DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, N.E., Third Floor
Washington, D.C. 20002

Student,[1] through *Parent*, *Petitioner*,	)	Case No.: 2023-0082
	)	Date Issued: 7/7/23
v.	)	Hearing Officer: Keith L. Seat, Esq.
District of Columbia Public Schools ("DCPS"), Respondent.	)	Hearing Date (using Microsoft Teams): 6/14/23

HEARING OFFICER DETERMINATION

Background

Petitioner, Student's Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") due to DCPS's failure to include a safety plan in Student's Individualized Education Program ("IEP") that Parent wanted to pick up Student at a childcare facility due to Parent's work hours, as well as failing to involve Parent in IEP decision-making. DCPS responded that not accommodating Parent's work schedule and not providing a safety plan were not denials of FAPE, and that Parent participated in IEP decision-making.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

[1] Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student's gender are omitted.

Procedural History

Following the filing of the due process complaint on 5/2/23, the case was assigned to the undersigned on 5/3/23. Respondent filed a timely response on 5/12/23 and did not challenge jurisdiction. Petitioner initially filed her due process complaint against both OSSE and DCPS, but on 5/18/23 filed a notice of withdrawal as to OSSE (along with a correspondingly revised due process complaint), which was granted by the undersigned on 5/23/23. OSSE had filed a notice of insufficiency on 5/17/23 which was rejected as moot in the 5/23/23 order. A resolution meeting took place on 5/10/23, but the parties did not settle the case or shorten the 30-day resolution period, which ended on 6/1/23. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination ("HOD") by 7/16/23.

A prehearing conference was held on 5/31/23 and the Prehearing Order was issued that same day, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 6/14/23 and was open to the public. Petitioner was represented by *Petitioner's counsel*. DCPS was represented by *Respondent's counsel*. Petitioner participated in the entire hearing.

Documents and Witnesses

Petitioner's Disclosure, submitted on 6/7/23 and amended without objection during the hearing, contained documents P1 through P19, all of which were admitted into evidence over various objections.[2] Respondent's Disclosure, submitted on 6/7/23, contained documents R1 through R45, of which R5, R6, R8, R9, R10, R11, R12, R24, R27, R32, R33, R34, R36, R38, R39, and R43 were offered and admitted into evidence over certain objections.[3]

Petitioner's counsel presented 1 witness in Petitioner's case-in-chief (*see* Appendix A):

1. Parent

Respondent's counsel presented 2 witnesses in Respondent's case (*see* Appendix A):

1. *Special Education Teacher*
2. *LEA Representative*

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[2] Respondent's objection to the handwritten notations by Petitioner's counsel providing identifying information (i.e., dates and the like) on Petitioner's documents was sustained to the extent that the undersigned will disregard such added information.

[3] Citations herein to the parties' documents are identical except that Petitioner's documents begin with a "P," while Respondent's documents begin with an "R," followed by the exhibit number and then a "p" (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

Petitioner's counsel recalled Parent as her only rebuttal.

Issues and Relief Requested

The issues[4] to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to develop an appropriate IEP on 4/12/23 due to (a) allowing non-team member OSSE to dictate terms of the IEP without any input from Parent, (b) revising the IEP to take away services without IEP team discussion or informing Parent, (c) allowing OSSE to determine what is or is not FAPE in IEP implementation, (d) refusing to allow Parent meaningful participation in the IEP team meeting, and/or (e) failing to develop a safety plan. *(Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Issue 2: Whether DCPS denied Student a FAPE by predetermining the transportation provisions of the 4/12/23 IEP by (a) removing the safety plan requirements from the IEP, (b) refusing to discuss whether an OSSE bus picking up and dropping off Student at the childcare center would provide a FAPE, and/or (c) stating that it would implement OSSE's transportation policy and would not contradict that policy regardless of Student's needs. *(Petitioner has the burden of persuasion on this issue.)*

The relief requested by Petitioner is:

1. A finding that Student has been denied a FAPE.
2. DCPS shall collaborate with Parent to develop a safety plan, which shall be part of Student's IEP; in the absence of agreement, Petitioner may file another due process complaint challenging the IEP.
3. Within 5 business days, DCPS shall convene an IEP team meeting to discuss (a) how Student's disability impacts the need for adult supervision when taking OSSE transportation, and (b) whether pick up or drop off locations other than Petitioner's residence are necessary for a FAPE, making appropriate amendments to the IEP if necessary.

Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings

[4] At the beginning of the due process hearing, Petitioner's counsel withdrew without prejudice the first issue in the Prehearing Order, which was "Whether DCPS denied Student a FAPE by failing to develop an appropriate IEP on 1/10/23 due to (a) not stating how transportation would be implemented, and/or (b) not developing a safety plan as referenced in the IEP."

of Fact[5] are as follows:

1. Background. Student is a resident of the District of Columbia; Petitioner is Student's Parent.[6] Student is *Age*, *Gender*, in *Grade* at *Public School*.[7] Student is a very happy, healthy child.[8] Student has the safety concerns of a younger child about 7 or 8 years old; Student cannot perceive dangers and navigate surroundings.[9] Special Education Teacher and the classroom aide did not report any concerns with Student's ability to independently access the academic environment; Student can independently follow classroom routines.[10]

2. IEPs. Student has had IEPs for as long as Student has been in school, with the disability category of Traumatic Brain Injury based on an injury weeks after birth.[11] Student's 1/10/23 IEP provided for 20 hours/week of specialized instruction outside general education, 120 minutes/month of adapted PE inside general education, 240 minutes/month of speech-language pathology outside general education, and 90 minutes/month of occupational therapy outside general education.[12] Student's IEP was amended on 4/12/23 to increase occupational therapy from 90 to 120 minutes/month and edit secondary transition areas.[13] Petitioner's counsel was listed on the 4/12/23 IEP as attending the IEP meeting as Student Advocate on "OSSE Transportation."[14]

3. Parental Participation. Parent's central concern at the annual review on 1/10/23 was that Student would have to wait alone outside their home for the school bus, which was unreliable.[15] Student can't safely wait alone for the bus at home.[16] In the absence of the school bus, Parent would drive Student to school causing her to be late for work or use HopSkipDrive (similar to Uber for children) to get Student to school, which cost about $40 each way.[17] Petitioner's counsel pressed for transportation to be discussed during the

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[5] Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.
[6] Parent.
[7] P11p131; Parent.
[8] Parent.
[9] *Id.*
[10] P7p109.
[11] P13p165; Parent.
[12] P6p81,99.
[13] P11p131,150.
[14] P11p131.
[15] P5p74; Parent.
[16] Parent.
[17] *Id.*

4/12/23 IEP team meeting.[18] At the 4/12/23 IEP team meeting, Petitioner and her counsel discussed that Student needed direct supervision and could not wait independently for the school bus; Petitioner had to leave for work at 7 a.m. and there was no one to wait with Student for the bus.[19] The 4/12/23 IEP meeting was an hour long and discussed Student's transportation thoroughly.[20] Parent couldn't say an accident would never happen to Student, and in fact considered Student "an accident waiting to happen."[21]

4. Safety Plan. The 2/22/21, 1/18/22 and 1/10/23 IEPs each noted in the transportation sections that Student was "on [a] safety plan" due to Student's "ability to wander" and needed adult supervision so Student would not "leave the premise."[22] This does not match anything Special Education Teacher has seen from Student.[23] In 2015, Student was eloping and wandering, so needed a plan, but Student did not wander or elope in 2022/23.[24] Student may have been more challenging in 2021/22 and was "shutting down," but was much better in 2022/23; Student exhibited no concerns this year for which a safety plan (or a behavior plan) was needed.[25] Safety plans are not part of an IEP but a standalone document when there are concerns about harm to the student or others.[26]

5. The 4/12/23 Amended IEP omitted any reference to a safety plan, unlike Student's 1/12/23 IEP and prior IEPs, and stated that Student was "permitted one round trip from [Student's] residency" to school per school day.[27] DCPS removed the reference to a safety plan from the 4/12/23 IEP without informing Parent.[28] Parent only discovered that the safety plan reference had been removed from Student's IEP when Petitioner's counsel pointed it out; Parent was "shocked."[29] Parent felt that a safety plan was important to avoid any incidents, even if there had been no incidents in the current school year.[30] The only safety issue was when Parent sent Student alone by Uber to a place Student had never been and was dropped off at the wrong place.[31]

