

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parent, on behalf of Student,¹)	
Petitioner,)	
)	Hearing Date: 12/20/23
v.)	Hearing Officer: Michael Lazan
)	Case No. 2023-0218
Office of the State Superintendent of)	
Education,)	
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student (the “Student”) who is currently eligible for services as a student with Autism. A due process complaint (“Complaint”) was received by Office of the State Superintendent of Education (“OSSE” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on November 3, 2023. The Complaint was filed by the Student’s parent (“Petitioner”). On November 13, 2023, Respondent filed a response.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 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 (“DCMR”), Title 5-A, Chapter 30.

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

III. Procedural History

On November 21, 2023, a prehearing conference was held. Participating in the prehearing conference were Attorney A, Esq., and Attorney B, Esq., for Petitioner, and Attorney E, Esq., for Respondent. On November 28, 2023, a prehearing conference order was issued, summarizing the rules to be applied in the hearing and identifying the issues in the case.

The complaint contains “systemic” claims, i.e., claims that address the concerns of other students and the entire transportation system within OSSE. On November 13, 2023, OSSE moved to dismiss these systemic claims. OSSE contended that caselaw indicates that systemic claims are beyond the jurisdiction of an IDEA hearing officer, since the IDEA only provides for individual claims, as indicated in the procedural safeguards and regulatory language relating to the filing of a due process complaint. Petitioner opposed the motion, contending that OSSE has long failed to provide appropriate transportation services to the students of the District of Columbia, which became an acute crisis in the beginning of January 2023, when OSSE changed its bus routing system. This motion was granted by Hearing Officer Order dated December 6, 2023. Accordingly, this Hearing Officer Determination (“HOD”) will not address issues relating to systemic claims, whether in regard to the alleged denial of a Free Appropriate Public Education (“FAPE”) or in regard to the relief requested.

On December 14, 2023, Petitioner moved for a continuance to extend the timelines for the HOD. On December 18, 2023, the motion was granted by a written order, and the timelines for the HOD were extended to January 10, 2024, without objection.

The matter proceeded to trial on December 20, 2023. Appearing for Petitioner were Attorney A, Esq., Attorney B, Esq., Attorney C, Esq., and Attorney D, Esq. Appearing for Respondent was Attorney E, Esq. The hearing was conducted through the Microsoft Teams

videoconferencing platform, without objection. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-71, without objection. During the proceeding, Respondent moved into evidence exhibits R-1 through R-2, without objection. Petitioner presented as witnesses herself and Witness A, a special education consultant (expert in special education and the development of compensatory education plans). Respondent presented Witness B, a customer service communication specialist. After testimony and evidence concluded on December 18, 2023, the parties presented oral closing statements.

IV. Issues

As identified in the prehearing conference order and in the Complaint, and as modified through the order on the partial motion to dismiss, the issue to be determined in this case is as follows:

Did OSSE deny the Student a FAPE during the 2021-2022, 2022-2023, and 2023-2024 school years by failing to implement the requirements in the Student's then-current Individualized Education Programs ("IEPs")?

As relief, Petitioner seeks: a declaration that OSSE's actions denied the Student a FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law; an order that OSSE provide consistent, reliable, and appropriate transportation to and from school in conformity with the Student's IEPs; an order authorizing comprehensive independent education evaluations for the Student, including but not limited to vocational evaluations, psychoeducational evaluations, speech-language evaluations, assistive technology evaluations, occupational therapy evaluations, and neuropsychological evaluations; an order awarding compensatory education services, including tutoring and related services from a provider of Petitioner's choice; and an order awarding reimbursement for the cost of transporting the Student

to and from school on the days in which Petitioner was forced to provide transportation because of OSSE's failures.

V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a student with Autism. Autism affects the Student academically, socially and emotionally. The Student becomes internally distracted and tends to perseverate. The Student is not able to get him/herself dressed, tell time, or tell Petitioner what has happened during the day. The Student does not have the ability to communicate well, so when the Student experiences a tantrum, s/he cannot tell anyone what is wrong or what happened that went wrong. During a tantrum, the Student may bites his/her fingers, hit his/her head, grab someone's cheeks, and/or cry for thirty minutes or more. The Student is impulsive, has difficulty with self-regulation, and can become aggressive. It can take a while for the Student to calm down during a tantrum. The tantrums are provoked by scheduling changes, particularly when the Student does not understand the changes. Testimony of Petitioner; Testimony of Witness A.

