

**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  
October 04, 2023

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|-------------------------------------|---|---------------------------------------|
| <i>Student</i> , <sup>1</sup>       | ) | Case No.: 2023-0071                   |
| through <i>Parent</i> ,             | ) |                                       |
| <i>Petitioner</i> ,                 | ) | Date Issued: 10/4/23                  |
|                                     | ) |                                       |
| v.                                  | ) | Hearing Officer: Keith L. Seat, Esq.  |
|                                     | ) |                                       |
| District of Columbia Public Schools | ) | Hearing Date (using Microsoft Teams): |
| ("DCPS"),                           | ) | 9/12/23                               |
| Respondent.                         | ) |                                       |
|                                     | ) |                                       |

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**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 OSSE's failure to provide access to transportation records and provide appropriate transportation services. OSSE responded that requested documents and transportation services had been provided and there was no denial of FAPE.

**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 4/21/23, the case was assigned to the undersigned on 4/24/23. Respondent filed a response on 5/2/23 and challenged subject matter jurisdiction in a combined filing with a motion to dismiss. The motion to

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<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.

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dismiss was briefed and denied in a written order by the undersigned on 5/20/23 that concluded the case should proceed based on allegations of actual harm to Student. On 7/7/23, Petitioner filed an amended due process complaint which was properly served on 7/11/23. Respondent filed an amended response on 7/21/23.<sup>2</sup> 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 following proper service of the amended due process complaint, as extended by an agreed-upon 45-day continuance, which requires a Hearing Officer Determination (“HOD”) by 10/9/23.

Prehearing conferences were held on 6/14/23 and 8/23/23 and an Amended Prehearing Order was issued on 8/23/23, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 9/12/23 and was open to the public. Petitioner was represented by *Petitioner’s counsel*. OSSE was represented by *Respondent’s counsel*. Petitioner participated in much of the hearing.

### Documents and Witnesses

Petitioner’s Disclosure, submitted on 9/5/23, contained documents P1 through P74, all of which were admitted over various objections, except for P4, P5, P11, P13, P14, P16, P28, P33, P34, P38, P39, P63, P65, P66, P71 and P72, which were withdrawn by Petitioner. Respondent’s Amended Disclosure, also submitted on 9/5/23, contained documents R1 through R5, which were admitted into evidence over objections.<sup>3</sup>

Petitioner’s counsel presented 3 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Educational Advocate* (qualified over objection as an expert in Special Education, IEP Programming and Implementation)
2. *Legal Assistant*
3. Parent

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

1. *IT Specialist*.

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<sup>2</sup> At this time, the Hearing Officer has jurisdiction to decide all allegations in the complaint relating to the identification, evaluation or educational placement of Student or the provision of a free appropriate public education (“FAPE”) to Student. Challenges to jurisdiction may be made at any time.

<sup>3</sup> 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.

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### 2. Associate Director

Petitioner's counsel submitted no rebuttal evidence.

### **Issues and Relief Requested**

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

**Issue 1:** Whether OSSE denied Student a FAPE by failing to provide Parent with access to education transportation records despite numerous requests for trip tickets, Parent communication logs and Parent complaint documentation. (*Petitioner has the burden of persuasion on this issue.*)

**Issue 2:** Whether OSSE denied Student a FAPE during the 2022/23 school year by failing to provide appropriate, safe, timely, and reliable transportation services as required by Student's IEP. (*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. OSSE shall immediately provide the requested records to Petitioner's counsel via email.
3. The statute of limitations shall be tolled for any issues related to the documents withheld by OSSE from 1/6/23 until the time that OSSE fully responds to the document request.
4. OSSE shall provide door-to-door transportation for Student and/or arrange for private transportation services at no cost to Parent; notify the family by text, email, telephone or knocking on the door if the bus arrives early or late and/or the bus is not directly within view from the family's home; and give Student sufficient time to access the bus.
5. OSSE shall provide compensatory education for any denials of FAPE.<sup>4</sup>
6. Any other just and reasonable relief.

