

**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

OSSE  
Office of Dispute Resolution  
March 28, 2024

---

<i>Student</i> , <sup>1</sup>	)	Case No.: 2023-0252
through <i>Parents</i> ,	)	
<i>Petitioners</i> ,	)	Date Issued: 3/28/24
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
Office of the State Superintendent of	)	Hearing Date (using Microsoft Teams):
Education (“OSSE”),	)	3/19/24
Respondent.	)	
	)	

---

**HEARING OFFICER DETERMINATION**

**Background**

Petitioners, Student’s Parents, 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 OSSE’s failure to provide adequate transportation services. OSSE responded that transportation services had largely been provided and, if there was any denial of FAPE, Petitioners were seeking excessive compensatory education.

**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.”).

**Procedural History**

Following the filing of the due process complaint on 12/20/23, the case was assigned to the undersigned on 12/21/23. Respondent filed a response on 1/8/24 and objected to portions of the complaint that purported to state a claim for systemic relief. OSSE filed a

---

<sup>1</sup> 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.

## Hearing Officer Determination

Case No. 2023-0252

Partial Motion to Dismiss on 1/8/24 asserting lack of subject matter jurisdiction by Hearing Officers over systemic violations, which was briefed and granted by order of the undersigned on 1/20/24. In the absence of a resolution period in cases against OSSE, a final decision in this matter must be reached no later than 45 days after the due process complaint was filed, as extended by 45-day and 10-day continuances, which require a Hearing Officer Determination (“HOD”) by 3/29/24.

A prehearing conference was held on 2/1/24 and a 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 3/19/24 and was closed to the public. Petitioners were represented by *Petitioners’ counsel*. OSSE was represented by *Respondent’s counsel*. *Parent* participated in the entire hearing.

On 1/12/24, Petitioners filed a Motion to Compel Respondent to Answer the Due Process Complaint and to Produce Documents. The parties agreed during the prehearing conference that the motion might be moot by 2/9/24, as memorialized in the Prehearing Order. The undersigned inquired about the status of the motion at the hearing and denied it as moot with the concurrence of Petitioners’ counsel.

### Documents and Witnesses

Petitioners’ Disclosure, submitted on 3/12/24, contained documents P1 through P53, all of which were admitted into evidence over a single objection. Respondent’s Disclosure, also submitted on 3/12/24, contained documents R1 through R13, all of which were admitted into evidence over 2 objections.<sup>2</sup>

Petitioners’ counsel presented 2 witnesses in Petitioners’ case-in-chief (*see* Appendix A):

1. Parent
2. *Special Education Expert* (qualified without objection as an expert in Special Education Services and Compensatory Education)

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

1. *Customer Service Manager*
2. *Associate Director*

---

<sup>2</sup> Citations herein to the parties’ documents are identical except that Petitioners’ documents begin with a “P,” while Respondent’s documents begin with an “R,” followed by the exhibit number and then generally 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.

## Hearing Officer Determination

Case No. 2023-0252

Petitioners' counsel submitted no rebuttal evidence.

### Issue and Relief Requested

The issue to be determined in this Hearing Officer Determination is:

**Issue:** Whether OSSE denied Student a FAPE by failing to provide consistent, reliable and appropriate transportation to Student during 2022/23,<sup>3</sup> the 2023 extended school year ("ESY"), and 2023/24. (*Petitioners have the burden of persuasion on this issue.*)

The relief requested<sup>4</sup> by Petitioners is:

1. A finding that Student has been denied a FAPE.
2. OSSE shall provide consistent, reliable and appropriate transportation to and from school pursuant to Student's Individualized Education Program ("IEP").
3. OSSE shall reimburse Petitioners for the costs of transporting Student to and from school when OSSE failed to do so.
4. OSSE shall notify Student's family of any changes to transportation, including changes to route, delays and cancellations.
5. OSSE shall provide compensatory education for any denials of FAPE, including tutoring and related services from providers of Petitioners' choice.<sup>5</sup>
6. Any other appropriate relief.

---

<sup>3</sup> All dates in the format "2022/23" refer to school years.

<sup>4</sup> At the beginning of the due process hearing, Petitioners' counsel withdrew without prejudice the relief requested in paragraph 5 of the Prehearing Order, which stated in full, "OSSE shall authorize comprehensive independent educational evaluations ('IEEs') of Student, including (a) vocational (b) psychoeducational, (c) speech-language, (d) assistive technology, (e) occupational therapy, and (f) neuropsychological."

<sup>5</sup> Petitioners' counsel was put on notice at the prehearing conference that at the due process hearing Petitioners must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was invited to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE was found.

