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Via Electronic Mail

March 18, 2026

Bureau of Early Intervention Services and Family Supports
Office of Child Development and Early Learning
607 South Drive, 4th Floor Rotunda
Harrisburg, PA 17120
ra-ocdintervention@state.pa.us

RE: *Complaint on Behalf of Children Eligible for Preschool Early Intervention Services Entitled to Transportation as a Related Service in Delaware County*

Dear Bureau of Early Intervention Services and Family Supports:

The **Education Law Center – PA** files this Complaint as an organization¹ and on behalf of individual children [REDACTED] and [REDACTED], as well as all similarly situated eligible young children entitled to transportation services through the Delaware County Intermediate Unit (“DCIU”) to access Preschool Early Intervention (“EI”). The Complaint is filed against DCIU and the Office of Child Development and Early Learning (“OCDEL”) for failure to provide required special education services and a free appropriate public education (“FAPE”) to eligible students with disabilities who were discriminated against on the basis of disability. DCIU and OCDEL have violated Part B of the Individuals with Disabilities Education Act (“IDEA”) and its implementing regulation, 34 C.F.R. Part 300, Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and its implementing regulation, 34 C.F.R. Part 104, the Early Intervention Services System Act of Dec. 19, 1990, P.L. 1372, No. 212 § 304(a)(1), *as amended* 11 Pa. Stat. § 875-304(a)(1) (“Act 212”), and Chapter 14 of the Pennsylvania Code, 22 Pa. Code Chapter 14 (“Chapter 14”). Pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Local Educational Agency (“LEA”) is obligated to provide appropriate educational services to all eligible children with disabilities, aged 3 through 21. These obligations are further governed by 22 Pa. Code Chapter 14.

OCDEL is the State Education Agency (“SEA”) charged with responsibility to ensure a FAPE for all young children with disabilities. The Pennsylvania Department of Education (“PDE”),

¹ 34 C.F.R. § 300.153(a) (“An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.”).

through OCDEL, is directly responsible for the delivery of early intervention services under state law, the Early Intervention Services System Act of Dec. 19, 1990, P.L. 1372, No. 212 § 304(a)(1), *as amended* 11 Pa. Stat. § 875-304(a)(1) (“Act 212”). This law expressly provides, in part, that the “Department of Education shall be responsible for the delivery of early intervention services for all eligible young children between three years of age and the age of beginners.” PDE transferred its role to OCDEL in 2007. Within Delaware County, DCIU provides services based on the scope of services delegated by OCDEL through a MAWA and based on funds allocated by OCDEL. 11 Pa. Stat. § 875-304(a)(3). As the Early Intervention LEA for Delaware County, DCIU must ensure that eligible children receive a FAPE, which includes providing related services tailored to meet their individual needs. DCIU also bears responsibility for ongoing progress monitoring, timely reevaluations, and ensuring that students’ Individualized Education Programs (“IEPs”) are developed and implemented in full compliance with state and federal law. *See* 20 U.S.C. § 1414; 34 C.F.R. §§ 300.320–300.324; 22 Pa. Code §§ 14.124, 14.131.

Here, in violation of these laws, young children with disabilities failed and continue to fail to receive appropriate transportation services as required by their IEPs due to systemic deprivations that remain unaddressed by DCIU. These children have been deprived of Early Intervention services due to the joint failure of both OCDEL and DCIU to provide them with the related service of transportation. While DCIU contracts with Upper Darby School District to provide related transportation services, it retains the responsibility of ensuring that such services are appropriately provided as related services. We request that the Bureau of Early Intervention Services and Family Supports (“Bureau”) investigate this matter and issue corrective action as needed to remedy the violations described herein.

I. INTRODUCTION

DCIU has denied eligible young children a FAPE by failing to appropriately provide transportation as a related service and as required by children’s IEPs, and it has failed to offer sufficient compensatory education to children deprived of a FAPE. By failing to provide appropriate transportation, DCIU has denied these young learners a service to which they are legally entitled and a service that is necessary for them to be able to access other related services and their educational programs. This Complaint alleges a systemic denial of FAPE caused by the ongoing failure of DCIU to appropriately provide transportation to named students and similarly situated students who require transportation as a related service to receive a FAPE and alleges an ongoing failure by DCIU to remedy the violations of FAPE that occurred and continued to occur.

