

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution

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OSSE
Office of Dispute Resolution
February 02, 2023

Confidential

Parent on behalf of Student¹)	Case No. 2022-0186
)	
Petitioner)	Hearing Dates: January 19-20, 2023
)	
v.)	Conducted by Video Conference
)	
District of Columbia Public Schools)	
)	
and).	Date Issued: February 2, 2023
)	
Office of the State Superintendent of Education)	
)	
Respondents)	Terry Michael Banks, Hearing Officer

SECOND AMENDED HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioner is the mother of an X-year-old² student (“Student”) attending School A. On October 17, 2022, Petitioner filed a Due Process Complaint Notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) and the State Superintendent of Education (“OSSE”) denied the student a free appropriate public education (“FAPE”) by failing to provide Student transportation during throughout the 2022-23 school year. On October 24, 2022, OSSE filed *Office of the State Superintendent of Education’s Response to Administrative Due Process Complaint* (“OSSE Response”), denying that it had denied Student a FAPE in any way. On October 26, 2022, DCPS filed *District of Columbia Public Schools’ Response to Parent’s Administrative Due Process Complaint Notice* (“DCPS Response”), denying that it had denied Student a FAPE in any way.

¹ Personally identifiable information is attached in the Appendix and must be removed prior to public distribution.

² The age of majority in the District is 18. D.C. Code § 46-101. Petitioner has filed a *Power of Attorney for Educational Decision Making* in which Student ceded authority to Petitioner to represent him/her in matters relating to his/her education. Petitioners’ Exhibits (“P:”) 49 at page 1 (266). The exhibit number and exhibit page numbers are followed by the electronic page number in the disclosure in parentheses, i.e., P49:1 (266).

SUBJECT MATTER JURISDICTION

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. Section 1400 *et seq.*, its implementing regulations, 34 C.F.R. Sect. 300 *et seq.*, Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

PROCEDURAL HISTORY

On October 17, 2022, Petitioner filed her *Complaint* alleging that DCPS and OSSE denied Student a FAPE by failing to provide Student transportation since the beginning of the 2022-23 school year.

On October 24, 2022, OSSE filed the *OSSE Response*, in which it neither admitted nor denied the allegations in the *Complaint*. On October 26, 2022, DCPS filed its *Response* in which it refuted allegations in the *Amended Complaint* denying that it had denied Student a FAPE, *inter alia*, as follows:

1. Student has been found to be eligible for services as a student with Other Health Impairment (“OHI”) and attends [REDACTED], a non-public placement in Montgomery County, Maryland. Student’s most recent IEP, amended on March 28, 2022, provides transportation as a related service.
2. As of October 17, 2022, Student had 20 absences during the 2022-23 school year, four of which were excused due to lack of transportation.
3. DCPS attempted to contact Petitioner on September 1, 6, and 15, 2022 to inquire about Student’s attendance and enrollment/residency forms that were needed. As of September 15, 2022, Student had not attended school during the school year, and enrollment/residency forms had not been completed for the 2022-23 school year.
4. During the week of September 19, 2022, DCPS became aware that Student’s address had changed from that in the 2021-22 school year from and to which Student received school transportation. Petitioner first notified [REDACTED] of the address change on September 21, 2022.
5. On September 26, 2022, Petitioner’s counsel notified DCPS of Student’s new address. That day, DCPS submitted a Transportation Request Form (“TRF”) to OSSE with Student’s new address. More than 10 days later, when Student’s transportation had not yet been provided, DCPS called OSSE’s call center and was informed that OSSE had not received the new TRF. DCPS resubmitted the TRF in early/mid-October to OSSE. On October 21, 2022, OSSE informed Mr. [REDACTED] of DCPS that it had the new TRF.

6. Transportation services are currently being provided to Student.
7. DCPS gave [REDACTED] ride-free Metro passes for all students to use, but Student is unable to use Metro due to other circumstances.
8. OSSE DOT is responsible for providing transportation services when transportation is included as a related service on a student's Individualized Education Program ("IEP"). Transportation was prescribed as a related service on Student's March 28, 2022 IEP. When DCPS was notified of Student's change of address, it took the required steps in a timely manner to notify OSSE.
9. It is OSSE's obligation to provide transportation to students with disabilities in the District and is responsible for any denial of FAPE due to the failure to implement transportation services.
10. DCPS took all required steps in a timely manner to ensure that Student had transportation services to and from [REDACTED]. DCPS is not responsible for any school services Student has missed.