## Hearing Officer Determination

Case No. 2023-0252

### Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>6</sup> are as follows:

1. Background. Student is a resident of the District of Columbia; Petitioners are Student's Parents.<sup>7</sup> Student is *Age, Gender* and attends the medical and educational support ("MES") classroom at *School*.<sup>8</sup> MES follows a basic functional life skill curriculum; Student is nonverbal and communicates through facial expressions, especially with eyebrows, eye gaze and vocal play.<sup>9</sup> Student presents significant global delays across all areas of development and cannot sit unsupported; Student wears a mitten to prevent biting self.<sup>10</sup> Student has complex medical needs with severe cognitive impairment, requiring adult supervision and support at all times, but is a "strong little [child]."<sup>11</sup>

2. IEPs. Student's most recent IEP is dated 11/2/23; Student has had IEPs providing full time support and special education transportation for the years at issue in this case as a medically fragile student.<sup>12</sup> Student is classified as having Multiple Disabilities due to Speech-Language Impairment and Visual Impairment including Blindness.<sup>13</sup>

3. Transportation. OSSE's goal is to drop students off at school in the morning at least 10 minutes before the school bell rings, so that they can get to their classrooms and be ready for the day.<sup>14</sup> Student's buses were often late; Parent called OSSE "a lot" seeking the status of Student's bus, but often received little information in calls lasting 15-45 minutes each.<sup>15</sup> Parent alerted Student's teacher when she had information about the bus being late.<sup>16</sup> In the

---

<sup>6</sup> 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.

<sup>7</sup> Parent.

<sup>8</sup> P1p7.

<sup>9</sup> P1p7; Parent.

<sup>10</sup> P1p11.

<sup>11</sup> P1p2,19; Special Education Expert; Parent.

<sup>12</sup> R1; R2; P5p87,88 (2022/23); P3p47; P2p39,42 (2022/23); P2p29,42-43 (2023 ESY); P1p17,19,26 (2023/24); Special Education Expert.

<sup>13</sup> P2p29; P3p45; P5p75.

<sup>14</sup> Associate Director; P38p303; P39p314.

<sup>15</sup> Parent; P25; P28; P30; P31.

<sup>16</sup> P46.

## Hearing Officer Determination

Case No. 2023-0252

afternoon, OSSE attempts to drop off children 15 minutes before or after their scheduled arrival time.<sup>17</sup>

4. Parent often drove Student to school because the bus was not reliable in picking Student up.<sup>18</sup> A shortage of drivers sometimes required OSSE to “double the route,” causing delays.<sup>19</sup> Delays also occurred in the afternoon returning Student home, when there was no explanation or expected time of drop off; Parent hid an electronic tracker tag on Student’s wheelchair to obtain information about when Student would arrive home.<sup>20</sup> Parent risked her employment by driving Student to school when the bus should have transported Student, but failed to do so.<sup>21</sup>

5. Student is non-ambulatory and in a wheelchair, non-verbal, and requires a nurse during transportation by OSSE; a nurse was not always available on Student’s bus.<sup>22</sup> OSSE was impacted by a nationwide nursing shortage in 2022/23, which has since eased.<sup>23</sup> Student was sometimes not able to ride the bus when there were too many wheelchairs to be transported.<sup>24</sup> Parent felt it was risky for her to drive Student without a second adult to assist with Student.<sup>25</sup> Parent made repeated calls to OSSE about buses without air conditioning on hot days, due to Student being medically fragile.<sup>26</sup> OSSE warned Parent at least once that the air conditioning was broken on Student’s bus and the week was going to be “HOT.”<sup>27</sup>

6. Student needed to get to school on time to avoid missing important services and social interactions and collaboration, as well as a hot breakfast.<sup>28</sup> Student needed to get home as scheduled to receive timed medications, food, drink, and toileting needs, so that Student would be calm and avoid seizures; Student was often lethargic when the bus was late and then became agitated when roused.<sup>29</sup> Student relies on consistency and routine, and had nurses at home who were thrown off-schedule when Student was late.<sup>30</sup> OSSE often did

---

<sup>17</sup> Associate Director.

<sup>18</sup> Parent; Special Education Expert; P31; P33.

<sup>19</sup> P34p277-78.

<sup>20</sup> Parent; P35.

<sup>21</sup> Parent; P28p248.

<sup>22</sup> Parent; Customer Service Manager; Special Education Expert; P1p19; P22p222; P25p240-42 (no nurse on bus, and no indication of how long it would take to pick up nurse at terminal).

