamie Davis Smith, ¶¶ 5, 7, 13-14, 16; ECF No. 35-8, Decl. of Lashone Watts ¶¶ 6-13; ECF No. 35-3. Decl. of Pettrice Lewis ¶¶ 5-9; ECF No. 35-10, Decl. of Kiara Coleman ¶ 4; ECF No. 35-11, Decl. of Charlisa Neal ¶¶ 6-11; ECF No. 35-12, Decl. of Renica Robinson ¶¶ 8-13; ECF No. 35-4, Decl. of Sheneice Lassiter ¶¶ 4-8; ECF No. 35-5, Decl. of Andy McKinley, ¶¶ 7-10; ECF No. 35-6, Decl. of Nikki Floyd, ¶¶ 6, 8; ECF No. 35-13, Decl. of Rita Whatley ¶¶ 7, 9, 10 ("Putative Class Member Declarations"). Accordingly, the interests of the Individual Plaintiffs and the putative class members are "aligned because all plaintiffs would assert the same legal claim[s]." *Coleman*, 306 F.R.D. at 83. Moreover, all of their injuries derive from the "same unitary course of conduct by a single system[,]" namely Defendant's handling of the transportation system. *Compare id. with* ECF No. 29-1 at 22. Typicality is thus satisfied here.

Even if the limited individualized relief Plaintiffs obtained at their administrative hearings somehow put them at odds with the putative class, *see* Opp'n at 22*,* Plaintiffs have ably demonstrated that the harms they are experiencing from Defendant's continued failure to run a

competent transportation system are ongoing and the same as those experienced by other class members. *See* ECF No. 35 at 2-4. This is supported by the Plaintiff Declarations and Putative Class Member Declarations. *Id.* at 3 n.1. These declarations make clear that (1) the individualized relief Plaintiffs obtained through the Hearing Officer did not solve the underlying systemic problems at the heart of this case, which remain ongoing, nor did that relief address their anti-discrimination claims, and (2) that there is a "sufficient nexus" between the claims asserted by the Individual Plaintiffs and the putative class to support a finding of typicality here. *DL*, 302 F.R.D. at 14.

Defendant further argues that Plaintiffs' claims are atypical because they exhausted their administrative remedies, when presumably other members of the putative class will not have done so. Opp'n. at 23. This would turn both the law of exhaustion and class certification upside-down. As this Court has held previously, when one named plaintiff has exhausted their administrative remedies under the IDEA, all plaintiffs in the class are deemed to have exhausted through the doctrine of vicarious exhaustion. *See* ECF No. 4-1 at 36-37; *DL*, 302 F.R.D. at 21 (citing *Harman v. Duffey*, 88 F.3d 1232, 1235 (D.C. Cir. 1996) ("exhaustion of administrative remedies by one member of the class satisfies the requirement for all others with sufficiently similar grievances"); *see also Pappas v. District of Columbia*, 513 F. Supp. 3d 64, 81 (D.D.C. 2021) ("The vicarious exhaustion exception . . . 'allows non-filing parties to join the suit of another similarly situated plaintiff who did file an administrative complaint against the same defendant.'") (citing *Brooks v. Dist. Hosp. Partners, L.P.*, 606 F.3d 800, 804, (D.C. Cir. 2010)). Defendant argues that exhaustion necessarily defeats typicality. But under the doctrine of vicarious exhaustion, the reverse is true. By properly exhausting their administrative remedies, Plaintiffs here have vicariously exhausted on behalf of the class. *See DL*, 302 F.R.D. at 21. Thus, there is no difference between the Individual Plaintiffs and the class because of exhaustion, as both have functionally exhausted their

administrative remedies (whether actually or vicariously). Defendant's argument, if accepted, would mean that any group of plaintiffs who have exhausted administrative remedies could never bring a class action, as there would never be typicality between the Individual Plaintiffs and the class. This argument should be rejected.

