

District of Columbia
Office of the State Superintendent of Education
 Office of Review and Compliance
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Confidential

<p>Parent on Behalf of Adult Student, ¹</p> <p>Petitioner,</p> <p>v.</p> <p>The Office of the State Superintendent of Education (“OSSE”), State Education Agency) (“SEA”) Respondent.</p> <p>Case # 2025-0107</p> <p>Date Issued: September 22, 2025</p>	<p>CORRECTED HEARING OFFICER’S DETERMINATION ²</p> <p>Hearing Dates: August 18, 2025 September 10, 2025</p> <p>Counsel for Each Party listed in Appendix A</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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¹ Personally identifiable information is in the attached Appendices A & B.

² The Corrected HOD names the Respondent in the order.

JURISDICTION:

The hearing was conducted, and the decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter 5-A30.

BACKGROUND AND PROCEDURAL HISTORY:

The student who is the subject of this due process hearing ("the Student") resides in the District of Columbia with the Student's parent. The Student has reached the age of majority and has executed a power of attorney allowing his/her parent to exercise educational rights. The District of Columbia Public Schools ("DCPS") serves as the Student's local education agency ("LEA"), and the District of Columbia Office of the State Superintendent of Education (“OSSE”) is the Student’s State Education Agency (“SEA”).

On February 20, 2025, DCPS determined that the Student continued to be eligible for special education pursuant to the IDEA, classified with multiple disabilities (“MD”). On February 20, 2025, DCPS convened an annual individualized educational program (“IEP”) review meeting for the Student and developed an IEP for the Student. The Student attends a non-public special education day school (“School A”) and also attended School A during school year (“SY”) 2024-2025. Pursuant to the Student’s current and previous IEPs, the Student was provided bus transportation services to and from School A. The Student’s IEP also prescribes that the Student will be provided a nurse during morning and evening bus transportation due to the Student’s significant medical needs. OSSE implements the Student’s IEP-prescribed bus transportation and provides the required nurse on the bus.

On June 26, 2025, the Student's parent ("Petitioner") filed a due process complaint ("DPC") claiming that OSSE ("Respondent") denied the Student a free appropriate public education ("FAPE") by failing to provide timely and reliable transportation services and consistently providing a nurse familiar with the Student’s medical needs as required by the Student’s IEP.

In addition to finding that OSSE denied the Student a FAPE, Petitioner requests that OSSE be ordered to provide the Student with compensatory education for the denial of FAPE and that OSSE be required to provide timely door-to-door transportation for the Student at no cost to the parent. The Petitioner also requests that OSSE ensure a dedicated nurse familiar with the Student’s medical needs and medication protocols is available during transportation. Furthermore, Petitioner asks that OSSE allow her to meet with any nurse expected to provide services to the Student before services begin and to receive at least three (3) school days’ notice of any staffing changes. Additionally, Petitioner requests that OSSE immediately notify her if the Student experiences a seizure on the bus and provide a written report within 24 hours of any incident. Lastly, Petitioner requests that OSSE reimburse her for the days she provided transportation to the Student during the 2024-2025 school year.

OSSE’s Response to the Complaint:

OSSE filed a response to the DPC on July 11, 2025. In its response, OSSE stated, inter alia, the following:

OSSE admits that the Student’s IEP(s) in effect for SY 2024-2025 require a nurse to be available to the Student during transportation. At numerous times during SY 2024-2025, Petitioner requested that no morning or afternoon transportation be provided for the Student. The dates on which paused transportation included but are not limited to: January 8 through 29, 2025, February

At times, Petitioner also requested that OSSE not send any nurse to her home whom she had not previously met and had the opportunity to discuss the Student’s needs, despite the existence of a medical plan. OSSE Department of Transportation (“DOT”) advised Petitioner that any changes to the existing medical plan had to be discussed with and resubmitted by the Student’s LEA. Even after the medical plan for the Student was updated, Petitioner insisted that OSSE not send any new nurse unless she personally met with them first. Although the IDEA does not give parents a right to have pre-meetings with service staff, OSSE made efforts to accommodate Petitioner’s request. OSSE denies that it failed to provide the Student with transportation.