2. The Student has receptive and expressive language disorder. The Student can minimally communicate his/her wants and needs. The Student is significantly below grade level in every academic area, to the point where s/he is unable to identify his/her address and phone number. The Student participates in alternative assessments and requires discrete trial instruction, as part of an Applied Behavioral Analysis ("ABA") approach to learning. Testimony of Petitioner; Testimony of Witness A.

3. For the 2021-2022 school year, the Student attended School A. The Student's IEPs for the 2021-2022 school year included transportation to and from school as a related service. P-4; P-5. One of OSSE's goals is to make sure students arrive at school at least ten

minutes prior to class time so they are ready for classes. This goal is especially important for students with special needs, who ordinarily need more time than general education students to get ready for class. Testimony of Witness B. For School A, which is a fifteen-minute drive from Petitioner's home, the Student was supposed to be picked up at 7:58 a.m. to arrive timely for the 8:40 a.m. start of the school day. However, on most days, the Student arrived at school after 8:30 a.m.

4. Beginning on November 19, 2021, the Student's school bus started to arrive at School A on or before 8:30 a.m. R-2-7-11. However, by January 2022, the bus was again ordinarily arriving at the school after 8:30 a.m., and the bus sometimes arrived at the school well after 8:30 a.m. For example: on January 20, 2022, the bus arrived at 10:32 a.m.; on March 8, 2022, the bus arrived at 9:33 a.m.; on April 22, 2022, the bus arrived at 10:04 a.m.; on April 25, 2022, the bus arrived at 10:51 a.m.; on May 16, 2022, the bus arrived at 10:00 a.m.; on May 17, 2022, the bus arrived at 9:54 a.m.; on May 18, 2022, the bus arrived at 9:55 a.m.; on May 18, 2022, the bus arrived at 10:05 a.m.; on May 23, 2022, the bus arrived at 9:58 a.m.; on June 6, 2022, the bus arrived at 9:30 a.m.; and on June 13, 2022, the bus arrived at 10:00 a.m. R-2-7-8. OSSE has not been able to locate "trip tickets" for three days during the 2021-2022 school year. There is accordingly no documentary evidence available regarding the Student's bus travel on those three days. Testimony of Witness B.

5. When the Student arrived late to school, s/he often did not understand why s/he was late and would be thrown off by the day's lack of structure. As a result, the Student would have tantrums that took a long time to address. Teachers engaged in redirection and sometimes called Petitioner on the phone to try to calm the Student down. The Student ended up missing

instruction as a result. The Student began to get grades in the “C” range, instead of the “A” and “B” range, and dropped off the school’s honor roll. Testimony of Petitioner.

6. The Student started at School B for the 2022-2023 school year. The Student’s IEPs for the 2022-2023 school year included transportation to and from the school as a related service. P-3; P-4. A vehicle needs about forty-five minutes to travel from Petitioner’s home to School B. Classes at the school started at approximately 8:45 a.m. and ended at 3:15 p.m. Testimony of Petitioner; P-61.

7. When the Student started at School B, s/he did not receive transportation from OSSE at all. For two weeks, Petitioner had to use a car service to transport the Student to and from school. On September 29, 2022, the OSSE Associate Director for Customer Engagement, Division of Student Transportation, wrote to Petitioner, apologized for the service failures, and provided Petitioner with reimbursement documents. P-28-2; P-65.

8. Thereafter, the bus often arrived at School B less than ten minutes prior to the 8:45 a.m. starting bell time. In September 2022, the bus arrived at the school after 8:35 a.m. approximately seven times, including at 10:03 a.m. on September 23, 2022, and at 10:17 a.m. on September 29, 2022. In October, the bus arrived at the school after 8:35 a.m. at least four times. In November, the bus arrived at the school after 8:35 a.m. at least five times, including at 10:22 a.m. on November 15, 2022. OSSE has not located “trip tickets” for twenty-two days during the 2022-2023 school year. There is accordingly no documentary evidence available regarding the Student’s bus travel on those twenty-two days. R-2-17-21; Testimony of Witness B.

9. On or about December 9, 2022, the Student transferred to School C. A vehicle needs at least thirty minutes to travel from Petitioner’s home to School C. The school day at School C started with breakfast at 8:10 a.m. After breakfast, the school provided a “morning

circle” at 8:30 a.m. and classes started at about 8:45 a.m. “Bell time” was considered to be 8:30 a.m. Testimony of Petitioner; R-2-27.