Finally, Defendant also attempts to turn its typicality analysis into an argument for mootness. Opp'n. at 22-23. Once again, this ignores the nature of Plaintiffs' claims and the underlying evidence. As Plaintiffs have explained the Hearing Officer Determinations each of them received did not—and indeed could not—afford them the systemic relief they seek here, as each Hearing Officer dismissed their systemic IDEA, Section 504, ADA, and DCHRA claims with prejudice. ECF No. 35 at 5. Accordingly, even though Plaintiffs did obtain some individualized relief from the Hearing Officer, this does not moot their claims nor preclude them from bringing systemic claims, as it would "hollow" the "broad grant of procedural rights" secured by the IDEA's cause of action provision. *Id.* at 6 (quoting *Diatta v. District of Columbia*, 319 F. Supp.2d 57, 65 (D.D.C. 2004)). Plaintiffs satisfy the typicality requirement.

d. The Named Plaintiffs and Their Counsel Will Fairly and Adequately Protect the Interests of the Class

The District argues that the alleged mootness of the Individual Plaintiffs' claims disincentivize them from vigorously prosecuting the interests of the class members. Opp'n at 24-25. This argument fails for three reasons. First, as discussed above in Section I.c. and in ECF No. 35 at 12-14, the Individual Plaintiffs' claims are not moot. Plaintiffs satisfy the two elements of a justiciable controversy, namely "sharply presented issues in a concrete factual setting and self-interested parties vigorously advocating opposing positions." *United States Parole Comm'n. v. Gerahty*, 445 U.S. 388, 404 (1980). Individual Plaintiffs have not been afforded the systemic relief under the IDEA they originally sought in their administrative proceedings and they continue to

face a failing transportation system. Given that the Hearing Officers dismissed Plaintiffs' ADA claims for lack of jurisdiction, these claims have yet to be addressed at all and could not be mooted out by the HOD decision. *See* ECF No. 4-1 at 5-6. Second, even if the Individual Plaintiffs' claims were moot, "[m]ootness alone . . . does not establish their inadequacy as representatives." *J.D. v. Azar*, 925 F.3d 1291, 1313 (D.C. Cir. 2019). The District selectively quotes *J.D. v. Azar* on this point, omitting that the Court certified the class and found that "mootness and adequacy are 'separate issues' and that plaintiffs with moot claims may adequately represent a class." *Id.* (quoting *Geraghty*, 445 U.S. at 404, in which the Supreme Court specifically recognized that a plaintiff with a moot claim may serve as a class representative). Third, the Individual Plaintiffs have demonstrated a willingness to vigorously prosecute this litigation, by first bringing due process hearings, then in bringing this litigation, including submitting declarations in support of their Motion for a Preliminary Injunction and attesting to their willingness to represent the class. *See* ECF No. 4-3 Dagget Decl. at ¶ 57; ECF No. 4-9 Guerrero Decl. ¶ 45; ECF No. 4-14 Clark Decl. ¶ 36; ECF No. 4-18 McCray Decl. ¶ 45; ECF No. 4-22 Robertson Decl. ¶ 45; *see also* ECF No. 35-1 Second Daggett Decl.[5] Therefore, the Individual Plaintiffs will adequately protect the interests of the class because they do not have a "conflicting interests with the unnamed members of the class" and have a demonstrated willingness to "vigorously prosecute the interests of the class." *Nat'l Veterans Legal Servs. Program v. United States*, 235 F. Supp. 3d 32, 41 (D.D.C. 2017) (certifying class).

[5] One parent has also testified in government hearings advocating for change in the District's transportation policy. *See* ECF 4-5.

II. Plaintiffs' Requested Relief is Specific and Tailored to the Needs of the Class Making Certification Proper under Rule 23(b)(2)

Plaintiffs seek hybrid certification under Rule 23(b)(3) for their compensatory education claims (addressed below), and under Rule 23(b)(2) for injunctive relief. Because Defendant's transportation failures "apply generally to the class . . . final injunctive relief" is warranted. Fed. R. Civ. P. 23(b)(2). Injunctive relief under Rule 23(b)(2) "exists so that parties and courts, *especially in civil rights cases* . . . can avoid piecemeal litigation when common claims arise from systemic harms that demand injunctive relief." *DL II,* 860 F.3d at 726 (emphasis added). The IDEA afforded courts "broad discretion" to grant "such relief as [they] determine[] is appropriate."[6] 20 U.S.C. § 1415(i)(2)(C)(iii); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. Cir. 2005) (citation and internal quotation marks omitted). "For decades, courts across the country have done just that, ordering or approving structural relief when IDEA violations required it." *DL II,* 860 F.3d at 731.