Early childhood education (“ECE”) plays a vital role in the learning and social development of all children, and especially those eligible for early intervention services.² Children’s experiences in their first five years of life are critical to brain development, and the benefits of high-quality ECE for both children without disabilities and children with disabilities are robust,

² See generally ANNA D. SCHOCH, CASSIE S. GERSON, TAMARA HALLE & MEG BREDESON, CHILDREN’S LEARNING AND DEVELOPMENT FROM HIGH-QUALITY EARLY CARE AND EDUCATION: A SUMMARY OF THE EVIDENCE 3-6 (2023), <https://acf.gov/sites/default/files/documents/opre/%232023-226%20Benefits%20from%20ECE%20Highlight%20508.pdf>.

intergenerational,³ and long-lasting.⁴ For young children with disabilities, inclusive, high-quality ECE plays an especially critical role in supporting both learning and social-emotional development.⁵ While all children benefit from high-quality ECE, children who are most underserved – including English learners, children with disabilities, and children experiencing homelessness, among others – make the most significant learning gains when provided access to high-quality ECE.⁶ Children with disabilities are excluded from ECE at staggering rates, often caused by or directly related to Preschool EI deprivations and other violations of federal law.⁷

Research shows that state and local entities responsible for Preschool EI deprive Black and Brown children with disabilities of legally-required services, due to existing systems of systemic ECE underfunding, neighbourhood and regional disinvestment, and insufficient community-based medical access, as well as individual racial bias, thereby barring them from the benefits of high-quality ECE while opening them to the negative consequences of preschool exclusion.⁸ Black children are excluded from their educational programs at a rate 3.6 times that of their white peers, through no fault of their own.⁹ Inappropriate provision of transportation is a major barrier to preschool access and inclusion.¹⁰ When transportation does not arrive to bring children to school, or arrives so late that children must miss the majority of the school day, or when transportation occurs so inappropriately that it creates barriers to meaningful participation, children are excluded from equal access and participation in school and are denied EI services. For Black children like Named Complainants, the failure to provide transportation compounds existing racialized and systemic barriers to accessing early intervention services and preschool programs.¹¹ By failing to provide needed appropriate transportation services to Black children, OCDEL and DCIU directly contribute to the disparate exclusion of Black children from preschool programs.

³ James J. Heckman, *Perry Preschool Project*, CENTER FOR THE ECONOMICS OF HUMAN DEVELOPMENT, https://cehd.uchicago.edu/?page_id=958.

⁴ Beth Meloy, Madelyn Gardner, and Linda Darling-Hammond, *Untangling the Evidence on Preschool Effectiveness: Insights for Policymakers*, Learning Policy Institute (2019).

⁵ Katherine B. Green, Nicole Patton Terry & Perry A. Gallagher, *Progress in Language and Literacy Skills Among Children With Disabilities in Inclusive Early Reading First Classrooms*, 33 TOPICS IN EARLY CHILDHOOD SPECIAL EDUC. 249, 256 (2013).

⁶ See generally PRUDENCE L. CARTER & KEVIN G. WELNER, *CLOSING THE OPPORTUNITY GAP: WHAT AMERICA MUST DO TO GIVE EVERY CHILD AN EVEN CHANCE* (2013).

⁷ OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, *KEY DATA HIGHLIGHTS ON EQUITY AND OPPORTUNITY GAPS IN OUR NATION’S PUBLIC SCHOOLS* (2014); CHRISTINA NOVOA & RASHEED MALIK, *SUSPENSIONS ARE NOT SUPPORT: THE DISCIPLINING OF PRESCHOOLERS WITH DISABILITIES* (2018).

⁸ Dolores A. Stegelin, *Preschool Suspension and Expulsion: Defining the Issues*, *Institute for Child Success* (Dec. 2018); Terri J. Sabol, et al, *A Window into Racial and Socioeconomic Status Disparities in Preschool Disciplinary Action Using Developmental Methodology*, *Annals of the New York Academy of Sciences* (Sept. 2021), at <https://nyaspubs.onlinelibrary.wiley.com/doi/10.1111/nyas.14687>.

⁹ Office for Civil Rights, U.S. Department of Education, *Key Data Highlights on Equity and Opportunity Gaps in Our Nation’s Public Schools* (2014); Cristina Novoa & Rasheed Malik, Center for American Progress, *Suspensions Are Not Support: The Disciplining of Preschoolers with Disabilities* (2018).