Petitioner and DCPS participated in a resolution meeting on October 27, 2022 that did not result in a settlement. A prehearing conference was conducted by video conference on November 1, 2022, and the Prehearing Order was issued that day. In light of OSSE's failure to assert any defenses in the *OSSE Response*, the Prehearing Order authorized OSSE to file an amended response within five business days.

On November 8, 2022, OSSE filed *Office of the State Superintendent of Education's Amended Response to Administrative Due Process Complaint* ("OSSE Amended Response"). OSSE asserted that DCPS submitted inaccurate transportation request forms ("TRF") for Student and that its policy allows 10 days after receipt of a TRF before initiating service or implementing a change to a student's bus route.

The due process hearing was conducted on January 19-20, 2023 by video conference. The hearing was open to the public at Petitioner's request. OSSE filed Disclosures on January 9, 2023 containing a witness list of one witness and documents OSSE R1 through OSSE R16. No objections were filed to OSSE's exhibits, and OSSE's Exhibits OSSE R1 – OSSE R16 were admitted into evidence. DCPS filed Disclosures on January 11, 2023 containing a witness list of four witnesses and documents R1 through R16. No objections were filed to DCPS' exhibits, and DCPS' Exhibits R1 – R16 were admitted into evidence. Petitioner also filed Disclosures on January 11, 2023, containing a witness list of five witnesses and documents P1 through P54. No objections were filed to Petitioner's disclosures, and Petitioner's Exhibits P1-P54 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A and Petitioner. Witness A was admitted as an expert in special education. DCPS presented as witnesses in chronological order: Witness B, Witness C, and Witness D. OSSE's lone witness was Witness E. At the conclusion of testimony, the parties' counsel gave oral closing arguments.

ISSUES

As identified the *Prehearing Order*, the issue to be determined in this is whether DCPS and OSSE denied Student a FAPE by failing to provide Student transportation since the beginning of the 2022-23 school year.

FINDINGS OF FACT

1. Student is X years old and is enrolled in grade J at School A for the 2022-23 school year.³ Student resides in the northwest quadrant of the District,⁴ while School A is located in Gaithersburg, Maryland.⁵ Student enrolled at School A on February 1, 2021.⁶

2. On January 10, 2022, DCPS conducted an IEP Annual Review. Student was enrolled in grade J and placed at School A by DCPS with a disability classification of Other Health Impairment (“OHI”) due to Attention Deficit Hyperactivity Disorder (“ADHD”).⁷ The Consideration of Special Factors indicated that “[Student’s] disability, Other Health Impairment, manifests in aggressive behaviors, poor relationships, impulsiveness and non-compliance and aggressive behavior impedes [his/her] learning and that of other children.”⁸ The Areas of Concern were Mathematics, Reading, and Written Expression, Emotional/Social/Behavioral Development (“Behavior”). The IEP team prescribed thirty-one hours per week of specialized instruction outside general education and four hours per month of behavioral support services (“BSS”).⁹ The IEP team also prescribed transportation as a related service because s/he “will be attending a nonpublic placement outside of DCPS.”¹⁰

3. On March 29, 2022, DCPS convened an IEP team to amend Student’s IEP. The changes included revisions to Present Levels of Performance (“PLOPs”), annual goals, related services, and specialized instruction.¹¹ The team prescribed 30.25 hours per week of specialized instruction outside general education, four hours per month of BSS, three hours per month of occupational therapy (“OT”), and 30 minutes per month of OT consultation services.¹² The IEP team also maintained transportation as a related service.¹³

4. During the 2021-22 school year, Student was absent 74 days and earned the following grades: B’s in Algebra 1B (semester 1) and Geometry B, C’s in English 12A and Chemistry A, D’s in Transition to College Math A, World History, and U.S. History A, and F’s in English 12B, Spanish 1A, Spanish 1B, Algebra 1A, Geometry 1B, Environmental Science A, and

³ P7:1 (120).