10. The Student did not receive transportation to School C during December 2022. On January 9, 2023, the bus service resumed. The Student’s scheduled pick-up time at home, to go to school, was 7:44 a.m., and his/her scheduled drop-off time at home, after school, was 4:09 p.m. P-21. The bus arrived at the school after 10:00 a.m. eleven times between January 4, 2023, and February 3, 2023. The bus always arrived at the school after 8:10 a.m. Most of the time, the bus arrived at the school after 8:30 a.m., until about March 2023. Sometimes, the bus was extremely late to the school. For example, the bus arrived at 11:45 a.m. on January 4, 2023, and at 11:30 a.m. on January 5, 2023. Thereafter, the bus often arrived at the school after 9:00 a.m. The bus arrived before 8:10 a.m. about twenty times between January 2023 and June 2023. R-2-18-21.

11. Due to the unreliable bus service, Petitioner often made alternative arrangements to bring the Student to school. Because Petitioner did not have a car at that time, the Student’s godfather took the Student to school most of the time. R-2-17-21; Testimony of Petitioner; P-60-3. These transportation issues contributed to the Student getting “C” grades in English language arts class for every quarter at School C during the 2022-2023 school year. P-19.

12. The Student’s IEPs for the 2023-2024 school year included transportation to and from school as a related service and provided for extended school year (“ESY”) services. P-2. During the summer of 2023, the Student was supposed to go to summer school because the IEPs recommended ESY services. However, no transportation was provided or offered to the Student until the final week of the summer school session. By that time, Petitioner had arranged for the

Student's aide to take him/her to school. Petitioner gave the aide gasoline money to compensate for the gas used during the journey. Testimony of Petitioner.

13. The Student again attended School C for the 2023-2024 school year, starting in August 2023. Petitioner made informal arrangements with a bus driver to pick the Student up at 7:15 a.m., which would have allowed the Student to get to school within an appropriate time frame. Petitioner made sure the Student was ready at 7:00 a.m. Testimony of Petitioner.

14. In August 2023, the Student's bus arrived at School C prior to 8:10 a.m. every day except one. In September 2023, the bus arrived at the school prior to 8:10 a.m. on most days, though it arrived at 10:14 a.m. on September 6, 2023, and at 9:01 a.m. on September 25, 2023. In October 2023, the bus arrived at the school at 8:10 a.m. four times. OSSE has not located "trip tickets" for two days during the 2023-2024 school year. R-2-27.

15. During the 2023-2024 school year, at the end of the school day at School C, the Student's bus is generally late bringing him/her home, sometimes as much as two hours late. The bus is supposed to arrive at the Student's home at 3:47 p.m., with a fifteen-minute grace period (before or after the designated time). Even with the grace period, the Student has arrived home late over thirty times between August 2023 and October 2023. Testimony of Witness B; R-2-28.

VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed in 2014. The law states that "(w)here there is a dispute about the appropriateness of the child's individual educational program or placement, 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 establishes "a *prima facie* case." D.C. Code

Sect. 38-2571.03(6)(A)(i). The issues here do not directly relate to the appropriateness of the Student's program or placement. As a result, as indicated in the prehearing conference order, which was agreed to by the parties, the burden of persuasion is on Petitioner. Schaffer v. Weast, 546 U.S. 49 (2005).

Did OSSE deny the Student a FAPE during the 2021-2022, 2022-2023, and 2023-2024 school years by failing to implement the requirements in the Student's then-current IEPs?

The IDEA is violated when a school district materially deviates from a student's IEP. Wilson v. District of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C.2011). A material failure occurs when there is a "more than a minor" discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir.2007). "(T)he materiality standard does not require that the child suffer demonstrable education harm in order to prevail." Wilson, 770 F. Supp. 2d at 275 (quoting Van Duyn, 502 F.3d at 822). Rather, "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." Turner v. District of Columbia, 952 F. Supp. 2d 31, 41 (D.D.C. 2013) (citing Wilson, 770 F. Supp. 2d at 775).

2021-2022 School Year

For this school year, the Student attended School A. The Student's IEPs for the 2021-2022 school year included transportation to and from school as a related service. The Student was supposed to be picked up at 7:58 a.m. The school day started at 8:40. a.m., but the Student arrived to school after 8:30 a.m. on most days. Respondent did provide proper and timely bus service beginning on November 19, 2021, but by January 2022, the bus was again ordinarily arriving at School A after 8:30 a.m., and the bus sometimes arrived at the school well after 8:30

a.m. For example: on January 20, 2022, the bus arrived at 10:32 a.m.; on March 8, 2022, the bus arrived at 9:33 a.m.; on April 22, 2022, the bus arrived at 10:04 a.m.; on April 25, 2022, the bus arrived at 10:51 a.m.; on May 16, 2022, the bus arrived at 10:00 a.m.; on May 17, 2022, the bus arrived at 9:54 a.m.; on May 18, 2022, the bus arrived at 9:55 a.m.; on May 18, 2022, the bus arrived at 10:05 a.m.; on May 23, 2022, the bus arrived at 9:58 a.m.; on June 6, 2022, the bus arrived at 9:30 a.m.; and on June 13, 2022, the bus arrived at 10:00 a.m.