OSSE admits that nurses assigned to the Student’s route changed over the course of SY 2024-2025. IDEA does not require the assignment of one person or a particular person to provide services to a student. OSSE respectfully requests that Petitioner’s request for relief be denied.

Pre-Hearing Conference:

The DPC was filed on June 26, 2025. The 45-day period began on July 26, 2025, and ended [and the Hearing Officer’s Determination (“HOD”) was originally due on August 10, 2025. The parties filed motions to extend the HOD due date to accommodate hearing dates, and the HOD is now due on September 22, 2025.

The undersigned impartial hearing officer (“IHO”) conducted a pre-hearing conference on July 21, 2025, and issued a pre-hearing order (“PHO”) on August 2, 2025, stating, inter alia, the issue to be adjudicated.

ISSUE:³

The issue adjudicated is:

Did OSSE deny the Student a FAPE during SY 2024-2025 by failing to provide timely and reliable transportation services and consistently providing a nurse familiar with the Student’s medical needs as required by the Student’s IEP?

DUE PROCESS HEARING:

The Due Process Hearing was convened on August 18, 2025, and September 10, 2025, via video teleconference on the Microsoft Teams platform.

RELEVANT EVIDENCE CONSIDERED:

The IHO considered the testimony of the witnesses, and the documents submitted in each party’s disclosures (Petitioner’s Exhibits 1 through 41 and Respondent’s Exhibits 1 through 54) that were admitted into the record and are listed in Appendix 2.⁴ The witnesses testifying on behalf of each party are listed in Appendix B.⁵

³ At the outset of the due process hearing, the IHO reviewed the issue to be adjudicated the parties agreed to the issue as stated herein.

⁴ Any item disclosed and not admitted or admitted for limited purposes was noted on the record and is noted in Appendix A.

⁵ The Petitioner presented three witnesses: (1) Petitioner’s educational advocate who testified as an expert witness, (2) an administrative assistant of the law firm representing Petitioner, and (3) the Student’s mother (Petitioner).

SUMMARY OF DECISION:

Petitioner sustained the burden of persuasion by a preponderance of the evidence that OSSE denied the Student a FAPE by not consistently providing the Student with transportation services. The IHO ordered OSSE to provide the Student compensatory education.

FINDINGS OF FACT:⁶

1. The Student resides with Petitioner, the Student's parent, in the District of Columbia. DCPS is the Student's LEA, and OSSE is the Student's SEA. Although the Student is legally an adult, the Student has executed a power of attorney ("POA") transferring educational decision-making rights to Petitioner. The Student attends School A, a non-public special education day school, and did so during SY 2024-2025. (Mother's testimony, Petitioner's Exhibit 41)
2. The Student's IEP for the first half of SY 2024-2025 was dated February 22, 2024. On February 20, 2025, DCPS determined that the Student continued to be eligible for special education pursuant to the IDEA, classified with MD, and updated the Student's IEP at the February 20, 2025, annual IEP review meeting. (Mother's testimony, Respondent's Exhibits 28, 29)
3. The Student's IEPs prescribe the following services for SY 2024-2025: 26 hours per week of specialized instruction outside the general education setting, and the following related services all outside the general education setting: 4 hours per month occupational therapy ("OT"), 2 hours per month of behavioral support services, 1 hour per month of speech-language pathology, and 2.5 hours per month of orientation and mobility services. (Respondent's Exhibits 28, 29)
4. Pursuant to the Student's February 20, 2024, and February 20, 2025, IEPs, the Student was provided with bus transportation services to and from School A. The Student's IEPs also prescribe that the Student will be provided a nurse during morning and evening bus transportation due to the Student's significant medical needs. The IEP's transportation section notes that the Student is subject to seizures and may have to have medication administered while in transport. The Student's IEPs also prescribe that the Student is eligible for extended school year ("ESY") and transportation services for ESY. OSSE implements the Student's IEP-prescribed bus transportation and provides the required nurse. (Witness 3's testimony, Respondent's Exhibits 28-22, 28-24, 29-25, 29-29)
5. Prior to January 2025, the same nurse who provided the Student services during the school day at School A also provided the Student nursing services on bus transportation from the Student's home to School A and from School A to home, and had been doing so for years. (Mother's testimony)

Respondent presented two witnesses, both administrators in the OSSE Division of Student Transportation. The IHO found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the witnesses' testimony that the IHO identified are addressed in the conclusions of law.