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<sup>4</sup> Petitioner's counsel was put on notice at the prehearing conference that at the due process hearing Petitioner 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. Respondents were to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

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### Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>5</sup> are as follows:

1. Background. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>6</sup> Student is *Age, Gender*, and has attended *Nonpublic School* for a few years.<sup>7</sup>

2. IEPs. Student's 3/22/22 IEP stated that Student's disability classification was Multiple Disabilities based on Specific Learning Disability and Other Health Impairment, and provided 30.25 hours/week of specialized instruction outside general education, along with 180 minutes/month of Behavioral Support Services ("BSS") outside general education, 120 minutes/month of Occupational Therapy ("OT") outside general education, and 30 minutes/month of OT consultation; Student qualified for special education transportation with an aide on the bus to avoid negative interactions with peers and elopement.<sup>8</sup>

3. Student's IEP was amended on 9/26/22 to note that Student's serious *medical condition* required medication to be provided at particular times, so Student could not be picked up before 7:45 AM; Student also required an aide on the bus to avoid negative interactions with peers and elopement.<sup>9</sup>

4. Parent and counsel met with OSSE personnel on 1/5/23, as Parent was frustrated over transportation, called OSSE often and made complaints.<sup>10</sup> OSSE agreed that Student should not be picked up before 7:45 AM and should be dropped off first in the afternoon.<sup>11</sup> Student's IEP was amended on 1/5/23 so that Student would be the first child dropped off by the bus in the afternoon.<sup>12</sup> Student's 3/10/23 IEP continued to require Student to be picked up no earlier than 7:45 AM and dropped off first in the afternoon.<sup>13</sup>

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<sup>5</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>6</sup> Parent.

<sup>7</sup> *Id.*

<sup>8</sup> P6p81,95,99.

<sup>9</sup> P7p104,122; Educational Advocate.

<sup>10</sup> P9p152; Educational Advocate; Parent.

<sup>11</sup> P9p153.

<sup>12</sup> P8p128,146.

<sup>13</sup> P10p177,158.

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5. Transportation. Student has had transportation issues for years; the current issues began at the beginning of 2022/23,<sup>14</sup> with the bus coming late and not providing notification.<sup>15</sup> OSSE has a 30-minute window for picking up students (plus or minus 15 minutes from their scheduled time) and is to call parents if the bus is operating outside that window.<sup>16</sup> Student often waited another 40-60 minutes beyond the window.<sup>17</sup>

6. The usual travel time between home and Nonpublic School was about 30 minutes.<sup>18</sup> Student was sometimes dropped off after 2 hours on the bus without water.<sup>19</sup> Student sometimes missed entire school days due to lack of timely transportation.<sup>20</sup> After school, Student's bus sometimes had to cover more than one route, so that Student was not dropped off first and the trip often took an extra hour.<sup>21</sup> Parent often contacted OSSE to complain about the bus problems picking up or dropping off Student, but the issues did not get better.<sup>22</sup>

7. Educational Advocate carefully analyzed the minutes of service that Student missed due to problems with the bus, which sometimes prevented Student from attending for entire days; Student missed a total of 99 hours of specialized instruction, 2.4 hours of BSS, and 1.6 hours of OT.<sup>23</sup> Educational Advocate counted as academic losses the hours Student should have been at school eating breakfast or in community circle, as they were important and could impact Student's school performance.<sup>24</sup> Student's mood would shift and behaviors were triggered by being just 10 to 15 minutes late.<sup>25</sup>

8. Bus aides and bus attendants are the same role and provide for safety on the bus; a dedicated aide focuses on a particular child.<sup>26</sup> OSSE's Route Operation Reports for buses

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<sup>14</sup> All dates in the format "2022/23" refer to school years.

<sup>15</sup> Parent.

<sup>16</sup> Associate Director.

<sup>17</sup> Parent.

<sup>18</sup> Educational Advocate; Parent.

<sup>19</sup> Educational Advocate; Legal Assistant; P48p544 (Student hadn't arrived home by 5:00 PM and was without water, which could trigger medical issues, on 3/16/23).

<sup>20</sup> Educational Advocate; Parent.

<sup>21</sup> Parent.