One of OSSE's goals is to make sure that even general education students arrive at school at least ten minutes prior to class time in order for student to get ready for classes. As Witness B admitted during testimony, this goal is especially important for students with special needs, who ordinarily need more time than general education students to get ready for class. The record establishes that this autistic Student has considerable difficulty managing tasks. The Student becomes internally distracted and tends to perseverate, is not able to get him/herself dressed, cannot tell time, cannot communicate well, and cannot readily ask questions to staff if s/he needs something at the start of the school day. Nor can the Student readily tell Petitioner what has happened during the day. Moreover, when schedules change, there is a real risk that the Student will experience a tantrum, which has occurred multiple times at school. During a tantrum, the Student cannot tell anyone what is wrong or what happened that went wrong, which means that it is difficult to stop the Student's tantrums after they start. During a tantrum, the Student may bite his/her fingers, hit his/her head, grab someone's cheeks, and/or cry for thirty minutes or more.

There is no dispute that a transportation mandate on a student's IEP requires a bus to regularly and reliably pick the child up on time. OSSE's argument was that it was appropriate for this Student to be late for school only twenty-four days during the school year, which was less than fifteen percent of all school days. This argument is premised on a policy to mark

students “on time” if they arrive at school before the bell rings. But even high-functioning general education students need some time to settle before going to class, which is why one of OSSE’s goals is to get students to school at least ten to forty minutes before the school day starts. Before classes start, all students, and especially disabled students, need time to do things like go to the bathroom, greet peers, and prepare for lessons. If this severely disabled Student has no time to get ready at school and has to rush to get to his/her classroom because s/he is late, his/her educational performance is obviously and significantly affected. And this Student has arrived late at school multiple times due to OSSE’s transportation issues, as documented in the record. Moreover, when this Student arrived at school very late, i.e., after 10:00 a.m., which happened multiple times during the 2021-2022 school year, it is easy to see how s/he could get upset while transitioning to class and miss class time as a result. There is nothing in the record to establish that there was a plan to give the Student anything like extra instruction because s/he arrived at school late on some days. Accordingly, this Hearing Officer finds that this is a Student who needs buses to *regularly and reliably* arrive at school at least ten minutes prior to the start of classes in order to fairly satisfy the transportation mandate on his/her IEP.

Further, even accepting OSSE’s rule that arrival just before bell time is acceptable, OSSE submitted no caselaw to establish that its failure to provide the Student with proper bus transportation twenty-four times during a school year is *de minimis*. When courts focus on whether a student was deprived of an educational benefit, courts look to the “goal and import” of the services. Wilson, 770 F. Supp. 2d 270. Respondent pointed to two cases during its closing argument, but those cases did not support its position. Both cases found that the school district violated the IDEA by failing to implement a student’s IEP. Middleton v. District of Columbia, 312 F. Supp. 3d 113 (D.D.C. 2018) (reversing the hearing officer by finding that DCPS denied

the student a FAPE by providing three general education classes for an IEP that called for twenty-seven hours of specialized instruction); Wade v. District of Columbia, 322 F. Supp. 3d 123 (D.D.C. 2018) (rejecting the argument that DCPS provided a "full-time" special education placement by providing twenty hours of specialized education).

Indeed, District of Columbia courts have been rather receptive to parent arguments on failure to implement claims, in general. For instance, in White v. District of Columbia, 80 IDELR 284 (D.D.C. March 31, 2018), a case that this Hearing Officer decided at the Office of Dispute Resolution, a student's IEP called for one hour of occupational therapy per month. However, that student was unavailable for services. As a result, this Hearing Officer ruled that there was no FAPE denial because that student was offered the services. The court disagreed and reversed, remarking that an IEP is "not a form," that it is constructed only after careful consideration of a child's present levels of achievement, disability, and potential for growth, and that it is not enough merely to "offer" the services provided by an IEP. Instead, the court decided that the school district must "ensure" that the child actually receives those services. This Hearing Officer therefore must agree that Respondent denied the Student a FAPE by failing to provide him/her with sufficient bus transportation during the 2021-2022 school year.