⁶ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained. When citing an exhibit submitted by more than one party separately, the IHO may only cite one exhibit.

6. In January 2025, OSSE changed the nursing service contractor, resulting in a new nurse being assigned to accompany the Student on the school bus. However, the nurse who previously provided nursing services to the Student on the bus continued to do so at School A. Neither Petitioner nor the existing nurse was notified in advance of the change. The newly assigned nurse, who was unknown to Petitioner, arrived outside the Student's home on January 3, 2025, at 5:30 a.m., calling for the Student on a day when school was closed. (Mother's testimony, Witness 3's testimony, Witness 4's testimony)
7. After being notified of the change in nurses, Petitioner requested a meeting with OSSE regarding the nurse change and told OSSE that the Student would not ride the bus until that meeting took place. As a result, OSSE DOT initiated a route deviation form that suspended the Student's bus transportation effective January 8, 2025, to resume after the Petitioner agreed to restart the bus transportation. (Witness 3's testimony, Respondent's Exhibit 3)
8. On Wednesday, January 8, 2025, OSSE sent an email to Petitioner and copied others, including the Student's LEA, confirming the suspension of transportation and that Petitioner would self-transport the Student to and from school until she could acclimate the new nurse to the Student's medical needs. Petitioner agreed to resubmit the Student's medical plan with medication updates to the LEA and OSSE, and Petitioner was to contact OSSE to restart bus transportation. (Respondent's Exhibit 32)
9. On January 29, 2025, Petitioner had a meeting with OSSE and the new nursing staff who would be providing nursing services during the Student's bus transportation. Following the meeting, OSSE instituted a route deviation to resume the transportation effective January 30, 2025. (Witness 3's testimony, Respondent's Exhibit 3, 4, 36)
10. On February 4, 2025, the Petitioner became unconscious while being transported on the bus with the newly assigned nurse. The nurse did not strictly follow the standard protocol for administering the Student's medication and, as a result, gave the medication too early. The transportation nurse eventually informed the Petitioner what happened, which heightened Petitioner's concerns about the nursing staff on the bus and her desire to be notified in advance of any changes in nursing staff and to meet with any nurse before he or she provided nursing services to the Student. (Mother's testimony, Petitioner's Exhibit 34)
11. On February 5 and 13, 2025, the school bus arrived at the Student's home to transport the Student at 7:35 a.m. and 7:32 a.m., respectively, both within the scheduled arrival window. (Witness 3's testimony, Respondent's Exhibit 21-25, 21-28, 21-29)
12. OSSE maintained call logs of when Petitioner contacted OSSE's parent transportation center, showing that Petitioner called to suspend and then resume the Student's bus transportation on the following dates: 1/31/2025 to resume on 2/3/2025, 2/11/2025 to resume on 2/12/2025, 2/21/2025 to resume on 2/24/2025, 2/24/2025 to resume on 2/25/2025, 2/25/2025 to 2/28/2025, to resume on 3/3/2025. (Witness 3's testimony, Respondent's Exhibit 2)
13. In response to a March 7, 2025, inquiry from Petitioner's counsel, School A's principal related to Petitioner, through her counsel, that the Student missed the following school days due to transportation, inquiry to School A: January 21, 22, 13, 24, 2025, and March 3 and 7, 2025. (Petitioner's Exhibit 21)
14. On March 17, 2025, the bus arrived at 8:46 a.m. at the Student's home over one hour late with a nurse with whom Petitioner was not familiar. Petitioner did not believe the nurse was sufficiently familiar with the Student's needs, and because she had not been notified

by OSSE beforehand of a nurse change, Petitioner did not send the Student to School on the bus, and the Student missed school that day. (Mother's testimony, Petitioner's Exhibit 32, Respondent's Exhibits 21-73, 39)