<sup>23</sup> Customer Service Manager; R8p52.

<sup>24</sup> Parent; P31.

<sup>25</sup> Parent.

<sup>26</sup> P26p244-45; P27p246-47; P44p504 (Student would have been on bus without air conditioning for nearly 2 hours if Student had ridden the bus).

<sup>27</sup> P45p505.

<sup>28</sup> Parent.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

## Hearing Officer Determination

Case No. 2023-0252

not have answers about the bus situation and timing, and OSSE personnel once stated to Parent, “I’m sorry. I’m so sorry. I promise you I’m sorry.”<sup>31</sup>

7. Transportation Analysis. Special Education Expert closely reviewed OSSE’s morning route analysis for Student and Student’s attendance across the years at issue (2022/23, 2023 ESY, 2023/24 through 12/20/23), using OSSE’s goal of dropping off students 10 minutes before the school bell; Special Education Expert concluded that Student was impacted by the bus being late to school on 28 out of the 159 days Student attended (or 18% of the time), by the bus not arriving at all on an additional 33 of the 159 days (21%), and Parent picking up Student on another 17 days (11%).<sup>32</sup> In addition, there were 9 days for which no information was provided and another 4 days in which the trip tickets were missing, together totaling 8% of the total days, but which are not considered in this analysis.<sup>33</sup> Parent confirmed the accuracy of the underlying morning calculations.<sup>34</sup>

8. Special Education Expert closely review OSSE’s afternoon route analysis for Student and Student’s attendance across the same timespan (2022/23, 2023 ESY, 2023/24 through 12/20/23) and concluded that Student was impacted by the bus dropping off Student late 95 out of 159 days (60%) and by Parent picking up Student on another 21 days (or 13%). In addition, there were 9 days for which no information was provided and another 5 days in which the trip tickets were missing, together totaling 9% of the total days, but which are not considered in this analysis.<sup>35</sup> Parent confirmed the accuracy of the underlying afternoon calculations.<sup>36</sup>

9. Reimbursement. OSSE promised reimbursement to parents for “self-transporting” children when OSSE buses were late.<sup>37</sup> An OSSE text message to Parent stated the parent reimbursement rate for self-transport was \$1.48 per mile<sup>38</sup> OSSE required numerous steps to be taken for reimbursement.<sup>39</sup> The driving distance from Student’s home to School was 6.3 miles; the distance to Student’s 2023 *ESY location* was 7.8 miles.<sup>40</sup> In 2022/23, Parent drove Student 32 times when the bus did not arrive to pick up Student in the morning, made 10 trips when the bus was late in the morning, and 14 trips when the bus was late in the

---

<sup>31</sup> P31p267; P33; R8 (OSSE messages often stated the route status had been updated to “20 to 40 minutes or more late”)

<sup>32</sup> Special Education Expert; P52p524.

<sup>33</sup> *Id.*

<sup>34</sup> Parent; P52.

<sup>35</sup> Special Education Expert; P52p525.

<sup>36</sup> Parent; P52.

<sup>37</sup> P47.

<sup>38</sup> P47p515.

<sup>39</sup> P28p248-50; P29; Parent.

<sup>40</sup> Parent; P52p521,522.

## Hearing Officer Determination

Case No. 2023-0252

afternoon, totaling 56 trips of 6.3 miles at the OSSE rate of \$1.48, which amounts to \$522.14.<sup>41</sup>

10. For 2023 ESY, Parent made 11 trips in total of 7.8 miles when the bus didn't arrive or was late, amounting to \$126.98 (11 x 7.8 miles x \$1.48/mile).<sup>42</sup> For 2023/24 (through 12/20/23), Parent made 4 trips due to the bus being late, amounting to \$37.30 (4 x 6.3 miles x \$1.48/mile).<sup>43</sup> Petitioners have already received reimbursement of \$284.46 from OSSE for mileage driving Student to or from school during the periods at issue, so the total to be reimbursed by OSSE is \$401.96.<sup>44</sup>

11. Compensatory Education. Special Education Expert credibly testified that across the school years at issue Student needed specialized instruction to make up for the time missed in order to build tolerance and develop functional skills.<sup>45</sup> Based on Student's limited capabilities, Student needs more than a tutor; Student needs a special education teacher who is experienced with medically fragile children and who can collaborate with Student's existing teachers and related service providers and work with Student over a 2-year period if needed to generalize skills learned at school.<sup>46</sup>