⁴ P1:2 (8).

⁵ P7:1 (120).

⁶ P10:1 (160).

⁷ P4:1 (39).

⁸ *Id.* at 3 (41).

⁹ *Id.* at 12 (50).

¹⁰ *Id.* at 15 (53).

¹¹ P5:1 (71).

¹² *Id.* at 18 (88).

¹³ *Id.* at 21 (91).

Environmental Science B.¹⁴

5. On August 2, 2022, DCPS submitted a TRF to OSSE for Student's transportation for the 2022-23 school year.¹⁵ The TRF provided Petitioner's address in the southeast quadrant of the District.¹⁶ At the beginning of the 2022-23 school year, OSSE Department of Transportation's ("DOT") route schedule for Student included the address in southeast.¹⁷ DOT Route Operation Reports reveal that buses made pick-up attempts at the address in southeast from August 23, 2022 through September 30, 2022.¹⁸

Petitioner testified that she moved to her current address in the northwest quadrant of the District on September 2, 2022. She testified that she notified School A of her move around September 7th or 8th. School A informed her that it might take ten days for OSSE to reroute bus services. When no bus service was provided after ten days, Petitioner contacted Witness A, a family friend, for assistance. Witness A is also a DCPS school teacher and operates a company that, among other things, provides transportation services. OSSE first began providing service to Student at Petitioner's current address on October 25, 2022. Petitioner never sought reimbursement for alternative transportation services for Student from DOT.¹⁹

6. On September 15, 2022, Witness B, DCPS' Monitoring Specialist for students placed by DCPS at School A, attempted to reach Petitioner by phone to inquire about Student's attendance and left a voicemail, but he did not receive a return call.²⁰

7. On September 22, 2022, Attorney A, Petitioner's attorney, notified Witness C at School A that "transportation services are not yet in place for [Student]."²¹ On September 23, 2022, Witness C replied, stating that School A first became aware of Petitioner's new address on September 20, 2022.²² On September 23, 2022, Witness C emailed Witness B a copy of Attorney A's email.²³

8. Witness B testified that he was not in the office to receive Witness C's email on September 23, 2022. On September 26, 2022, Witness B, by email, notified Attorney A and Petitioner that the TRF that was submitted on Student's behalf had Petitioner's prior address in the southeast quadrant of the city, and requested confirmation of her new address.²⁴ Petitioner responded four minutes later, providing her new address.²⁵ An exchange a few minutes later revealed that Witness B was unaware of Petitioner's current cell phone number.²⁶ Witness B then

¹⁴ P10:1 (160).

¹⁵ OSSE's Exhibit ("OSSE R:") 4 at page 2 (77). The exhibit number and exhibit page numbers are followed by the electronic page number in the disclosure in parentheses, i.e., OSSE R4:2 (77); testimony of Witness E.

¹⁶ *Id.* at 3 (78).

¹⁷ OSSE R7:1 (92).

¹⁸ *Id.* at 1 - 70 (92 - 161)

¹⁹ Testimony of Petitioner.

²⁰ DCPS Exhibit ("R:") 12 at page 21 (87). The exhibit number and exhibit page numbers are followed by the electronic page number in the disclosure in parentheses, i.e., R12:21 (87); testimony of Witness B.

²¹ P16:1 (181).

²² P19:1 (190).

²³ P17:1 (183).

²⁴ P22:1 (200).

²⁵ P23:1 (202).

²⁶ P25:1 (206).

notified Petitioner that he had provided the contact information to the person on his staff that is responsible for submitting TRFs to OSSE and advising Petitioner that it “takes up to 10 business days for OSSE to route transportation once they receive the request.”²⁷

9. DCPS sent a TRF to DOT with Student’s current address on September 26, 2022.²⁸

10. When Student had not received transportation by October 11, 2022, Petitioner told Attorney A that OSSE DOT informed Petitioner that it had never received a TRF with her correct address. Attorney A notified witness B and requested “interim transportation supports.”²⁹ On October 14, 2022, Witness B informed Attorney A that DCPS had resubmitted a corrected TRF and offered to provide Student a “Kids ride Free” card.³⁰ Petitioner informed Attorney A that Student “doesn’t know how to catch the train...”³¹ Attorney relayed this information to DCPS and also indicated that “due to [her/his] past criminal case – there are also safety issues involving [Student] using public transportation.”³²