¹⁰ See Nat’l Head Start Ass’n, *Head Start United: Removing Barriers to Access for Children and Families* (2022), <https://nhsa.org/wp-content/uploads/2022/04/Head-Start-United-Removing-Barriers-to-Access-for-Children-and-Families-1.pdf>; see also Erica Greenberg et al., *Barriers to Preschool Participation for Low-Income Children of Immigrants in Silicon Valley* (Urban Inst. 2016)

¹¹ *Id.*

In light of the ongoing and pervasive nature of the deprivation, we assert claims against OCDEL for its failure to ensure a FAPE to preschool students receiving EI services in Delaware County and its failure to ensure that these students are not discriminatorily denied access to early education due to their disabilities. We specifically allege that OCDEL failed to ensure that [REDACTED] and other similarly situated students received special education services compliant with federal and state law and were thereby deprived of a FAPE. The term “similarly situated students” as used in this Complaint refers to all children with disabilities eligible to receive Preschool EI services from DCIU who were deprived of transportation as a related service.

For the reasons discussed herein, we request a finding that DCIU and OCDEL violated not only the rights of [REDACTED] and [REDACTED], but also the rights of all similarly situated students as defined herein who were denied a FAPE and deprived of meaningful educational opportunities on the basis of their disabilities. We further request a remedy for [REDACTED], [REDACTED], and all similarly situated children whose educational rights have been systematically denied through DCIU’s failure to provide appropriate transportation and whose deprivations have not been appropriately addressed.

As part of the requested investigation, we specifically ask that the Bureau interview the following persons:

Name	Occupation/Title	Phone Number and Email
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]

Complainants

Education Law Center - PA (“ELC”) is a non-profit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, and policy advocacy, ELC advances the rights of underserved children, including children with disabilities, children experiencing poverty, children of color, children in the foster care and juvenile justice systems, multilingual learners, LGBTQ+ students, and children experiencing homelessness.

██████ and ██████ are students with qualifying disabilities under Section 504 who are eligible for special education services under the IDEA. *See* 34 CFR 104.3(j) and 34 CFR § 300.8.

Similarly Situated Students are children with disabilities eligible to receive Preschool EI services from DCIU who were deprived of transportation as a related service.

Respondents

Respondent DCIU is the LEA for qualified students with disabilities seeking relief. *See* 20 U.S.C. § 1401(19); 34 CFR § 300.28. Respondent DCIU qualifies as a recipient of federal financial assistance within the definition of 34 CFR § 104.3(f).

Respondent OCDEL is the State Education Agency (“SEA”) charged with responsibility to ensure a FAPE for all young children with disabilities. *See* 20 U.S.C. § 1412(a)(11)(A) (SEA responsible for ensuring the requirements of the IDEA are met); 34 C.F.R. § 300.149 (delineating SEA responsibilities for general supervision). OCDEL has direct responsibility for and control over the delivery of early intervention services under Act 212. Act 212, at § 875-304(a)(3). Respondent OCDEL qualifies as a recipient of federal financial assistance within the definition of 34 CFR § 104.3(f).

II. FACTUAL BACKGROUND

█████, D.O.B.: █████

█████ is a █████-year-old Black boy who, prior to transitioning to kindergarten in █████ in August 2025, attended preschool at █████ located at █████ through the DCIU. █████ is eligible for special education under the disability category of autism. He received EI services through DCIU including █████

█████ His EI IEP included transportation to and from █████'s home and █████, which are approximately █████ miles apart. Transportation services were to be provided by Upper Darby School District. █████ rode the █████ bus and was routed to be picked up from his home at █████ am and dropped off at his home at █████ pm.

DCIU failed to implement █████'s related service of transportation appropriately or consistently. As a result, █████ – a young child with a significant disability – typically did not arrive to school until █████ am and sometimes was not returned home until as late as █████ pm. Despite consistent requests for assistance from █████'s family and providers, DCIU refused to address the issue and said there was “nothing it could do” even as transportation issues escalated to a point that they impeded █████'s access to education and led to regressions and heightened behavioral challenges, for which DCIU declined to provide any support. The issue was never resolved, and in August 2025, █████ transitioned to kindergarten.