Here, certification under Rule 23(b)(2) is appropriate because the District has "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Plaintiffs' requested relief would "affect the entire class at once." *Wal-Mart*, 564 U.S. at 360. The proposed injunction is tailored to address Defendant's deficiencies and the harm to the putative class. *See* ECF No. 35 at 28-30, 32. As the D.C. Circuit held in *Brown v. District of Columbia*: "If a certain outcome is legally mandated and an injunction provides each member of the class an increased opportunity to achieve that outcome, Rule 23(b)(2) is satisfied." 928 F.3d 1070, 1082-83 (2019). Like in *Brown* and *DL II,* the injunction here will increase class members'

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[6] None of the District's cited cases refers to injunctive relief ordered under the IDEA, ADA, or Section 504 of the Rehabilitation Act.

opportunity to receive the transportation services to which they are entitled. *See id*. (noting that in *DL II* "we found Rule 23(b)(2) satisfied even though the injunction required the District to satisfy each of [its IDEA] obligations with respect to 95 per cent, rather than 100 per cent, of each subclass. . . we implied that the injunction aided every class member because it improved his likelihood of achieving the legally mandated outcome."). Plaintiffs' requested injunctive relief also mirrors measures already imposed on the District, approved by this Court, and which indeed remedied the District's transportation failures. *See* ECF No. 35 at 29-30; *Petties v. District of Columbia*, No. 95-cv-00148 (PLF), Def. Reply to Mot. to Vacate, ECF No. 1643-3 at 11-12. It is well within the Court's power to grant "such relief as [they] determine[] is appropriate, 20 U.S.C. § 1415(i)(2)(C)(iii) and order Defendant to take specific, outlined steps to ensure compliance. *See id.*; *DL v. District of Columbia*, 194 F. Supp. 3d 30, 97-103 (D.D.C. 2016).

Defendant's concern about this Court's ability to order clear injunctive relief is misplaced.[7] In fact, this Court has previously approved broad systemic injunctive relief requiring the District to comply with the IDEA. *See DL* 860 F.3d at 730 (injunction "requir[ing] [the District] to do nothing more than what is required under IDEA") (alterations in original); *Petties*, slip op. at 6-10 (D.D.C. July 8, 1997) (ECF No. 380) (appointing a Special Master to oversee the District's special education transportation system); *Charles H.,* 2021 WL 2946127, at *6, *14 (ordering the District to provide special education and related services for incarcerated students); *Blackman v. District*

[7] Defendant also repeats its concerns that the requested injunction is too vague. *See* ECF No. 31 at 45-52. An injunction is not overly vague if it "relates the enjoined violations to the context of the case." *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1137 (D.C. Cir. 2009). As is the case here, a broad injunction is warranted "where a proclivity for unlawful conduct has been shown." *Id.* Like *DL*, in which the Court set specific compliance benchmarks for the District under the IDEA, a single injunction requiring Defendant to take specific, outlined steps will "provide relief to each member of the class." *DL II*, 860 F.3d at 726 (quoting *Wal-Mart*, 564 U.S. at 360).

of Columbia, 277 F. Supp. 2d 71, 85 (D.D.C. 2003) (ordering the District to conduct timely due process hearings for class). Broad injunctive relief has also been issued in class actions under the ADA. *See* ECF No. 35 at 28 (citing cases).

The requested injunction also does not require the Court to assess each student's individual needs. While the IDEA inherently allows individual relief to account for the wide range of students' disabilities, it does not preclude systemic relief. *See DL II*, 860 F.3d at 730; *Z.Q. v. N.Y.C. Dept. of Educ.*, No. 1:20-cv-09866, 2024 U.S. Dist. LEXIS 56726, at *14-15 (S.D.N.Y. Mar. 28, 2024). Defendant incorrectly presumes that an "injunction would require individually tailored relief." ECF No. 38 at 33. Not so. *See DL II,* 860 F.3d at 730 (denying the District's argument that IDEA claims can only be "handled one-by-one" rather than structural remedies); *Charles H.*, 2021 WL 2946127, at *6, *14-15. Plaintiffs are not challenging individualized determinations regarding their personal IEPs; they are challenging a system of faulty policies and practices that deprives them of safe, reliable, and appropriate transportation. Adopting the District's argument would "eviscerate the very purpose of IDEA" and eliminate any potential for class-wide relief for students with disabilities. *DL*, 860 F.3d at 731.