11. When OSSE informed Petitioner that it never received a TRF with Petitioner’s current address, DCPS submitted another on October 14, 2022.³³ The TRF provided Petitioner’s current address in the northwest quadrant of the District.³⁴

12. The first DOT Route Operation Report that reflects Petitioner’s new address indicates an “Effective Start Date” of October 17, 2022.³⁵ There were “No Shows” by Student on October 18, 2022 between 7:42 and 7:45 a.m.,³⁶ October 19, 2022 between 7:17 and 7:20 a.m.,³⁷ October 20, 2022 between 7:39 and 7:42 a.m.,³⁸ October 26, 2022 between 6:35 and 6:38 a.m.,³⁹ and October 27, 2022 between 6:40 and 6:43 a.m.⁴⁰ Student was marked as “On bus” on October 25, 2022.⁴¹

13. On October 21, 2022, Witness B notified Petitioner of the bus route number, the fifteen-minute pick-up (7:01 a.m.) and drop-off (4:48) time windows.⁴²

14. On October 21, 2022, Attorney A informed Witness B that no bus arrived for Student that day or the previous day.⁴³ On October 24, 2022, Attorney A informed Witness B that

²⁷ P26:2 (208).

²⁸ R5:1 (50); testimony of Witness B and Witness D. Witness E, DOT’s Associate Director of Audit & Compliance, conceded that DCPS sent a TRF with Petitioner’s current address on September 26, 2022.

²⁹ P27:1 (210).

³⁰ P30:1 (217).

³¹ P31:1 (219).

³² P32:1 (222).

³³ R7:1 (52); testimony of Witness B and Witness D; OSSE R6:2 (88).

³⁴ *Id.* at 3 (89).

³⁵ OSSE R8:9 (180).

³⁶ *Id.* at 11 (182).

³⁷ *Id.* at 22 (193).

³⁸ *Id.* at 29 (200).

³⁹ *Id.* at 56 (227).

⁴⁰ *Id.* at 64 (235).

⁴¹ *Id.* at 50, 53 (221, 224).

⁴² P35:1 (228). The bus should be expected within the fifteen-minute windows before and after the specified times.

⁴³ P34:1 (226).

no bus arrived for Student that morning. Witness B acknowledged the email thirteen minutes later.⁴⁴

15. On November 14, 2022, DCPS issued Student's IEP Progress Report for the first reporting period of the 2022-23 school year. S/he was reported to have made no progress on his/her math goals due to a "significant number of absences," s/he had made progress on two reading goals, s/he had made progress on one written expression goal but limited progress on a second due to absences, his/her behavior goals were "Just Introduced," and s/he had made progress on one OT goal but no progress on three others due to absences.⁴⁵

16. On November 22, 2022, Attorney A notified Witness B that OSSE had not provided transportation since November 14, 2022.⁴⁶

17. School A's Attendance Report indicates that Student had "Transportation Problems" on September 21-23, October 10, 19-21, and 24, November 10-11, 15, and 29, 2022.⁴⁷

18. On November 29, 2022, Attorney A notified Witness B that Petitioner had reported to the "OSSE transportation line" that morning that the bus had not arrived, but was informed by OSSE that the bus arrived at 6:30 a.m. and left at 6:33 a.m., before the scheduled arrival window.⁴⁸

19. During the first quarter of the 2022-23 school year, Student earned failing grades in all subjects: Chemistry B, English 12B, Environmental Science A, Geometry A, Music-Technology, Spanish 1A, and World History 2A.⁴⁹ All of the failing grades were attributed to Student's absences.⁵⁰

20. Witness A is a DCPS teacher and has operated All Around Services, LLC since 2015, which "assist[s] families and children in need academically, socially, and emotionally in the DC community."⁵¹ Witness A testified that he has interacted with Student since 2014. When Petitioner informed Witness A that OSSE had not sent a school bus to take Student to school for several days, Witness A offered transportation services to be provided by All Around Services. Witness A personally drove Student to and from School A on eighteen days from September 26, 2022 through October 28, 2022, at a rate of \$200.00 round-trip.⁵² Witness A testified that he developed his rate through comparison with Uber rates. He charged more than Uber because he also provided mentoring and behavioral support during the rides to and from school.⁵³

21. The distance between Petitioner's home and School A is 22.1 miles.⁵⁴

22. The July 1, 2022 General Services Administration's POV Mileage Rate for

⁴⁴ P37:1 (232).