Prior to the onset of the described transportation challenges, █████ arrived home from preschool at █████ pm. Beginning in spring 2025, █████ arrived home often well after █████ and often after █████. Because █████ also received related services that began at █████ in the home, he missed a significant number of services due to these transportation failures, which his parent notified DCIU of promptly. On █████ he arrived home later than █████; on █████, at █████, on █████, at █████ and on █████, at █████. In one instance, █████ did not arrive home until almost █████, meaning that he was on the bus for almost four hours after preschool. His parents and providers repeatedly called DCIU, Upper Darby School District, and the Upper Darby emergency transportation hotline to determine █████'s whereabouts, but received no information. His parents called █████ and Upper Darby daily to determine the whereabouts of their son when the bus did not arrive within a reasonable amount of time after █████ PM. █████'s parents – who are low-income and consistently struggle to afford gas to transport █████ to school – began picking up █████ from preschool when they were able due to the persistent bus delays and lack of communication regarding those delays from Upper Darby, which presented serious safety concerns and were affecting █████'s educational progress.

As a child with autism, █████ requires consistency, routine, and structure to access his education. The transportation issues described herein were not only inconsistent, irregular, and unpredictable, but also disrupted █████'s school days and created barriers that prevented █████ from experiencing consistency, routine, and structure in his school day. In early 2025, █████'s bus began arriving at school very late. In March 2025, the bus began arriving at █████'s home for pickup late, and in May 2025, █████'s bus began to drop him off at home far past his scheduled

drop off time. These disruptions caused immense stress for [REDACTED] and his family, who were never made aware of any changes to the bus route. They also were not informed when the bus was late or not coming, and they were not provided with reasons for the changes when they reached out to DCIU and Upper Darby. As a result of the bus arriving to [REDACTED] late, [REDACTED] typically missed much of the morning instruction, which was his favorite time at school and critical to ensuring his engagement and regulation throughout the day. He also could not fully access the specialized instruction services to which he was entitled to during this time. The family believes [REDACTED] may have missed additional scheduled EI services at DCIU because of transportation challenges, but has not been provided with the information necessary to confirm this or understand the extent of any related deprivations.

The disruption caused by extremely long rides and inconsistent transportation led to behaviors that impeded [REDACTED]'s educational access. In early May, Applied Behavior Analysis ("ABA") providers, including Board Certified Behavior Analyst ("BCBA") [REDACTED] began to notice and track an increase in [REDACTED]'s challenging behaviors, which prevented him from accessing his education and services. As a direct result of inadequate transportation services, [REDACTED] experienced significantly increased dysregulation and behavioral challenges related to the long wait times and educational deprivations, as well as an onset of new challenging behaviors since the transportation issues worsened. Existing behaviors increased in both intensity and duration, including throwing, kicking, hitting, and property destruction. Data collected by the BCBA indicated increases in maladaptive/impeding behaviors during this time, as well as throwing and aggression. During [REDACTED]'s spring break from EI programming, he was calm, and his challenging disability-related behaviors decreased. Upon returning to [REDACTED] for summer programming and again experiencing transportation issues, [REDACTED]'s intense behaviors returned. This sharp uptick in behavioral concerns further impeded his access to his education. Moreover, due to his disability, [REDACTED] requires toileting assistance, and he could not manage his toileting needs while on a bus for four hours. Additionally, [REDACTED] did not eat lunch at school and was not provided food during long bus delays. Delays in eating led [REDACTED] to experience delays in bowel movements, which have led to difficulties making progress on his goals and in potty training – an area that [REDACTED] had previously been working on at [REDACTED] with his teacher.

After observing the increases in challenging behaviors related to transportation, [REDACTED] began requesting assistance regarding the transportation issue. At one point, [REDACTED] behavioral challenges caused by transportation barriers escalated to such an extreme degree that [REDACTED] was forced to pause ABA service delivery due to the significant increase in behaviors. On May 15, [REDACTED] contacted [REDACTED]'s teacher at [REDACTED], as well as the teacher's supervisor, asking for insight and explaining the problem. [REDACTED] responded that she had no insight, "as transportation is through Upper Darby School District," and stated that she would forward the message to the DCIU Transportation Department. On May 16, [REDACTED] requested contact information for Upper Darby transportation and was not provided any information but was told that she could contact [REDACTED], [REDACTED]'s service coordinator and LEA.