Any effort to rely on *Jamie S. v. Milwaukee Public Schools*, 668 F.3d 481 (7th Cir. 2012) is misguided, as the Seventh Circuit decertified the class based on disparate individualized relief that is not requested here.[8] In *Jamie S.*, plaintiffs alleged widespread IDEA violations "touching on nearly every aspect of [Defendant's] implementation of the Act," including identifying children with disabilities and developing IEPs tailored to their specific needs. 668 F.3d at 485. Not only is

[8] Similarly, the District's reliance on *In re: Navy Chaplaincy*, 306 F.R.D. 33 (D.D.C. 2014) and *C.G.B. v. Wolf,* 464 F. Supp. 3d 174 (D.D.C. 2020), is similarly misplaced because class certification was denied in each of those cases due to requests for individualized relief under Rule 23(b)(2).

Jamie S. an inaccurate comparison, but it is not prevailing law in this Circuit. This Circuit has explained:

> It is true that courts may remedy certain IDEA disputes, such as a parent's claim that a child's IEP is defective, only through "individualized" relief. *See Jamie S.*, 668 F.3d at 495. But to argue, as does the District, that this limitation also applies [to the IDEA's] Child Find requirement ignores that, unlike a parent worried about her child's IEP, the parents in this case challenge systemic defects in the District's . . . policies . . . which can only be remedied by a comprehensive injunction designed to bring the District into compliance with IDEA.

DL, 860 F.3d at 730-31. So too here. Because the Defendant's legal obligations and its challenged conduct are applicable to "all of the class members," Rule 23(b)(2) certification is appropriate. *Wal-Mart*, 564 U.S. at 360.

III. Plaintiffs' Claims for Compensatory Education Satisfy Rule 23(b)(3)

Plaintiffs' compensatory education claims should be certified under Rule 23(b)(3). Here, common issues predominate over individual inquiries, as the Individualized Plaintiffs and putative class members have endured the same generalized harms and seek the same generalized relief. Fed. R. Civ. P. 23(b)(3). A class action is also superior to administrative relief, despite Defendant's assertion to the contrary, as the administrative route is ineffective, expensive, and inefficient for the putative class, Defendant, and the Office of Dispute Resolution office alike. The purpose of the predominance and superiority criteria are to cover cases, like this one, "in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem Products. v. Windsor*, 521 U.S. 591, 615 (1997) (internal quotations and citation omitted).

a. Common Issues to the Class Predominate Over Individual Members' Issues

The predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods. v. Windsor*, 521 U.S. 591 (1997). As

the Supreme Court has explained, the "predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1046 (2016) (citation and quotation omitted). While it is true that the amount of compensatory education will be individualized, as is required under *Reid,* the core legal question in determining the Rule 23(b)(3) class is whether common issues predominate, *not* whether all class members have the exact same remedy. *See Bouaphakeo*, 136 S. Ct at 1046; *Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 519 (D.C. Cir. 2005). The claims here present "common, aggregation-enabling, issues" that predominate over individual issues. *Bouaphakeo*, 136 S. Ct at 1046 (citation and quotation omitted). *See supra* Sec. I.b. The compensatory education claims depend on the resolution of common questions of law and fact that predominate, including do the Defendant's failure to establish policies and practices to provide safe, reliable, and appropriate transportation to students with disabilities consistent with federal and DC law, does that failure violate the IDEA, and if so, whether that violation obligates Defendant to provide compensatory education to class members. These questions, which determine the scope of defendants' liability, can be resolved on a class-wide basis through generalized proof and do not depend on class members' individual circumstances. *See* Mot. at 18-19. While the precise requirements of each student's IEPs are not identical, all class members' IEPs require that transportation be provided by the District in order to access their education. *See* ECF No. 4-1 at 17, 19-20.