15. On March 18, 2025, another nurse, unknown to Petitioner, arrived, and Petitioner chose to transport the Student to school herself. OSSE later notified Petitioner that the regular nurse would be out indefinitely. Petitioner suspended the Student's bus transportation and requested a meeting with the replacement nurse to review the Student's plan of care, which was held on April 7, 2025. After the meeting, Petitioner requested that the Student's bus transportation resume. (Mother's testimony, Witness 1's testimony, Petitioner's Exhibit 25, Respondent's Exhibits 11, 40, 41, 45, 48)
16. Petitioner alleged that the Student missed school on the following days due to no transportation in April, May, and June of 2025: April 1, 2, 3, 4, 9, May 1, 5, 9, 10, 12, 25, 28, 29, 30, June 9, 10, 11, 12, 13, 23. (Witness 2's testimony, Petitioner's Exhibit 37)
17. OSSE call logs indicate that the Petitioner contacted OSSE's parent transportation center to suspend and then resume the Student's bus transportation on the following dates in April and May 2025: 04/02/25, 04/25/2025, to resume on 04/28/2025; 04/28/2025, to resume on 04/29/2025; 05/08/25, to resume on 05/09/25; and 05/13/2025, to resume on 05/14/2025. (Witness 3's testimony, Respondent's Exhibit 2)
18. Petitioner's educational advocate developed a compensatory education plan to address the Student's missed instruction due to transportation failures. The advocate estimated that the Student missed 11 days, or 66 hours, of specialized instruction because of the lack of bus transportation, and an additional 30 hours of specialized instruction due to late transportation, totaling approximately 96 hours. She opined, based on the Student's cognitive abilities, that the Student would have been able to master IEP goals and achieve six months' worth of academic growth if he/she had not missed instruction due to transportation failures. She estimated that 50 hours of independent tutoring would enable the Student to achieve that amount of academic growth during SY 2025-2026, provided she/he continues to receive reliable transportation and consistent nursing services during transit. (Witness 1's testimony, Petitioner's Exhibit 32)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c), Include an appropriate preschool, elementary school, or secondary school education in the State involved;
and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Petitioner held the burden of persuasion on issue adjudicated. ⁷ The burden of persuasion shall be met by a preponderance of the evidence. The normal standard is a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE: Did OSSE deny the Student a FAPE during SY 2024-2025 by failing to provide timely and reliable transportation services and consistently providing a nurse familiar with the Student's medical needs as required by the Student's IEP?

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence that OSSE denied the Student a FAPE due to transportation failures.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special education and related services that' are 'provided at public expense, under public supervision ...;' and that 'meet the standards of the State educational agency;' as well as 'conform[] with [each disabled student's] individualized education program.'" *Charles H. v. District of Columbia*, 2021 WL 2946127 (D.D.C. June 16, 2021) (quoting 20 U.S.C. § 1401(9)) (alterations in original). "Special education" is defined as "specially designed instruction, at no cost to parents, [that] meet[s] the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services," on the other hand, are defined as "such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." *Id.* § 1401(26)(A).

"Under [the] IDEA and its implementing regulations, students with disabilities ... are entitled to receive [a] FAPE through an Individualized Education Program (or IEP)." *Charles H.*, 2021 WL 2946127 (quoting 20 U.S.C. § 1401(9)(D)). An IEP is a written document that lays out how the student will obtain measurable annual goals and that mandates specific special education and related services that the student must receive. 20 U.S.C. § 1414(d)(1)(A)(i). It is created for each student by a special "IEP Team," consisting of the child's parents, at least one regular-education teacher, at least one special-education teacher, and other specified educational experts. *Id.* § 1414(d)(1)(B). An IEP is the main tool for ensuring that a student is provided a FAPE. See *Charles H.*, 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

⁷ DC Code § 38-2571.03 (6) provides:

(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

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

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement, provided that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

For a failure to implement claim, the IDEA is violated only when a school district deviates materially from a student's IEP. See *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016); The IDEA is violated when a school district deviates materially from a student's IEP. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011) (citation omitted). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by that child's IEP. *Holman v. District of Columbia*, No. 14-1836, 2016 WL 355066 (D.D.C. 2016) (citing *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007)). In other words, for the court to find a failure to implement an IEP, the school board or local authorities must have "failed to implement substantial or significant provisions of the IEP." *Wilson*, 770 F. Supp. 2d at 274 (citing *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). There is no requirement that the child suffer educational harm in order to find a violation; rather, the proportion of services mandated compared with those provided is "the crucial measure for purposes of determining whether there has been a material failure to implement" an IEP.