12. Special Education Expert concluded that Student was impacted in the mornings of 2022/23, 2023 ESY and 2023/24 (through 12/20/23) on 28 days by being dropped off late at school and on another 33 days when the bus did not arrive for Student, for which Special Education Expert concluded that Student should receive an hour of compensatory education for each impacted day.<sup>47</sup> On the mornings of 30 other days OSSE lacked trip tickets or information was not provided or Student did not ride the bus; Special Education Expert did not include any compensatory education for these days.<sup>48</sup> Special Education Expert explained that Student needed an hour of compensatory education for each day the bus was late to school because Student's deficits could not be made up quickly through focused tutoring or other one-on-one services, unlike other cases where a child may be able to catch up more quickly with intensive efforts.<sup>49</sup>

13. Special Education Expert concluded that Student was impacted in the afternoons of 2022/23, 2023 ESY and 2023/24 (through 12/20/23) on 95 days by being dropped off late at home, for which Special Education Expert concluded that 50 hours of compensatory education would be appropriate because Special Education Expert noted that Student was

---

<sup>41</sup> Parent; P52p526; Petitioners' Supplemental Submission Regarding Reimbursement filed on 3/20/24 ("Pet. Supp.") p2.

<sup>42</sup> P52p528-29; Parent; Pet. Supp. p2.

<sup>43</sup> P52p530-31; Parent; Pet. Supp. p2-3.

<sup>44</sup> Parent; Pet. Supp. p2.

<sup>45</sup> Special Education Expert; P4p70; R3, R4; R5.

<sup>46</sup> Special Education Expert.

<sup>47</sup> Special Education Expert; P52p524.

<sup>48</sup> *Id.*

<sup>49</sup> Special Education Expert.

## Hearing Officer Determination

Case No. 2023-0252

about 30 minutes late per day.<sup>50</sup> On the afternoons of 35 other days OSSE lacked trip tickets or information was not provided or Student did not ride the bus; Special Education Expert did not include any compensatory education for these days.<sup>51</sup>

14. In total, Special Education Expert concluded that 61 hours of compensatory education were appropriate for Student for morning delays on 61 days, and another 50 hours were appropriate for afternoon delays on 95 days, totaling 111 hours of specialized instruction from a special education teacher, which Special Education Expert persuasively testified would be appropriate to restore Student to the position Student would have been in but for the denial of FAPE in this case, and that such services may take up to 2 years to complete.<sup>52</sup>

### 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.'" *Andrew 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." *Andrew 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); *Andrew 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).

---

<sup>50</sup> Special Education Expert; R3; R4; R5.

<sup>51</sup> Special Education Expert; P52p525.

<sup>52</sup> Special Education Expert.



## Hearing Officer Determination

Case No. 2023-0252

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 “[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.

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).

Petitioners carry 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 Petitioners establish 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:** *Whether OSSE denied Student a FAPE by failing to provide consistent, reliable and appropriate transportation to Student during 2022/23, 2023 ESY, and 2023/24. (Petitioners have the burden of persuasion on this issue.)*

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” clearly includes “[t]ravel to and from school and between schools....” 34 C.F.R. § 300.34(c)(16)(i). In this case, Student’s IEPs unambiguously provided for school transportation, and the issue is simply whether they were appropriately implemented. The undersigned concludes that Petitioners did meet their burden of persuasion on the issue of IEP implementation of transportation.

With a failure to implement claim, the IDEA is only violated when the respondent deviates materially from a student’s IEP. *See Middleton v. Dist. of Columbia*, 312 F. Supp.

## Hearing Officer Determination

Case No. 2023-0252

3d 113, 144 (D.D.C. 2018); *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). A material deviation requires more than a minor discrepancy or a “*de minimis* failure to implement all elements of [the student’s] IEP.” *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013), quoting *Catalan ex rel. E.C. v. Dist. of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). Courts are clear that it is “the proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement.” *Turner v. Dist. of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), citing *Wilson v. Dist. of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011). Notably, there is “no requirement that the child suffer educational harm in order to find a violation” in a failure to implement claim. *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016).

Here, OSSE does not dispute that Student was entitled to transportation as a related service pursuant to Student’s IEPs. Nor is there serious controversy over the extent of OSSE’s failure to provide timely and appropriate transportation to Student, who is medically fragile and in need of regularity in daily schedules. OSSE’s own route analysis of its bus service for Student was the basis for Petitioners’ expert to conclude that Student was impacted by the bus not coming at the right time – or at all – on some 61 out of 159 days (38% of the time) over the timespan at issue. While Associate Director’s calculations of problems with the bus in the morning were somewhat lower than Petitioners’, the undersigned does not view Associate Director as undermining Petitioners’ calculations and Respondent’s counsel explained the closeness of the numbers, particularly noting that counting Student as on time if dropped off by the bell time would make little difference. The afternoon figures were even more dramatic, with Student dropped off late 95 out of 159 days, or 60% of the time, which was not greatly diminished by Associate Director’s calculations.