On May 19, [REDACTED] and [REDACTED], a Behavior Specialist Consultant on [REDACTED]'s treatment team, met with [REDACTED]'s EI providers to discuss the behavioral challenges. At this meeting, providers informed [REDACTED] that [REDACTED] was being dropped off at school very late, in addition to being returned home late. On May 29, [REDACTED] stated that her supervisor was aware of the issue and working to resolve it and stated that the family should call Upper Darby Transportation, which they did and continued to do, to no avail. On May 29, [REDACTED]'s mother sent an email expressing her concerns to Upper Darby transportation. Her email was never answered. On June 2, [REDACTED] and [REDACTED]'s mother again called Upper Darby transportation and left messages. Their calls were never returned.

On June 13, 2025, [REDACTED]'s mother requested an IEP meeting with DCIU to discuss behavioral challenges related to transportation, and the meeting was scheduled for July 23. [REDACTED]'s mother responded by requesting an earlier date due to the urgent need for transportation. On July 14, [REDACTED] cancelled the IEP meeting on the basis that DCIU cannot control transportation issues and there was nothing DCIU could do, despite its obligation to provide related services; provide appropriate services in response to children's changing needs; and to ensure that transportation services appropriately occur. On July 17, [REDACTED]'s mother, with assistance from his BCBA, submitted a letter of parental concern to DCIU detailing these issues and requesting that the transportation issues be corrected and that DCIU communicate with the family if the bus route changes or there are delays. DCIU did not respond. These deprivations and concerns continued for the rest of [REDACTED]'s EI eligibility until he transitioned to kindergarten.

As a result of failures by OCDEL, DCIU, and Upper Darby, [REDACTED] was deprived of educational services to which he was entitled, deprived of an opportunity to make progress, and could not access a FAPE in the least restrictive environment.

[REDACTED], DOB: [REDACTED]

[REDACTED] is a [REDACTED]-year-old Black girl who lives in [REDACTED] and currently attends preschool at [REDACTED] in [REDACTED] through [REDACTED]. [REDACTED] attends school from the hours of [REDACTED], and the return buses begin loading at [REDACTED]. [REDACTED] has an IEP and is eligible to receive special education services under the disability category of autism. [REDACTED]'s IEP mandates access to a picture/symbol board and an AAC device so that she can communicate while at school. Her IEP services include [REDACTED]

[REDACTED] and transportation services with support from a Personal Care Assistant while in transit. Transportation services are provided by Upper Darby School District, though in February 2026, DCIU arranged for [REDACTED] to be transported by [REDACTED] an external company it uses when Upper Darby is unable to transport students. [REDACTED] and [REDACTED]'s home are approximately [REDACTED] miles apart.

In late 2024, prior to the preschool adjourning for winter break, [REDACTED]'s mother requested that DCIU and Upper Darby provide a five-point harness, as well as a transportation aide for [REDACTED]'s

transportation to and from preschool. This request was approved by the IEP team, though it was not initially written into the IEP. ██████████ confirmed that a harness and an aide would be on ██████'s bus once she returned to preschool after winter break. Upon returning to preschool in the new year, a new bus driver began driving ██████'s route to preschool. The first day ██████ returned to preschool, January ██████ 2025, the bus was running hours behind schedule. ██████'s transportation aide reported that the delay was because the new bus driver was learning the route. According to ██████'s preschool teacher, ██████ reached the school at nearly 10:00am despite being picked up by the bus at 7:30am at her home, which was approximately ██████ miles away. ██████'s harness was also not on the bus despite it being determined necessary by the IEP team. ██████████ communicated to ██████'s mother that delays are normal when a bus driver is learning a route and that the delays should improve within two weeks. The supervisor did not address the absence of the harness, despite ██████'s mother directly asking about it. In response, ██████'s mother drove ██████ to and from preschool in that two-week time frame. The transportation issues were not resolved within two weeks.

Transportation issues continued with ██████'s bus for months and persist to date. ██████ is routed to be picked up by ██████ AM so that she can begin school at ██████. ██████'s mother reports that the bus picks ██████ up late every day, often long after the start of the school day, and ██████ typically can only access about one-half hour of her nearly three-hour school day. As one example, on April ██████, 2025, when the bus had still not arrived by 8:10, ██████'s mother drove her to her school so that she would not have to miss the school day. Often, the bus would not drop ██████ off at ██████ until 9:00am or 9:30am – meaning that ██████ would miss a significant portion of her ██████-minute school day on a daily basis and would be deprived of critical developmental opportunities.