A school district "must ensure that ... special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2). A material failure to implement a student's IEP constitutes a denial of a FAPE. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268 69 (D.D.C. 2013). To meet its burden, the moving party "must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Beckwith v. District of Columbia*, 208 F.Supp.3d 34, 49 (D.D.C. 2016) (quoting *Hous. Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). "Generally, in analyzing whether a student was deprived of an educational benefit, 'courts ... have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.' " *Id.* (quoting *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011)). *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 at 144 (D.D.C. 2018)

The Student's IEP mandates that the Student be provided transportation and a dedicated nurse on the bus when the Student is being transported to and from school. OSSE, the SEA, operates student transportation on behalf of the local education agencies in the District of Columbia. Therefore, OSSE is responsible for implementing the transportation and nursing services during transportation that the Student's IEP requires.

Petitioner alleges that during SY 2024-2025, OSSE failed to appropriately implement Student IEPs, which call for nursing support to be available to the Student at all times due to his/her significant medical issues. Petitioner alleged that by failing to provide the Student with timely and reliable transportation, as well as to ensure that there was a nurse available sufficiently familiar with the Student's needs, the Student missed school and/or both instruction hours and/or related services.

In January 2025, OSSE changed the nursing service contractor, resulting in a new nurse being assigned to accompany the Student on the school bus. However, the nurse who previously provided nursing services to the Student on the bus continued to do so at School A. Neither Petitioner nor the existing nurse was notified in advance of the change. After being notified of the change in nurses, Petitioner requested a meeting with OSSE regarding the nurse change and told OSSE that the Student would not ride the bus until that meeting took place. As a result, OSSE DOT initiated a route deviation form that suspended the Student's bus transportation effective January 8, 2025, to resume after the Petitioner agreed to restart the bus transportation.

On January 29, 2025, Petitioner had a meeting with OSSE and the new nursing staff who would be providing nursing services during the Student's bus transportation. Following the meeting, OSSE instituted a route deviation to resume the transportation effective January 30, 2025.

Although the Petitioner claimed that the Student missed school on January 21, 22, 23, and 24 due to transportation, as indicated by School A, these dates were prior to OSSE resuming transportation and prior to the January 28, 2025, meeting that the parent requested. This was a demand by Petitioner for bus transportation to pause until she met with OSSE. Therefore, the IHO does not consider these to be days that the Student missed school because of OSSE's lack of implementation. There was a transportation deviation form that indicated that the Student transportation was not in effect and was resumed on January 30, 2025.

On February 5 and 13, 2025, when the Petitioner claimed that the Student's bus transportation did not show up, the OSSE trip tickets indicate that the bus arrived at the Student's home at 7:35 a.m. and 7:32 a.m., respectively, both within the scheduled arrival window.

There were other dates that Petitioner claimed that OSSE bus transportation failed to show, however, Petitioner could not remember the dates and although the administrative assistant testified that she created the list of dates that were missed, from information including texts and phone calls to the law firm from Petitioner, there were many dates that were simply listed without any explanation, no times and no indication of any communication that Petitioner had with OSSE about the transportation failures.

Petitioner alleged the Student missed school on the following dates due to transportation failures in March 2025: March 3, 4, 7, 18, 20, 24, 25, 27, and 31. There were no OSSE call log notations, OSSE route deviation forms, or bus trip tickets that indicated that OSSE provided the Student morning bus transportation on March 3, 4, and 7. However, the IHO notes that after March 18, 2025, Petitioner stopped the Student's transportation until she had a meeting with OSSE on April 7, 2025. This was a demand by Petitioner for bus transportation to pause until she met with OSSE. Therefore, the IHO does not consider these days to be those on which the Student missed school due to OSSE's lack of implementation. However, there was no explanation from OSSE as to why transportation was not provided on March 3, 4, and 7, 2025.