Plaintiffs do not dispute that the precise amount of compensatory education due to each class member may be different, but under Rule 23(b)(3) class members may receive different actual damages even if they have the same common issues. As the Supreme Court has made clear, "[w]hen one or more of the central issues in the action are common to the class and can be said to

predominate, the action may be considered proper under Rule 23(b)(3) *even though other important matters will have to be tried separately, such as damages . . . .*" *Bouaphakeo*, 136 S. Ct. at 1046 (citation and quotation omitted) (emphasis added); *see also, e.g.*, *Coleman through Bunn v. District of Columbia*, 306 F.R.D. 68, 87 (D.D.C. 2015) ("'the mere fact that damage awards will ultimately require individualized fact determinations is insufficient by itself to preclude class certification'") (citation omitted); *Hoyte v. District of Columbia*, 325 F.R.D. 485, 494 (D.D.C. 2017) (same). Here, the underlying question of the District's liability and the putative class members' entitlement to compensatory education does not depend on their individual circumstances. This court can decide on a class-wide basis if the District's policy and practice of failing to provide transportation consistent with students' IEPs is a violation of the IDEA that obliges it to provide compensatory education to them. *See, e.g., A.R. v. Connecticut State Bd. of Educ.*, No. 16-01197 (CSH), 2020 WL 2092650, at *13 (D. Conn. May 1, 2020) ("the underlying questions of liability and the class members' entitlement to compensatory education do not depend on the class members' individual circumstances" but on "the Board's conduct directed at the class as a whole."). The Court can then look to common proof to determine what services each class member was denied, such as OSSE's transportation logs and trackers, and rely on expert testimony to determine "the ultimate award" "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place" *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 524 (2005).

Compensatory education claims have been certified, including hybrid certification under Rule 23(b)(2) and (b)(3). The Second Circuit affirmed a 23(b)(3) class for compensatory education, appointing a magistrate to determine the amount of compensatory education owed to each class member. *A.R. v. Connecticut State Bd. of Educ.*, 5 F.4th 155, 159, 167 (2nd Cir. 2021)

(affirming *A.R. v. Conn. State Bd. of Educ.*, No. 3:16-cv-01197, 2020 U.S. Dist. LEXIS 77034 at *28-29 (D. Conn. May 1, 2020). This court also approved a class settlement for a compensatory education class under Rule 23(b)(3). *See Charles H. v. District of Columbia*, No. 1:21-cv-00997 (CJN) (ECF No. 217-1 at 14-15).

To manage the individualized determinations, the Court can appoint a magistrate or otherwise employ a similar process to calculate damages for individual class members under a Rule 23(b)(3) action. *See Johnson v. District of Columbia,* 248 F.R.D. 46, 57 (D.D.C. 2008) (quoting *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004) (internal quotations omitted) (there are "many ways of dealing with possible individual damages issues . . . such as (1) bifurcating liability and damage trials with the same or different juries; (2) appointing a magistrate judge or special master to preside over individual damages proceedings; (3) decertifying the class after the liability trial and providing notice to class members concerning how they may proceed to prove damages; (4) creating subclasses; or (5) altering or amending the class."). *Blackman/Jones* and *Petties* demonstrate how DC Courts have granted compensatory education in class actions. *See Blackman v. District of Columbia*, 185 F.R.D. 4, 5-7 (D.D.C.1999) (awarding compensatory education for 6,500 students); *Petties v. District of Columbia*, 881 F. Supp. 63, 64 (D.D.C. 1995) (authorizing the use of a Special Master to determine compensatory education for each class member).[9] All of these options are available here.

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[9] Even post-*Walmart*, circuits have employed these mechanisms for individual damages in class actions. *See, e.g., M.D. by Stukenberg v. Abbott*, 907 F.3d 237 (5th Cir. 2018) (special masters to study a state agency and submit a list of findings and recommendations to the district court to monitor its injunction); *Monroe v. FTS USA*, LLC, 860 F.3d 389 (6th Cir. 2017) (special master to calculate individual FLSA damages even though employer had to present individualized defenses); *Shields Law Group, LLC v. Stueve Siegel Hanson LLP*, 95 F.4th 1251, 1258 (10th Cir. 2024) (appoint a special master to craft a two-stage approach for allocating a multi-million damages award); *Hartman v. Pompeo*, 2020 WL 6445873 at *2-3 (D.D.C. 2020) (affirming the