⁴⁵ P6:1-7 (109-15).

⁴⁶ P40:1 (238).

⁴⁷ P12:1-2 (165-66).

⁴⁸ P 42:1 243).

⁴⁹ P11:1 (162).

⁵⁰ *Id.* at 2 (163).

⁵¹ P50:1 (270).

⁵² P9:1-2 (156-57).

⁵³ Testimony of Witness A.

⁵⁴ OSSE R10:1 (255).

automobiles is \$0.625 per mile.⁵⁵

23. The estimated Uber charges from Petitioner's home to School A, with a drop-off time of 8:44 a.m. are as follows: Uber X (Affordable rides, all to yourself) - \$63.89, Comfort (Newer cars with extra legroom) - \$75.22, and Uber XL (van) - \$92.16.⁵⁶ Lyft rates, with a pickup time of 7:55 a.m., varied from \$45-\$50 for basic Lyft to \$60-\$65 for Lyft XL.⁵⁷

24. OSSE initiated transportation for Student for the 2022-23 school year on October 18, 2022.⁵⁸ Student was first transported by OSSE DOT on October 25, 2022.⁵⁹

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, and this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows: The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.⁶⁰

The issue in this case does not involve the alleged failure of DCPS or OSSE to provide an appropriate IEP or placement. Thus, under District of Columbia law, Petitioner bears the burden as to all issues in this case. The burden of persuasion must be met by a preponderance of the evidence.⁶¹

Whether DCPS and OSSE denied Student a FAPE by failing to provide Student transportation since the beginning of the 2022-23 school year.

IDEA requires that states enforce policies and procedures to ensure that a free appropriate public education is available to all children in the states between the ages of three and twenty-one, inclusive, including children with disabilities who have been suspended or expelled from school.⁶² Each state's state educational agency ("SEA") is responsible for ensuring compliance with the

⁵⁵ OSSE R11:2 (257). The January 1, 2023 rate is \$0.655 per mile. OSSE R12:1 (259).

⁵⁶ OSSE R14:1 (264).

⁵⁷ OSSE R15:1 (265).

⁵⁸ OSSE R8:9 (180).

⁵⁹ Testimony of Witness E.

⁶⁰ D.C. Code Sect. 38-2571.03(6)(A)(i).

⁶¹ *Schaffer v. Weast*, 546 U.S. 49 (2005).

⁶² 20 U.S.C. §1412(a)(1)(A).

statute, including all programs administered by any other state agency or local agency.⁶³ Local educational agencies (“LEAs”) are eligible for federal assistance if they have policies, procedures, and programs in effect that are consistent with the FAPE mandates of IDEA.⁶⁴ An SEA shall use the federal funds that would otherwise have been available to an LEA to provide FAPE if, *inter alia*, the LEA is unable to maintain programs that meet the requirements of IDEA.⁶⁵ District of Columbia regulations obligate LEAs to make FAPE available to each child with a disability, and specifically requires the District of Columbia Public Schools (“DCPS”) to make FAPE available to all such students who are not enrolled in a public charter school LEA, private school, or religious school.⁶⁶

IDEA regulations provide that when an SEA provides services directly to students, it assumes the same obligations to provide FAPE as would an LEA:

If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency must comply with any additional requirements of §§ 300.201 and 300.202 and §§ 300.206 through 300.226 as if the agency were an LEA...⁶⁷

On May 5, 2010, the federal district court issued an order transferring responsibility for conducting day-to-day operations of the local school system’s Division of Transportation from a Transportation Administrator appointed by the court to the District of Columbia.⁶⁸ Under District law, OSSE receives all the funding for transportation of disabled students, in the District and is charged with the responsibility for providing that transportation. “‘Special Education Compliance Funding’ means funds provided to public schools through the ‘Formula’ to support ... regulations regarding the provision of special education services to students with disabilities... For purposes of the Formula, transportation of students with disabilities and payment of tuition for private placements of children with disabilities are considered state level costs.”⁶⁹