Petitioner alleged that the Student missed school on the following dates due to transportation failures in April 2025: April 1, 2, 3, 4, 9, and 23. There were either call log notations, OSSE route deviation forms, or bus trip tickets that indicated that OSSE provided the Student morning bus transportation for the following dates in April 2025: April 2, 10 and 25, 2025, but not for the other April dates alleged by Petitioner, although the IHO notes that Petitioner requested meeting with OSSE about the nursing staff that occurred on April 7, 2025, but the Student's bus transportation was not to restart until April 9, 2025.

Petitioner alleged that the Student also missed the following dates due to transportation failures in May 2025: May 1, 5, 9, 10, 12, 25, 28, 29, 30. There were either call log notations or OSSE route deviation forms or bus trip tickets that indicate that OSSE provided the Student morning bus transportation for the following dates: from April 29 to resume on May 7, and for May 9, 12, and 29, but not for May 25, 28, and 30, 2025.

Petitioner alleged that the Student also missed the following dates due to transportation failures in June 2025: June 9, 10, 11, 12, 13, 23, 2025. There were either call log notations or OSSE route deviation forms or bus trip tickets that indicate that OSSE provided the Student morning bus transportation for the following dates: June 9, 10, 11, 12, 13, and 23.

Based on the IHO review of the trip tickets, many of the dates on which Petitioner claimed no transportation was provided to the Student were contradicted by the OSSE documentation, which either indicated that Petitioner paused the transportation or the bus arrived at Petitioner's home and Petitioner refused the transportation. Consequently, the IHO concludes that there were only eight verifiable dates that the Student missed school due to transportation failures: March 3, 4, 7, April 9, 23, and May 25, 28, and 30. Although Petitioner asserted that the Student missed instruction due to late arrivals to school because of transportation delays, there was insufficient evidence presented by Petitioner regarding transportation delays.

The Student's IEP prescribes 26 hours per week of specialized instruction outside the general education setting, and the following related services all outside the general education setting: 4 hours per month OT, 2 hours per month of behavioral support services, 1 hour per month of speech-language pathology, and 2.5 hours per month of orientation and mobility services. There was no evidence that the Student missed any related services due to transportation failures. The IHO concludes, however, that the Student likely missed approximately 50 hours of specialized instruction in eight days that were related to OSSE's transportation failures, which the IHO considers a material deviation of the Student's IEP services and a denial of a FAPE to the Student.

Remedy:

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.)

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his/her loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

When a hearing officer finds denial of FAPE, he has "broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education.... [A]n award of compensatory education must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.)

Petitioner requested the compensatory education included in her educational advocate's proposal. Petitioner's witness credibly testified that the Student would make progress with independent tutoring. There was sufficient evidence that providing the Student with the proposed compensatory tutoring will place the Student at or near the position she/he would have been in but for the denial of a FAPE as determined herein. However, the advocate estimated that the Student missed more days of school than were proved and missed services due to transportation delays that were also not proved. Consequently, the IHO concludes that her estimation of the amount of tutoring that would compensate the Student should be reasonably adjusted and does so in the order below.

Petitioner asserts that a change in the person implementing the nursing services in the IEP is a change that requires notice requirements and requests that OSSE be ordered to provide Petitioner notice of changes in the nursing staff. However, as OSSE aptly points out, IDEA does not require a pre-meeting with the IEP staff or for a parent to vet a service provider. Consequently, the IHO does not grant Petitioner the additional relief requested.

ORDER: 8

1. OSSE shall, within ten (10) business days of the issuance of this order, provide Petitioner authorization to obtain the following services as compensatory education at the OSSE-prescribed rates: 30 hours of independent tutoring.
2. All other relief requested by the Petitioner is denied.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Impartial Hearing Officer
Date: September 22, 2025

Copies to: Counsel for Petitioner
 Counsel for LEA
 ODR hearing.office@dc.gov

⁸ Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day-for-day basis.