More recently, the issues regarding transportation have escalated. In past months, the bus has often picked ██████ up around 7:40 AM and dropped her off at school around 10:20, which has been “intolerable” for ██████. On November ██████, 2025, transportation was delayed to the point that ██████ – a ██████-year-old with disabilities who lives under ██████ miles from the school – was on the bus for over 2.5 hours on the way to school. ██████'s parent reached out to ██████████ the ██████████ when her child, who was supposed to begin school at 8:30, was still on the bus at 9:54. The parent then received a notice that ██████████ was out of office. He never responded, and ██████ did not arrive to school until 10:30 AM. ██████████ reported on November 12, 2025, that ██████'s route was being combined with another route from ██████████ due to a driver shortage. ██████'s parent reports that it is very typical that ██████ does not arrive to school until 10:20 or 10:30. Because the return buses load at 11:00, this means that ██████ often can only participate in around one half-hour of her multi-hour school day. As a result, ██████ has been deprived of significant special instruction time and the opportunity to work on her IEP goals, and she has been deprived of multiple related services, including speech therapy sessions, that occurred outside of the unpredictable half-hour window she is able to access school. As a result, she has been deprived of a FAPE.

It is critical for ██████ to be able to access not only her legally-required services and her preschool, but also the critical developmental opportunities such as peer and social group time that are

necessary to making progress on her IEP goals. [REDACTED] routinely misses a significant portion of her specialized instruction time and has missed other scheduled related services because of the chronic transportation issues. Her parent believes she may have also been deprived of more services due to transportation issues but has not been provided with the information necessary to ascertain this or understand the extent of potential deprivations. [REDACTED] repeatedly reported these issues to both [REDACTED] and DCIU personnel, including making them aware of the necessity of routines for children with autism like [REDACTED], and who have disability-related behavioral needs. Both Upper Darby and DCIU stated that it was the responsibility of the other to coordinate and ensure transportation, and Upper Darby stated that this is the nature of public transport.

In [REDACTED] 2025, DCIU added a Personal Care Assistant (“PCA”) to ride in the vehicle to and from [REDACTED] with [REDACTED]. As the year progressed into the summer months, however, transportation service remained inconsistent. Upper Darby provided [REDACTED]’s mother with a GPS to track the bus in case it was coming early or late. However, often the GPS system is down and not working. [REDACTED] wrote to [REDACTED]’s mother that in such cases, “the family can always go by the routed stop time and can call the dispatch office for assistance in bus updates,” but families often cannot rely on a stop time and cannot reach anyone at either the dispatch office or through the emergency transportation hotline. In one instance, the bus arrived earlier than is scheduled without any prior notice, causing [REDACTED] to miss her transportation, which was her access to her education program. Although [REDACTED]’s mother notified Upper Darby that the GPS tracker often does not work, no one contacted her to address the issue, and even when the GPS was working, the bus still continued to come late.

In December, after [REDACTED] was placed onto a bus with significantly older students, the situation continued to worsen. [REDACTED]’s parent reached out to the [REDACTED] about her safety concerns, and the [REDACTED] told her that the delays and long rides would continue. On December [REDACTED], 2025, [REDACTED]’s mother emailed several members of DCIU, including a representative of the Transportation Department, as well as a staff member with Upper Darby’s Transportation Office regarding her concerns and to request an alternative transportation arrangement. She did not receive a response and has been self-transporting [REDACTED] in the morning due to the ongoing safety concerns. On February [REDACTED], more than a year after [REDACTED]’s parent initially reached out and two months after [REDACTED]’s parent reached out on this particular email thread, DCIU representative [REDACTED] stated that an external company called [REDACTED] had been identified and would be in touch with [REDACTED]’s parent regarding routing information.

Since the transportation issues began, [REDACTED] has consistently been deprived of her services, has gotten to school late, has missed school, has not been picked up from school, and has arrived at school so late in the day that DCIU has sent her back home immediately. The situation has only worsened since [REDACTED]’s parent began to advocate for her daughter’s rights, and there has been no follow-up, problem solving, or meaningful conversation to address this issue. DCIU’s and Upper Darby’s joint failures to provide a necessary related service have harmed [REDACTED] and prevented her from accessing her education and the services to which she is legally entitled, as well as taken a

significant toll on her mother's work responsibilities, thereby threatening the family's stability further.