The cost of transportation for students with disabilities, tuition payments for private placements for students with disabilities, and the cost of performing state education functions for the District of Columbia are not covered by the Formula and shall be allocated by the Mayor and Council to the Office of the State Superintendent of Education (“OSSE”) ... The OSSE, as the state education agency for the District of Columbia, shall perform all state education functions for public charter schools and for DCPS, which are local education agencies.⁷⁰

In furtherance of its obligation to provide transportation services to disabled students, OSSE promulgated its *Special Education Transportation Policy* (“Policy”).⁷¹ The *Policy* provides

⁶³ 20 U.S.C. §1412(a)(11)(A).

⁶⁴ 20 U.S.C. §1413(a)(1).

⁶⁵ 20 U.S.C. §1413(g)(1)(B).

⁶⁶ 5-A DCMR §3001.1 and 3001.2.

⁶⁷ 34 C.F.R. §300.175.

⁶⁸ *Petties v. District of Columbia*, Civil Action No. 95-0148 (D.D.C. May 5, 2010).

⁶⁹ D.C. Code § 38-2901 (11B) and (12).

⁷⁰ D.C. Code § 38-2907.

⁷¹ OSSE R9:1 (242);

<https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/OSSE%20Transportation%20PolicyV07292014.pdf>.

that the OSSE Division of Student Transportation (“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.”⁷² The *Policy* sets forth eligibility criteria for transportation services for which the LEA’s IEP teams are tasked with determining for each child.⁷³ The *Policy* imposes on LEAs the responsibility to upload all documentation associated with special education transportation services into specified databases within five days of the eligibility determination.⁷⁴ LEAs are required to recertify each student’s continued eligibility for transportation services twice a year.⁷⁵ The *Policy* authorizes OSSE DOT to notify parents and the LEA if a student misses three consecutive days of transportation and to request an explanation. The LEA is responsible for communicating with parents to resolve absence issues. If OSSE DOT does not receive a satisfactory response within seven days, it is authorized to notify the parent and LEA of its intent to terminate services. If no satisfactory response is received within an additional three days, OSSE DOT is authorized to terminate services.⁷⁶

Student’s IEP includes transportation services as a related service.⁷⁷ While OSSE imposes responsibilities on LEAs to determine students’ eligibility for transportation services, once those determinations are made and the appropriate documentation is uploaded to designated databases, OSSE DOT provides the transportation services for all eligible disabled students in the jurisdiction. LEAs may be held responsible for any delays and expenses that result from failure to submit necessary data or documentation,⁷⁸ but there is no circumstance described in the *Policy* or District law that authorizes an LEA to provide transportation services.

DCPS submitted an TRF to OSSE on August 2, 2022 with Student’s correct address in southeast Washington, D.C. at that time. OSSE DOT’s Route Operation Reports reveal that buses made pick-up attempts at the address in southeast from August 23, 2022 through September 30, 2022. Petitioner testified that she moved to an address in northwest on September 2, 2022, but did not notify School A until September “7th or 8th.” However, Witness C of School A testified that School A became aware of the address change no earlier than September 20, 2022. Witness C informed Witness B of DCPS of the address change by email on September 23, 2022, but Witness B was out of the office that day. DCPS submitted a TRF to OSSE with Student’s correct address upon Witness B’s return to the office on Monday, September 26, 2022.

For an unexplained reason, OSSE did not process the TRF it received on September 26, 2022. Instead, it continued to send buses to Student’s old address until at least September 30, 2022. OSSE did not correct the bus route until it received another TRF from DCPS on October 14, 2022. OSSE initiated bus service for Student on October 17, 2022.⁷⁹ Between September 26, 2022 and October 28, 2022, Witness A provided Student transportation on the eighteen occasions that Petitioner informed him that the DOT bus had not arrived during the designated time window. From that date until the hearing, although Student was absent on a number of occasions, Petitioner offered no testimony or documentation of the days Student’s absences were due to bus transportation,

⁷² OSSE R9:3 (244).

⁷³ *Id.* at 4-7 (245-48).