2022-2023 School Year

The Student started at School B for the 2022-2023 school year. The Student's IEPs for this school year included transportation to and from school as a related service. Classes started at approximately 8:45 a.m. and ended at 3:15 p.m. However, when the Student first started at School B, s/he did not receive any transportation from OSSE. Petitioner had to use a car service to transport the Student to and from school for two weeks. On September 29, 2022, the OSSE Associate Director for Customer Engagement, Division of Student Transportation, apologized

for the service failures, but thereafter, the bus still often arrived at school less than ten minutes prior to the 8:45 a.m. bell. In September 2022, the bus arrived after 8:35 a.m. approximately seven times, including at 10:03 a.m. on September 23, 2022, and at 10:17 a.m. on September 29, 2022. In October 2022, the bus arrived at school after 8:35 a.m. at least four times. In November 2022, the bus arrived after 8:35 a.m. at least five times, including at 10:22 a.m. on November 15, 2022.

After the Student transferred to School C in December 2022, transportation services did not improve. The school day at School C started with breakfast at 8:10 a.m. After breakfast, the school provided a “morning circle” at 8:30 a.m., with classes starting at about 8:45 a.m. “Bell time” was considered to be 8:30 a.m.

The Student did not receive any bus transportation to School C during December 2022. On January 9, 2023, the bus service resumed. The bus arrived at the school after 10:00 a.m. eleven times between January 4, 2023, and February 3, 2023. Sometimes the bus was extremely late to school, for example arriving at 11:45 a.m. on January 4, 2023, and at 11:30 a.m. on January 5, 2023. Thereafter, the bus often arrived at the school after 9:00 a.m. The bus arrived before 8:10 a.m. about twenty times between January 2023 and June 2023. Most of the time, the bus arrived at school after 8:30 a.m., until about March 2023.

Because of this unreliable bus service, Petitioner often made arrangements to bring the Student to school. Since Petitioner did not have a car at that time, the Student’s godfather often took the Student to school. Witness B admitted that the Student was late to school thirty-nine times during the 2022-2023 school year, and OSSE did not focus on this school year during its closing argument. This Hearing Officer therefore must agree that Respondent denied the Student

a FAPE by failing to provide the Student with sufficient bus transportation during the 2022-2023 school year.

2023-2024 School Year

The Student has attended School C during the 2023-2024 school year. The Student's IEPs for this school year included transportation to and from school as a related service and provided for ESY services. During this school year, Petitioner made arrangements with a school bus driver to pick the Student up earlier. As a result, in August 2023, the bus arrived at School C prior to 8:10 a.m. on every day except one. In September 2023, the bus arrived at School C prior to 8:10 a.m. on most days, though the bus arrived at 10:14 a.m. on September 6, 2023, and at 9:01 a.m. on September 25, 2023. This Hearing Officer agrees with OSSE that it has implemented the Student's IEP during the 2023-2024 school year, from late August 2023 through October 2023, insofar as the route from the Student's home to school was concerned.

Petitioner also argued that OSSE did not provide the Student with transportation for the Student's ESY services over the summer. Neither the prehearing conference order nor the Complaint specifically mention ESY services. As a result, OSSE objected to this issue being raised. However, ESY services were part of the Student's program for the 2023-2024 school year, and the Complaint does claim a failure to implement the Student's IEP during the 2023-2024 school year. Indeed, paragraph 26 of the Complaint states that "OSSE DOT transportation has been inconsistent and unreliable throughout the 2021-2022, 2022-2023, and 2023-2024 school years." While the issues at a hearing must correspond to the issues in the due process complaint, a due process complaint does not have to specify "all facts" or set forth "every legal theory" in painstaking detail. Escambia County Bd. of Educ. v. Benton, 406 F. Supp. 2d 1248, 1259-1260 (D. Ala 2005). Additionally, OSSE had an opportunity to ask to call a witness to

specifically respond to this charge, as was pointed out at the hearing. But there is no dispute that OSSE failed to provide the Student with bus transportation for ESY services until the final week of the summer of 2023. While Petitioner mitigated the damage to the Student by making arrangements with an aide to take the Student to school, this aide was never reimbursed by OSSE for their time and expense. This Hearing Officer agrees with Petitioner that OSSE denied the Student a FAPE by failing to provide transportation services during the summer of 2023.