As a direct result of the failures by OCDEL, DCIU, and Upper Darby to provide the transportation services necessary for [REDACTED] to receive a FAPE or access the least restrictive environment, [REDACTED] has been unable to access needed EI services and participate in her education. As a result, she has been deprived of a FAPE.

Similarly Situated Children

The educational deprivations that [REDACTED] and [REDACTED] experienced were not isolated incidents but rather reflect systemic failures that have impacted the education of many more children. Based on calls to ELC's Helpline and community partner feedback, ELC is aware that the joint failure of DCIU and Upper Darby to appropriately provide transportation is an issue that impacts many more children who receive transportation to and from DCIU EI programs. ELC has assisted the families of other children entitled to services in specialized settings through DCIU such as the [REDACTED] or [REDACTED] who have been unable to access their required services and education for months due to either the provision of inappropriate and inconsistent transportation services or the failure to provide those services at all. Further, [REDACTED]'s parent has heard from other parents with children in [REDACTED]'s classroom that their families have experienced similar barriers to accessing education. Based on intakes to ELC's Helpline and concerns raised by other organizations, the failure to provide transportation is not limited to [REDACTED]'s classroom but rather is impacting many more young children who rely on DCIU for EI Preschool services.

These deprivations harm children, and, in the cases of [REDACTED], [REDACTED], and similarly situated children, have caused significant regressions and skill loss for children and taken significant tolls on their families. The transportation failures bar children from accessing the FAPE and related services to which they are entitled. Upon information and belief, based on data collected through ELC's Helpline, these systemic inequities fall hardest on Black and Brown children. It is well documented that Black and Brown children are subjected to more EI educational deprivations and disruptions than their white peers through no fault of their own.¹² Despite this, research shows that LEAs generally fail to affirmatively offer compensatory education to Black and Brown children, whose families are less likely to be able to access IDEA's dispute-resolution system due to the failure of LEAs to apprise and support families to access this process, which is the typical avenue to securing compensatory education.¹³ Evidence-based remedial services that can be accessed through compensatory education awards, such as instruction or intensive skill

¹² Emily Feinberg, Michael Silverstein, Sara Donahue & Robin Bliss, The Impact of Race on Participation in Part C Early Intervention Services, 32 J. Dev. & Behav. Pediatrics 284 (2011).

¹³ Torin D. Togut, The Gestalt of the School-to-Prison Pipeline, 20 Am. U. J. Gender, Soc. Pol'y & L. 163, 164 (2011) (describing the role of bias and power differentials); Patricia A. Massey & Stephen A. Rosenbaum, 'Disability Matters': Toward a Law School Clinical Model for Serving Youth with Special Education Needs, 11 Clinical L. Rev. 271, 281 (2005); U.S. Gov't Accountability Off., GAO-20-22, Special Education: IDEA Dispute Resolution Activity in Selected States Varied Based on School Districts' Characteristics (2019).

interventions lead to meaningful and necessary educational opportunities and growth, similar to the intent of EI services. Research discloses that LEAs deny Black children EI services at alarmingly high rates compared to white children. When LEAs fail to provide Black children with the compensatory education which is both needed and intended to remedy educational deprivations, the harm done to Black children is thus compounded. [REDACTED], [REDACTED], and, upon information and belief, similarly situated students failed to receive compensatory education services due to systemic failures of DCIU, OCDEL and Upper Darby to provide appropriate and consistent transportation. The failure to offer compensatory education services awards for these known significant and multiple deprivations of FAPE deprives young children of essential services and skills. Accordingly, Complainants urge the Bureau to investigate the failure to provide transportation services to similarly situated students eligible for Preschool EI who are served by DCUI and this investigation include an assessment of racial disproportionality in the provision of transportation services and the failure of these agencies to offer compensatory education services.

III. LEGAL ANALYSIS

A. The BEISFS Has Jurisdiction Over this Complaint.

BEISFS has jurisdiction over this Complaint because this Complaint alleges that DCIU and OCDEL discriminated against qualified students on the basis of their disabilities and denied them a FAPE¹⁴ in violation of Part B of the IDEA, Section 504, and Chapter 14, all of which BEISFS enforces.¹⁵

Specifically, Complainants allege that DCIU and OCDEL violated the IDEA, Section 504, and Act 212 by failing to provide [REDACTED], [REDACTED], and other similarly situated eligible young children with a FAPE to address their disability-related needs. Young children who are eligible for early intervention services under the IDEA are entitled to a free appropriate public education (“FAPE”), which includes special education and related services. 20 U.S.C. §1401(9). The federal FAPE requirement is incorporated by reference into Chapter 14 of the Pennsylvania Code. 22 Pa. Code §14.102(a)(2)(vii).