⁷⁴ *Id.* at 9 (250).

⁷⁵ *Id.* at 12 (253).

⁷⁶ *Id.* at 9 (250).

⁷⁷ P5:21 (91).

⁷⁸ OSSE R9:12 (253).

⁷⁹ OSSE R8:9 (180).

Student's sickness, or for an unexcused reason. Specifically, Attorney A's email on November 22, 2022, asserts that OSSE had not provided transportation since November 14, 2022. However, Petitioner offered no testimony as to these dates. As reflected in paragraphs 12 and 17 above, the bus departed before the assigned pick-up window on October 18, 19, 20, 26 and 27, 2022 and November 29, 2022.

I conclude that the record supports a finding that Petitioner notified School A of her change of address no earlier than September 20, 2022, the week Witness C testified that School A was first notified of Petitioner's change of address. School A notified DCPS by email on Friday, September 23, 2022. OSSE was first informed of Student's changed address on September 26, 2022; OSSE's Witness E conceded that DCPS filed an updated TRF on that date. OSSE argued that it is entitled to a 10-day grace period to change a student's bus route, but offered no testimony as to why it takes that long to make the change. I note that once it received the TRF on October 14, 2022, the first DOT Route Operation Report reflecting Petitioner's new address indicated an "Effective Start Date" of October 17, 2022, three days after OSSE received the TRF, and the day the *Complaint* was filed.

I further conclude that Petitioner has met her burden of proving that OSSE failed to provide Student transportation on those occasions between September 26, 2022 and October 28, 2022 that she sought alternative transportation services from Witness A, on October 19, 20, 21 and 24, 2002, and on November 10, 11, 15, and 29, 2002, when School A's Attendance Report indicates Student had "Transportation Problems."⁸⁰

As of the day the *Complaint* was filed, October 17, 2022, Student had missed no school days once OSSE was notified of his/her address change on September 26, 2022 because of the alternative transportation services provided by Witness A. Thereafter, Student missed four days of school in late October and four in November 2022 due to the lack of transportation. OSSE's failure to provide Student transportation once it was advised of his/her correct address constitutes a material failure to implement his/her IEP.⁸¹

Petitioner is entitled to reimbursement for reasonable transportation expenses incurred to provide Student transportation when it was unavailable from OSSE. "Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required."⁸² It was reasonable for Petitioner to seek commercial transportation for Student on those occasions when the school bus did not arrive when scheduled to limit the time Student would miss in class, considering the distance to be travelled during congested rush-hour traffic.

Witness A used Uber to determine the market rate for the fare from Petitioner's home to School A, then added additional fees for providing mentoring and behavioral guidance during the

⁸⁰ P12:1-2 (165-66).

⁸¹ *Wilson v. District of Columbia*, 770 F.Supp.2d 270 (D.D.C 2011)(A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP), citing *Van Duyn ex rel. Van Duyn v. Baker School District 5J*, 502 F.3d 811, 822 (9th Cir. 2007), *S.S ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 68 (D.D.C. 2008), and *Catalan ex rel. E.C v. District of Columbia*, 478 F. Supp.2d 73, 75 (D.D.C. 2007).

⁸² *Leggett v. District of Columbia*, 793 F.3d 59, 75 (D.C. Cir. 2015), citing *Florence County School District Four v. Carter*, 510 U.S. 7, 16 (1993).

rides. These additional amounts are not warranted for two reasons. First, Student's IEP does not prescribe mentoring or behavioral services during transportation. Second, Witness A's resume does not reveal licensure or certification of any kind indicative of his qualifications to provide the purported services. Therefore, I will order OSSE to reimburse Petitioner the Uber round-trip rate of \$127.78, beginning on September 29, 2022, three days after OSSE received the first updated TRF from DCPS, through October 28, 2022.⁸³ Once OSSE DOT received the second updated TRF from DCPS on October 14, 2022, the Route Operation Report reflected an "Effective Start Date" of October 17, 2022, indicating its ability to change a route within three days.⁸⁴ The total reimbursement amount for 15 of the 18 days Student was transported by Witness A is \$1916.70.