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[18] R39p245,246.
[19] P10p129-30.
[20] LEA Representative.
[21] Parent.
[22] P2p28 (sic); P3p53 (sic); P6p102 (sic).
[23] Special Education Teacher.
[24] Special Education Teacher; LEA Representative; all dates in the format "2022/23" refer to school years.
[25] Special Education Teacher; LEA Representative (Student doing very well, no elopement at all this year).
[26] LEA Representative.
[27] P11p153 (sic); Parent.
[28] P13p164.
[29] Parent.
[30] *Id.*
[31] Special Education Teacher.

6. Transportation. OSSE's longstanding policy was to provide "one round trip from each student's residence in the District of Columbia to the student's attending school."[32] In recent years, OSSE had granted Parent's request to pick up Student from a childcare facility on a local military base where Parent worked as a civilian nurse; in 2022/23 OSSE began enforcing its policy of picking up children only from their home addresses.[33] LEA Representative offered to add Student's home address for transportation, but refused to include the childcare facility.[34] Petitioner's need for pick up at the childcare facility was due to Parent's work schedule.[35] Petitioner's proposal was "clearly against long-standing written" OSSE policy.[36] DCPS offered to put in a transportation request for Student to be picked up and dropped off at home.[37]

7. Parent didn't feel "comfortable at all" with Student walking across streets to the boys and girls club after school, but stated she would usually ask the teacher or aide to watch Student cross the streets; school staff did so.[38] Student does not receive services related to FAPE at the childcare facility or the boys and girls center.[39] OSSE only provided transportation to or from childcare if a student is receiving FAPE-related services there, even if transportation had been provided there in the past.[40]

8. Impacts. Parent driving Student to school causes her to be late to work with negative impacts on her work, putting her job in jeopardy.[41] Parent had to get a new government job and hoped her work schedule might be more flexible, as well as having fewer conflicts working 3 12-hour shifts/week.[42] As a single parent, Parent lacks family support as both her parents have cancer, her mother lives overseas and her brother begins work early himself.[43] Nor does Parent have friends who can help.[44] Parent's brother will sleep over when Parent has 3 months of night shift.[45] Parent cannot have Student in Extended School Year ("ESY") this summer because of her 12-hour shifts.[46] As of 4/27/23, Student had "permanently" lost Student's place in the desired childcare facility; Parent would have to check with the director to see what her chances were for next year.[47] Student

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[32] R24p120.
[33] Parent; P13p165.
[34] P15p169.
[35] P14p168; Parent.
[36] P14p167.
[37] R39p241.
[38] P15p12; Special Education Teacher.
[39] R32p170; Special Education Teacher (would be involved in providing FAPE as Student's case manager).
[40] R36p214.
[41] Parent; P13p164; P16p176.
[42] P16p176-77; Parent.
[43] Parent; P16p176.
[44] Parent.
[45] *Id.*
[46] *Id.*
[47] P16p173,174; Parent.

had previously "aged out" of the program and Parent had to make a special request for Student to continue.[48]

9. Predetermination. Special Education Teacher provided Student's draft IEP to Petitioner's counsel on 4/5/23, one week prior to the IEP team meeting on 4/12/23.[49]

Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(14); *Endrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. The Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that

[48] Parent.
[49] R39p247.

"[w]hen all is said and done, a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all." *Endrew F.*, 137 S. Ct. at 1001.

In addition, the local education agency ("LEA") must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at *3 (D.D.C. 2018).

A Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

Issue 1: *Whether DCPS denied Student a FAPE by failing to develop an appropriate IEP on 4/12/23 due to (a) allowing non-team member OSSE to dictate terms of the IEP without any input from Parent, (b) revising the IEP to take away services without IEP team discussion or informing Parent, (c) allowing OSSE to determine what is or is not FAPE in IEP implementation, (d) refusing to allow Parent meaningful participation in the IEP team meeting, and/or (e) failing to develop a safety plan. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

This is the second due process complaint brought by Petitioner to address the unwillingness of DCPS and OSSE to provide school transportation for Student from a childcare facility which Petitioner used because she must go to work early and doesn't have anyone who can wait at home with Student for the school bus. Petitioner's initial case asserted that the agencies failed to implement the school transportation required by Student's 1/18/22 IEP, but the 12/19/22 HOD in that case concluded that the IEP did not require transportation from a location other than Petitioner's home. Petitioner then sought to amend Student's IEP and brought this case asserting that the 4/12/23 Amended IEP was

not appropriate because it did not provide for picking up Student directly from childcare or include a safety plan requiring Student to be picked up where Parent requested in order to avoid the danger of Student waiting alone for the bus at home.

While it could well be argued that Petitioner failed to establish a *prima facie* case on this issue, giving Petitioner the benefit of the doubt and assuming that Petitioner established a *prima facie* case through testimony and documents, thereby shifting the burden of persuasion, DCPS nonetheless prevailed on this issue and its subparts, as discussed below.

This case is entirely focused on the related service of school transportation. "Related services" must be provided if required to assist a student with a disability to benefit from special education. *See* 34 C.F.R. § 300.34(a). "The [IDEA] makes specific provision for services, like transportation, for example, that do no more than enable a child to be physically present in class." *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883, 891, 104 S. Ct. 3371, 3376, 82 L. Ed. 2d 664 (1984) (citing 20 U.S.C. § 1401(17)). The definition of "transportation" includes "(i) "Travel to and from school and between schools; (ii) Travel in and around school buildings; and (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability." 34 C.F.R. § 300.34(c)(16). Unfortunately, the definition does not clarify where the travel to school is to originate from. The issue here is whether, with the transportation offered, Student's IEP was reasonably calculated to enable Student to benefit from special education. *See* 34 C.F.R. §§ 300.34(a), 300.320(a)(4). Related services, as with any other service in an IEP, are determined on an individual basis by the student's IEP team. *See Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. at 46663.

Here, there is no doubt that Student needed transportation to and from school and no doubt that DCPS (via OSSE) was willing to provide transportation to and from school. The entire debate is about where Student was to be picked up and/or dropped off. OSSE's longstanding policy is that it picks up and drops off children at their DC residences, and will not make exceptions for the convenience of their parents. Petitioner convincingly established that Student should not be left alone to wait outside for the bus each morning, any more than other children who function at the age of 7 or 8, which Petitioner testified was Student's functional age. However, that is not sufficient to prevail.

As long established, "[i]f a child's disabilities create unique needs that make it especially problematic to get the child to school in the same manner that a nondisabled child would get to school in the same circumstances, then transportation may be an appropriate related service. However, if the disabled student is capable of using the same transportation services as nondisabled students, then it would be consistent with Part B [of the IDEA] for the student's IEP team to find that transportation is not required as a related service." *Letter to Hamilton*, 25 IDELR 520 (OSEP 1996). Petitioner is no different from other parents of children who are not independent, for parents are responsible for their care until they get on the bus and after the bus drops them off at the end of the day.

A change in policy to allow DC parents to obtain transportation to school for their children from locations other than their homes doubtlessly would benefit many families along with Petitioner. Yet that is not what is required and Hearing Officers are not

permitted to change policy. *See R. A-G ex rel. R.B. v. Buffalo City Sch. Dist. Bd. of Educ.*, 2013 WL 3354424, at *7 (W.D.N.Y. July 3, 2013) *aff'd sub nom. R.A.G. ex rel. R.B. v. Buffalo City Sch. Dist. Bd. of Educ.*, 569 Fed. Appx. 41 (2d Cir. 2014) ("administrative hearing officers do not have the ability to alter already existing policies" *quoting S.W. by J.W. v. Warren*, 528 F. Supp. 2d 282, 294 (S.D.N.Y. 2007)). The undersigned is also mindful of the need for appropriate deference in light of the Supreme Court's guidance in *Endrew F.*, 137 S. Ct. at 1001, that courts should not "substitute their own notions of sound educational policy for those of the school authorities which they review," *quoting Rowley*, 458 U.S. at 206.