b. A Class Action is Superior

Rule 23(b)(3) allows for class certification when "class action is superior to other available methods for fairly and efficiently adjudicating the controversy," including when it "would forestall an inefficient and uneconomical flood of individual lawsuits and/or prevent inconsistent outcomes in like cases." Fed. R. Civ. P. 23(b)(3); *Newberg on Class Actions* § 4:67 (5th ed. 2014). Here, absent certification, a substantial increase of cases and inconsistent outcomes are indeed the likely outcome. Forcing the thousands of putative class members into an administrative forum would be both uneconomical and ineffective. The administrative forum is costly[10] and will risk prejudicing class members who cannot afford representation or expert witnesses. Mot. at 13 (citing high poverty rates among putative class members); *Schaffer v. Weast*, 546 U.S. 49, 66-67 (2005) (Ginsburg, J. dissenting).[11] *See also DL II (*"In the District's view, it would be up to each and every parent, many of whom are poor, homeless, and perhaps disabled themselves, to somehow determine whether their children are eligible for special education services and then to retain counsel to sue the District to obtain the services to which they are entitled. Given the purpose of IDEA, we cannot imagine a more preposterous argument"). 860 F.3d at 731. The administrative process is also inefficient for plaintiffs and defendants alike: in a class action, government and expert witness testimony will be streamlined and promote judicial efficiency. *See, e.g.*, *Black v. Occidental Petroleum Corporation*, 69 F.4th 1161, 1189 (10th Cir. 2023) ("there is no reason to

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recommendation of a special master in calculating attorney fee award in landmark Title VII case); *Evans v. Bowser*, 87 F.Supp.3d 1 (D.D.C. 2015) (enforcing the recommendation of a Special Master regarding criteria for individualized plans to come into compliance).

[10] The average cost of a due process hearing is between $8,000 to $12,000 but can be as high as $50,000. *See* William H. Blackwell & Vivian V. Blackwell, *A Longitudinal Study of Special Education Due Process Hearings in Massachusetts: Issues, Representation, and Student Characteristics*, SAGE OPEN 1, 2 (2015).

[11] *See also* Sarah Hudson- Plush, *Schaffer v. Weast: Negatively Affecting Special Education Students Whose Parents Cannot Afford Counsel*, 26 CHILD LEGAL Rts. J. 1, 3, 20 (2006).

burden either the courts or the parties with the requirement to file individual suits, secure costly experts, and repeatedly litigate the same elements of an antitrust liability case").

An influx of potentially thousands of administrative hearings would challenge the capacity of the Office of Dispute Resolution (ODR). Even accepting that one administrative hearing is quicker than one individual piece of civil litigation, one class action is much more efficient than thousands of potential administrative hearings that would dampen the ability of ODR to provide timely hearings to all class members—and all other parents of students with disabilities in DC who choose to pursue due process. ODR is currently staffed by only five hearing officers.[12] A class action will also concentrate potential federal court appeals of HODs, rather than flooding court. Finally, certifying a class on this issue will avoid conflicting decisions on the common liability question—i.e. do the District's deficient policies and practices fail to implement transportation services on students' IEPs and thus deny students FAPE—which is the piecemeal litigation that class actions hope to avoid. *See, e.g., Aliotta v. Gruenberg*, 237 F.R.D. 4, 13 (D.D.C. 2006) (class actions eliminate "[r]epetitious litigation and possibly inconsistent adjudications").

Plaintiffs' compensatory education claims should be certified as a Rule 23(b)(3) class because common issues predominate and proceeding as a class is superior.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' Motion for Class Certification.

Dated: June 21, 2024

Respectfully submitted,

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[12] *ODR Cadre of Impartial Hearing Officers and Mediators*, Office of the State Superintendent of Education, https://osse.dc.gov/page/odr-cadre-impartial-hearing-officers-and-mediators (last visited June 20, 2024).

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* Certification to practice pursuant to Rule 83.2(f) submitted.

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2024, I electronically filed the foregoing memorandum using the Court's ECF system, which will send notice of the filing to all counsel of record via email.

Theodore E. Alexander
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