RELIEF

For relief, Petitioner requests (1) an order requiring DCPS and OSSE to arrange for transportation services to be provided to Student, (2) an order requiring DCPS and OSSE to reimburse Petitioner for the expenses incurred providing Student transportation during the 2022-23 school year, (3) an order requiring DCPS to characterize any of Student's absences caused by lack of transportation as excused, (4) compensatory education expenses, (5) and attorneys' fees.

Petitioner has the burden of establishing entitlement to any requested relief, including the type and amount of compensatory education services that would compensate the student for the services that were allegedly denied. Absent such a showing, any award by the Hearing Officer would be arbitrary.

Accordingly, just as IEPs focus on disabled students' individual needs, so must awards compensating past violations rely on individualized assessments... In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be 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.⁸⁵

Thus, Petitioner must show (1) what educational harm Student suffered as a result of the alleged denial of FAPE, (2) what type and amount of compensatory services Student requires to put her/him in the position s/he would be had there been no denial of FAPE, and (3) the assessments or educational, psychological, or scientific studies that support the type and amount of services requested.⁸⁶

Petitioner failed to meet her burden of proving entitlement to compensatory education services for two reasons. First, as of the filing of the *Complaint*, Student had missed no school days once OSSE was notified of her/his new address due to the alternative transportation provided by Witness A. Second, thereafter, Student missed eight days due to lack of transportation prior to

⁸³ P9:1-2 (156-57).

⁸⁴ OSSE R8:9 (180).

⁸⁵ *Reid v. District of Columbia*, 401 F.3d 516, 524, (D.C. Cir. 2005). *See also, B.D. v. District of Columbia*, 817 F.3d 792, 799-800 (D.C. Cir. 2016).

⁸⁶ *See, Gill v. District of Columbia*, 751 F.Supp.2d 104, 111-12 (D.D.C. 2010) (petitioners offered neither reasoning nor factual findings to support the appropriateness of their proposed compensatory education plan).

the hearing. However, as in *Gill*, Petitioner offered no credible evidence, consistent with the requirements set forth in *Reid*, of the educational loss Student suffered or the type and amount of services s/he would require to ameliorate that loss.

Here, the Plaintiffs' request for an award contained “neither reasoning to support this [exact hourly request] nor factual findings showing that the [request] satisfied [W.G.'s] needs.” *Reid*, 401 F.3d at 521... The request appears untethered to W.G.'s educational deficit or to the necessary and reasonable education reasonably calculated to elevate W.G. to the approximate position he would have enjoyed had he not suffered the denial of FAPE for four months. *See Reid*, 401 F.3d at 524 (“[T]he ultimate award must be 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.”).⁸⁷

Therefore, because Petitioner offered no evidence to support an award of compensatory education services, she is not entitled to such services for the eight days OSSE failed to provide transportation after the filing of the *Complaint* up to the date of the hearing.

ORDER

Upon consideration of the *Complaint*, DCPS' *Response*, the *OSSE Amended Response*, the exhibits admitted into evidence, the testimony of the witnesses during the hearing, and the parties' closing arguments, it is hereby

ORDERED, that OSSE shall reimburse Petitioner \$1916.70 for transportation expenses incurred for Student between September 29, 2022 and October 28, 2022 when OSSE failed to provide Student school bus transportation.

IT IS FURTHER ORDERED, that DCPS shall ensure that the twelve absences found attributable to a lack of transportation, in paragraph 17 above, are deemed excused absences for purposes of determining Student's eligibility for graduation: September 21-23, October 10, 19-21, and 24, November 10-11, 15, and 29, 2022.⁸⁸

⁸⁷ *Id.*

⁸⁸ P12:1-2 (165-66).

APPEAL RIGHTS

This decision is final except that either party aggrieved by the decision of the Impartial Hearing Officer shall have ninety (90) days from the date this decision is issued to file a civil action, with respect to the issues presented in the due process hearing, in a district court of the United States or the Superior Court of the District of Columbia as provided in 34 C.F.R. §303.448 (b).

Terry Michael Banks
Terry Michael Banks
Hearing Officer

Date: February 2, 2023

Copies to: Attorney A
Attorney B
Attorney C
OSSE Office of Dispute Resolution
OSSE Division of Specialized Education
[REDACTED] DCPS
[REDACTED] DCPS