The appropriateness of Student's IEP is further analyzed by focusing on the specific concerns raised by Petitioner, which are considered in turn. *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311. The specifics of Issue 1 largely focus on Petitioner's assertions that she was not able to provide input into the 4/12/23 Amended IEP (in subparts (a), (b) and (d)); that OSSE was improperly involved (subparts (a) and (c)); and that there was no safety plan (subparts (b) and (e)).

Parental Participation. The law does clearly require parental involvement in IEP development. *See Endrew F.*, 137 S. Ct. at 999 (crafting an appropriate program of education contemplates the input of the child's parents or guardians); *Lofton v. Dist. of Columbia*, 7 F. Supp. 3d 117, 124 (D.D.C. 2013) (the IDEA mandates that parent be allowed to meaningfully participate in the development of child's IEP)*; Lague v. Dist. of Columbia*, 130 F. Supp. 3d 305 (D.D.C. 2015). On the other hand, however, parents have no veto power over such decisions. *Pavelko v. Dist. of Columbia*, 288 F. Supp. 3d 301, 306 (D.D.C. 2018) ("plaintiffs' disagreement with the *output* of the IEP process does not mean that they were denied the chance to provide meaningful *input* into that process" (emphasis in original)); *Hawkins v. Dist. of Columbia*, 692 F. Supp. 2d 81, 84 (D.D.C. 2010) (right conferred by the IDEA on parents to participate does not constitute a veto power over the IEP team's decisions).

Here, Petitioner's counsel urged that transportation be discussed during the 4/12/23 IEP team meeting and it was. At the hour-long meeting, Petitioner and her counsel discussed transportation thoroughly, including Student's needs, which arose from the fact that Student could not wait independently for the school bus, and that Petitioner had not found anyone else to wait with Student for the bus. The fact that Respondent did not change its position or adopt Parent's preferences does not mean that she did not have adequate input. *See, e.g., Hawkins*, 692 F. Supp. 2d at 84.

OSSE Involvement. DCPS easily overcame Petitioner's bald assertions suggesting that OSSE was somehow acting improperly or that DCPS was not acting independently in its dealings with Petitioner. As stated above, OSSE's transportation policies may negatively impact Petitioner and other parents, but that does not make DCPS's application of the policies illegal or even unreasonable. Here, Petitioner initially brought claims against OSSE, but then withdrew all claims as to OSSE.

Safety Plan. Petitioner argued that the 4/12/23 Amended IEP should have included a reference to a "safety plan" as prior IEPs did, even though the safety plan itself was not

contained in the IEPs or submitted elsewhere in the record. DCPS was more persuasive and prevailed on its arguments. Mere reference to a safety plan in the absence of any content did not require any action from DCPS or any other entity. Further, safety plans are not part of an IEP, but are developed as separate documents when there are concerns about harm to a student or to others, which was not the case here, as Student exhibited no concerns this year for which a safety plan was needed. Certainly no safety plan was needed to ensure that Parent did not leave Student alone outside their home to wait for the school bus, although Parent was having difficulty finding other options for Student.

In sum, the recent decision in *K.N. v. Bridges Pub. Charter Sch.*, 1:23-CV-00070 (TNM), 2023 WL 2809175, at *14 (D.D.C. 4/6/23) is instructive, as the court thoroughly analyzed the meaning of "transportation" in the IDEA and concluded that neither the District of Columbia nor the school was obliged to carry the student up and down the stairs outside the student's home in order to take the bus to school, but that the mother could pursue other options, including arranging for a private lifting service, move to a more accessible home, or get a family member to carry the child up and down the stairs to be able to take the bus. Further, in *Fick v. Sioux Falls Sch. Dist.*, 337 F.3d 968, 969 (8th Cir. 2003), the court held there was no violation of the IDEA when transportation to one destination instead of another "was not necessary for [student] to benefit educationally" from her IEP. The appellate court in *Fick* , 337 F.3d at 970, went on to conclude that a "facially neutral transportation policy" is lawful if it does not impact the child's educational needs, *citing Timothy H. v. Cedar Rapids Cmty. Sch. Dist.*, 178 F.3d 968 (8th Cir. 1999).