Petitioner also argued that, at the end of the school day at School C, the bus was often late in bringing the Student home, sometimes by as much as two hours. The bus is supposed to arrive at the Student's home at 3:47 p.m., with a fifteen minute grace period, but even with the grace period, the Student arrived home late over thirty times between August 2023 and October 2023. Witness B said this was because the drop-off time was "unrealistic."

OSSE suggested that there was no harm to the Student's education, given that the school day had already ended at that time. However, a child need not suffer demonstrable educational harm to prevail in a failure to implement case. Wilson, 770 F. Supp. 2d at 275. OSSE's responsibility was to create a realistic transportation schedule. The Student came home late on more than half of his/her school days through October 2023. Between September 22, 2023, and October 31, 2023, the bus was late every single day except one. The bus arrived after 5:00 p.m., more than an hour late, five times. Especially for a child like this, who cannot communicate well and requires structure and consistency, regular bus transportation both to and from school is material. OSSE denied the Student a FAPE by failing to provide him/her with timely bus service home during the 2023-2024 school year, through to October 31, 2023.

RELIEF

When remedying a violation of the IDEA, a hearing officer may “grant such relief as [he or she] determines is appropriate.” 20 U.S.C. Sect. 1415(i)(2)(C); Sch. Comm. of Burlington v. Dep’t of Educ., 471 U.S. 359, 369 (1985) (discussing the “broad discretion” of the court to craft relief, limited only by the instruction that “relief is to be ‘appropriate’ in light of the purpose of the Act”). Compensatory education is an award of services “to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 522 (D.C. Cir. 2005). This is a common form of relief awarded in IDEA cases. Glass, next friend of A.G. v. District of Columbia, No. CV 19-2148 (RC), 2020 WL 6799139, at *8 (D.D.C. Nov. 19, 2020). If compensatory education is unavailable, a child’s access to appropriate education could depend on his or her parents’ ability to pull the child out of the deficient public program and front the cost of private instruction. This is a result “manifestly incompatible with IDEA’s purpose of ‘ensur[ing] that all children with disabilities have available to them a free appropriate public education.’” Boose v. District of Columbia, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (quoting Reid at 522–23 [citing to 20 U.S.C. Sect. 1400(d)(1)(A)]).

A compensatory education award is crafted to remedy what might be termed an education deficit created by an educational agency’s failure over a period of time to provide a FAPE to a student. Reid, 401 F.3d at 523. A petitioner need not “have a perfect case” to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011). Under the IDEA, if a student is denied a FAPE, a hearing officer may not “simply refuse” to grant one. Henry v. District of Columbia, 750 F. Supp. 2d 94 (D.D.C. 2010). Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

Witness A proposed to provide the Student with 127.5 hours of compensatory education in the form of tutoring. Given the impact of the FAPE denial, which occurred over the course of three school years, this is a reasonable proposal, and OSSE did not contend that this proposal for compensatory education was excessive or inflated. Petitioner also seeks reimbursement for the travel expenses she incurred over the past three years. OSSE has already provided the Student with forms for reimbursement, and did not object to this reimbursement request during closing argument. This relief will be so ordered.

Finally, Petitioner seeks a “full set” of evaluations as relief, including a neuropsychological evaluation, a speech-language evaluation, and an occupational therapy evaluation. However, there was no claim that OSSE denied the Student a FAPE by failing to evaluate the Student. Unless there are significant countervailing considerations, relief awarded in an HOD should correspond to the hearing officer’s findings of FAPE denial. It is the Local Educational Agency (“LEA”) that is responsible for evaluating a student, not the State Educational Agency (“SEA”). The LEA was not a party to this action and therefore could not present a defense on this issue. As a result, this Hearing Officer must deny the request for evaluations.

VII. Order

As a result of the foregoing:

1. The Student is hereby awarded 127.5 hours of compensatory education in the form of one-to-one, in-person tutoring by a provider who is a special education teacher, at the teacher’s regular rate, provided that the rate is reasonable and customary in the community;

2. Petitioner shall be reimbursed for all transportation expenses directly incurred as a result of OSSE's failure to provide the Student with regular bus services during the 2021-2022, 2022-2023, and 2023-2024 school years;

3. Petitioner's other requests for relief are denied.

Dated: January 10, 2024

Corrected: January 10, 2024

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
Attorney C, Esq.
Attorney D, Esq.
Attorney E, Esq.

VIII. Notice of Appeal Rights

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. Sect. 1415(i).

Dated: January 10, 2024

Michael Lazan
Impartial Hearing Officer