While the difficulty of providing safe, timely and reliable bus service to Student and other children in need of transportation may be daunting, that does not excuse OSSE from more than a *de minimis* failure to provide required transportation services. *See, e.g., Middleton*, 312 F. Supp. 3d at 145 (20% deviation from IEP requirements was material and could not be excused as *de minimis*); *Wade v. Dist. of Columbia*, 322 F. Supp. 3d 123, 133 (D.D.C. 2018) (27% deviation was material). The undersigned concludes that OSSE’s failure to provide consistent, reliable and appropriate transportation to Student were far more than *de minimis* and rise to a denial of FAPE by preventing access to Student’s education, resulting in remedies including an award of compensatory education, discussed next.

### Remedies

Having analyzed and resolved the issue in this case, all that remains is to consider suitable remedies, including an award of compensatory education, to make up for the denial of FAPE found above. As an initial matter, OSSE is ordered to comply with Student’s IEP and improve its transportation for Student going forward (which may benefit other children as well), along with providing communication to Student’s family about transportation changes to the extent practicable. Further, Petitioners’ request for relief included reimbursement for the cost of Parent transporting Student to and from school when OSSE

## Hearing Officer Determination

Case No. 2023-0252

did not. As carefully analyzed above, Parent transported Student dozens of times, and has already been reimbursed by OSSE for \$284.46, resulting in an additional \$401.96 to be reimbursed to Petitioners as ordered below.

Turning to compensatory education for the denial of FAPE, courts note that there is often “difficulty inherent in figuring out both what position a student would be in absent a FAPE denial and how to get the student to that position,” *B.D. v. Dist. of Columbia*, 817 F.3d 792, 799 (D.C. Cir. 2016), but that does not permit the effort to be avoided. *See Henry v. Dist. of Columbia*, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse). Moreover, a student is not required “to have a perfect case to be entitled to compensatory education.” *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (citations omitted). Further, with a failure to implement claim, as here, Petitioners need not even show that there was educational harm to Student. *James*, 194 F. Supp. 3d at 139.

Special Education Expert concluded that Student should be provided 111 hours of specialized instruction from a special education teacher experienced with medically fragile children to make up for the scores of times that the bus was late to school or failed to arrive in the morning at Student’s home or was late in dropping Student home in the afternoon over the timeframe at issue. Special Education Expert asserted that missed time at School needed to be made up on an hour for hour basis due to the fact that Student needed to work on movement and other aspects of the IEP that cannot be rushed, but need the full time specified to develop with the support of a special education teacher. In fact, the amount of time missed varied and the award proposed by Special Education Expert was based on his judgment. Importantly, Special Education Expert affirmed that the 111 hours of compensatory education would restore Student to the position in which Student should have been, but for the denial of FAPE. At the due process hearing, OSSE did not counter Petitioners’ compensatory education assertions, which the undersigned adopts.

This determination by the undersigned has been specifically tailored to address Student’s unique needs as a matter of equity, as “hearing officers are reminded that ‘[t]he essence of equity jurisdiction’ is ‘to do equity and to mould each decree to the necessities of the particular case.’” *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), quoting *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005). All compensatory education hours are to be used within 24 months, although the undersigned encourages Parents to get Student engaged as quickly as possible to ensure that the remedial services that Student needs are implemented without delay.

### **ORDER**

Petitioners have prevailed on the sole issue in this case, as set forth above. Accordingly, **it is hereby ordered that:**

1. OSSE shall provide consistent, reliable and appropriate transportation to and from School pursuant to Student’s IEP and, to the extent practicable, notify

**Hearing Officer Determination**

Case No. 2023-0252

Student's family of any changes to Student's transportation, including changes to route, delays and cancellations.

2. Within 30 calendar days, OSSE shall reimburse Petitioners \$401.96 for their mileage transporting Student during the period at issue, as detailed above.
3. As compensatory education for the denial of FAPE found herein, within 10 business days after request by Petitioners, OSSE shall provide a letter(s) of authorization for 111 hours of 1:1 services by an independent special education teacher(s) chosen by Petitioners; all hours are to be used within 24 months and any unused hours shall be forfeited.

Any and all other 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)  
ODR (hearing.office@dc.gov)