<sup>22</sup> Legal Assistant; Parent; P25p349,362; P27p381,382; P29p386 (2 hours on bus on 11/9/22 when Student was to be first dropped off); P30p388 (bus arrived at 7:00 AM on 11/17/22 and didn't return until 9:30 AM); P32p396 (on bus over 2 hours in the afternoon of 12/21/22); P44p525 (at 9:15 AM bus called to say delay may be another 40 minutes on 3/13/23); P45p527 (Parent very frustrated at bus being late again on 3/14/23); P49p546 (bus an hour late in getting to school on 4/24/23).

<sup>23</sup> Educational Advocate; P74p699-700; P17-P24.

<sup>24</sup> Educational Advocate; P15p202 (school breakfast from 8:30-9:00 AM; Community Circle from 9:00-9:15 AM).

<sup>25</sup> Parent.

<sup>26</sup> Associate Director.

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differentiated between “One-On-One Aides Required” and “General Aide Required.”<sup>27</sup> Trip Tickets generally listed bus attendants.<sup>28</sup>

9. Transportation Records. A great deal of effort was spent by both parties trying to resolve issues of transportation records in this case.<sup>29</sup> Parent’s request for transportation records was made on 1/6/23, with follow up requests.<sup>30</sup> OSSE provided documents to Petitioner via a Box link in February 2023, but Petitioner’s team had great difficulty opening the files and accessing the documents, which turned out not to be transportation records.<sup>31</sup> As of 3/27/23, OSSE had not provided the requested records.<sup>32</sup> Missing documents were listed by the parties.<sup>33</sup> Parent received communication logs and trip tickets; an analysis of outstanding trip tickets for Student was provided by OSSE, covering the period from 9/8/22 to 1/6/23.<sup>34</sup> Legal Assistant first saw the document at R3 when it was included in OSSE’s 5-day disclosure in this case.<sup>35</sup>

10. Associate Director was the point of contact for responding to transportation record requests, and credibly testified that all requested records were provided to the extent they could be found.<sup>36</sup> OSSE agreed that records were missing and searched for the remaining trip tickets; OSSE made a reasonable search for the requested documents.<sup>37</sup>

11. Compensatory Education. Educational Advocate’s Compensatory Education Proposal carefully reviewed missed services in the context of this case and concluded that Student needed 87 hours of tutoring, 2 hours of counseling, and 1 hour of OT to put Student in the position that Student should have been but for the denials of FAPE.<sup>38</sup> Educational Advocate testified that her compensatory education proposal was not hour-for-hour, but her calculations began with missed services and then were adjusted by Educational Advocate in an effort to restore Student to where Student would have been but for the denials of FAPE.<sup>39</sup>

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<sup>27</sup> P17p207,209.

<sup>28</sup> P17; P18.

<sup>29</sup> Legal Assistant; Associate Director; P47; P50; P51; P52; P53; P54; P55; P57; P59; P60; P62; P67.

<sup>30</sup> Legal Assistant; P42p445-49.

<sup>31</sup> P43; Legal Assistant.

<sup>32</sup> Legal Assistant; Pp592,595.

<sup>33</sup> P62.

<sup>34</sup> R3p30-32.

<sup>35</sup> Legal Assistant.

<sup>36</sup> Associate Director.

<sup>37</sup> *Id.*

<sup>38</sup> Educational Advocate; P74.

<sup>39</sup> Educational Advocate.

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### 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 "[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

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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 OSSE denied Student a FAPE by failing to provide Parent with access to education transportation records despite numerous requests for trip tickets, Parent communication logs and Parent complaint documentation. (*Petitioner has the burden of persuasion on this issue.*)

Petitioner did not meet her burden of persuasion on the issue of access to education transportation records. As a general matter, parents of a child with a disability have the right to examine all education records that pertain to the identification, evaluation, and educational placement of the child, and provision of a FAPE. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a), 34 C.F.R. § 300.613(a) (parents must be permitted to inspect and review any education records relating to their child that are collected, maintained, or used by an agency). *See also Jalloh ex rel. R.H. v. Dist. of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) (“parents have the right to examine records and [educational agency] must give parents the opportunity to inspect, review, and copy records”).