Here, the argument was that transportation is needed from the childcare facility to get Student to school, but there was no assertion that either the childcare before school or activities afterwards were necessary for a FAPE; the evidence was actually to the contrary. *See also Dist. of Columbia v. Ramirez*, 377 F. Supp. 2d 63, 70 (D.D.C. 2005) (parents not seeking transportation arrangement simply for their convenience or preference); *Letter to Anonymous*, 17 IDELR 180 (OSEP 1990) (clear distinction made between extracurricular activities that are "a specific component" of a student's IEP and those that are not). The undersigned concludes that there was no IDEA violation here.

Issue 2: *Whether DCPS denied Student a FAPE by predetermining the transportation provisions of the 4/12/23 IEP by (a) removing the safety plan requirements from the IEP, (b) refusing to discuss whether an OSSE bus picking up and dropping off Student at the childcare center would provide a FAPE, and/or (c) stating that it would implement OSSE's transportation policy and would not contradict that policy regardless of Student's needs. (Petitioner has the burden of persuasion on this issue.)*

Petitioner asserts the same basic issues here as in Issue 1, along with the additional claim of predetermination, while DCPS persuasively asserted that DC law requires DCPS to provide a draft IEP to Parent in advance of the IEP meeting, which necessarily requires DCPS to consider in advance what positions DCPS will include in its draft. *See* D.C. Code § 38-2571.03(3) which requires that DCPS provide parents a copy of the documents to be discussed at IEP meetings at least five business days prior to the meeting.

The predetermination claim here is simply whether the school district came to the IEP meeting with an "open mind" or had already decided the outcome of the IEP. *See Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004); *Doyle v. Arlington Cnty. Sch. Bd.*, 806 F. Supp. 1253, 1262 (E.D. Va. 1992), *aff'd*, 39 F.3d 1176 (4th Cir. 1994) ("if the school system has already fully made up its mind before the parents ever get involved, it has denied them the opportunity for any meaningful input," but the school need not "come to the IEP table with a blank mind"). Here, there was extensive discussion back and forth between Petitioner and counsel on one side, and DCPS (and OSSE) on the other, before, during and after the IEP meeting, so the undersigned concludes that Student's IEP was not improperly predetermined before the IEP was developed.

In any case, predetermination is merely a variation on lack of Parent participation, as discussed in detail above. Excluding Parent from IEP team decisions and predetermination are both procedural violations of the IDEA and must "[s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child," to be a substantive violation and a denial of FAPE. 34 C.F.R. 300.513(a). The undersigned is persuaded that there was no lack of participation by Parent or predetermination by DCPS. Specifically, Petitioner challenges:

(a) Removal of the safety plan requirement, which as discussed above was merely a reference to a safety plan in prior IEPs but did not include an actual safety plan, so did not require anyone to do anything. The reference to a safety plan certainly would not require OSSE to pick up and drop off Student for Parent's convenience, as helpful as that might be to Parent.

(b) Refusing to discuss the need for an OSSE bus to pick up and/or drop off Student at the childcare center to provide FAPE was in fact simply for Parent's convenience and not to provide FAPE based on the services provided at Student's childcare before or after school. Through counsel and her own advocacy, Petitioner made her views well known to DCPS and OSSE, which had previously provided the services Petitioner sought, but this year had begun enforcing its bus policy as written.

(c) The agreement of DCPS with OSSE's policy of providing service to and from Student's home, despite any inconvenience to Petitioner. While OSSE was deeply involved in providing transportation, OSSE was not a member of Student's IEP team and was not involved in creating or amending Student's IEP. Despite Petitioner's advocacy and the diligent efforts of Petitioner's counsel, DCPS refused to schedule the school bus to go to the childcare facility as Parent desired. There was no failure of communication here, but a lawful change in the implementation of policy to the detriment of Parent.

In short, the undersigned finds no failure to permit parental participation in the key IEP meeting or any predetermination by DCPS. DCPS prevails on this issue.

ORDER

Petitioner has not prevailed on either issue in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ *Keith Seat*
Keith L. Seat, Esq.
Hearing Officer

NOTICE OF RIGHT TO APPEAL

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 (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

Copies to:

Counsel of Record (Appendix A, by email)
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