An “education record” under IDEA is defined by the regulations implementing the Family Educational Rights and Privacy Act (“FERPA”). 34 C.F.R. § 300.611(b). Under FERPA, an education record includes records, files, documents, and other materials which “(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. Part 99.

Here, a great deal of effort on both sides went into trying to determine what transportation records concerning Student were available and determining what happened to those that were not available. Associate Director, the OSSE point of contact for responding to transportation record requests, credibly testified that all requested records were provided to Petitioner to the extent they could be located.

Ultimately, this issue comes down to the assertions by Associate Director that OSSE made reasonable efforts and provided all documents available. Specifically, OSSE was unable to find or explain the absence of a modest number of trip tickets, which the undersigned concludes does not result in a denial of FAPE, although it does make the undersigned focus more closely on the failure to implement claim considered next, given the incomplete data provided by OSSE.

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**Issue 2:** Whether OSSE denied Student a FAPE during the 2022/23 school year by failing to provide appropriate, safe, timely, and reliable transportation services as required by Student's IEP. (*Petitioner has 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 IEP unambiguously provided school transportation and the issue is simply whether Student's IEP was appropriately implemented. The undersigned concludes that Petitioner did meet her burden of persuasion on the issue of IEP implementation of transportation.

With a failure to implement claim, the IDEA is only violated when a school district deviates materially from a student's IEP. *See Middleton v. Dist. of Columbia*, 312 F. Supp. 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, there is no dispute that pursuant to the IEPs Student was entitled to transportation as a related service. The record is replete with OSSE's failures to provide timely and appropriate transportation to Student, who had a serious medical condition that required transportation to pick Student up after 7:30 AM (the beginning of the 30-minute window) and drop off Student first in the afternoon to ensure that needed medication could be taken on time. The usual travel time between home and Nonpublic School was about 30 minutes, but Student was sometimes dropped off after 2 hours on the bus, without being allowed water. Indeed, Student sometimes missed entire school days due to lack of timely transportation. After school, Student's bus sometimes had to cover an extra route so that Student was not dropped off first and the trip often took an extra hour. While Parent often contacted OSSE about bus problems picking up or dropping off Student, the issues never got better.

While OSSE's challenges to provide reliable bus services to Student and other children in great need of transportation are daunting, that does not excuse OSSE from more than a *de minimis* failure to provide required transportation services. The undersigned concludes that OSSE's ongoing failures to provide the required transportation to Student are

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far more than *de minimis* and rise to a denial of FAPE due to preventing access to Student's education, resulting in an award of compensatory education, which is discussed next.

### Remedy

Having analyzed and resolved the issues in this case, what remains is to consider the compensatory education necessary to make up for the denial of FAPE found above. In determining the amount of compensatory education for denials of FAPE, 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, Petitioner need not even show that there was educational harm to Student. *James*, 194 F. Supp. 3d at 139.

Here, Educational Advocate testified that the compensatory education sought in her detailed plan would put Student in the position Student would have been but for the denials of FAPE. That proposal must be adjusted somewhat to match the denial of FAPE actually found above, which was the failure to provide transportation as required by Student's IEPs. Based on experience and careful analysis, the undersigned awards 75 hours of 1:1 academic tutoring in the Order below, although the proposed 2 hours of counseling and 1 hour of OT are not included as it would be difficult for Student to benefit from such small amounts of service from independent providers, and in the view of this Hearing Officer are not required to restore Student to the position that Student should have been in.

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 12 months to avoid administrative burdens on Respondent, although the undersigned encourages Parent to get Student engaged as quickly as possible to ensure that the remedial services that Student needs are obtained without delay.

### ORDER

Petitioner has prevailed on Issue 2, as set forth above. Accordingly, **it is hereby ordered that:**

As compensatory education for the denial of FAPE found herein, within 10 business days after request by Petitioner, OSSE shall provide a letter of authorization for 75 hours of

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1:1 academic tutoring from an independent provider chosen by Petitioner; all hours are to be used within 12 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)