The Pennsylvania Department of Education (“PDE”), through OCDEL, is directly responsible for the delivery of early intervention services pursuant to Act 212, which expressly provides, in part, that the “Department of Education shall be responsible for the delivery of early intervention services for all eligible young children between three years of age and the age of beginners.” PDE transferred its role to OCDEL in 2007. In Delaware County, DCIU provides services based on the scope of services delegated by OCDEL through a MAWA and based on funds allocated

¹⁴ The Third Circuit has held that the “[f]ailure to provide a FAPE violates Part B of the IDEA and generally violates the ADA and Rehabilitation Act because it deprives disabled students of a benefit that nondisabled students receive simply by attending school in the normal course—a free, appropriate public education.” *CG v. Pennsylvania Dep’t of Educ.*, 734 F.3d 229, 235 (3d Cir. 2013). As such, courts have found allegations that a student has been denied a FAPE sufficient to allege a claim under the Rehabilitation Act. *See, e.g., Centennial Sch. Dist. v. Phil L. ex rel. Matthew L.*, 799 F. Supp. 2d 473, 489 (E.D. Pa. 2011).

¹⁵ *See* 22 Pa. Code § 14.107; 22 Pa. Code § 15.8(a) and 22 Pa. Code § 15.10.

by OCDEL. Act 212, at § 875-304(a)(3).

Act 212 specifically provides that transportation services for EI services are provided to eligible young children by school districts or intermediate units and may be funded through section 2541 of the Public School Code of 1949, 24 P.S. §25-2541(b)(3)(providing funding as approved by the state agency to districts providing transportation for children with disabilities). Pennsylvania law also provides that either the school district of residence or the local intermediate unit must provide transportation to an eligible young child:

“Any exceptional child ... may be furnished with free transportation by the school district. ... If free transportation or board and lodging is not furnished for any exceptional child or any eligible young child ... who, by reason thereof, is unable to attend the class or center for which he is qualified, the intermediate unit shall provide the transportation necessary.”

24 Pa. Stat. Ann. § 13-1374.

Thus, Pennsylvania statutes provide for at least two authorized funding streams to provide transportation for eligible young children. OCDEL can provide transportation as part of its early childhood funding through a MAWA or other arrangement. Alternatively, the Public School Code provides that either a school district or an intermediate unit must provide such service to an eligible young child.

This Complaint is timely because the alleged violations of IDEA, Section 504, and Act 212 have occurred within one year of the filing of this complaint and are ongoing. Specifically, DCIU, working pursuant to its MAWA with OCDEL, has discriminated against students with disabilities in the past year by failing to provide [REDACTED], [REDACTED], and similarly situated eligible young children with disabilities in DCIU EI programs that require appropriate transportation services with the related services necessary to receive a FAPE and failing to remedy violations of FAPE, among others. These failures include DCIU’s ongoing inability to deliver required transportation services, despite those services being necessary for students to access their special education programs. As reflected in the narratives of [REDACTED] and [REDACTED] DCIU has failed to implement the related services in IEPs as written, among other violations, all of which have resulted in the systemic and continued denial of meaningful educational access.

B. DCIU and OCDEL Discriminated Against Students with Disabilities by Failing to Provide Related Transportation Services Necessary for Children to Receive a FAPE in Violation of the IDEA, Section 504, and Act 212, Resulting in a Denial of FAPE.

Children who are eligible for early intervention services are entitled to a Free Appropriate Public Education (“FAPE”) which requires that special education and related services be provided in conformity with a child’s IEP. 34 C.F.R § 300.17. Transportation to and from a special education program can be a “related service” that is part of a child’s FAPE, and that transportation must be appropriate, meaning that it must be contoured to the particular needs of the eligible child. *See* 34 C.F.R § 300.34(c)(16). Parents must be provided with prior written notice of a proposed action

by a public agency, including a description of the action and the reasons behind it. 34 C.F.R. § 300.503(a-b). Failure to provide such notice constitutes a substantive denial of FAPE when it causes a loss of educational opportunity or benefit for the student. *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 565 (3d Cir. 2010).

Under the IDEA, a local education agency (“LEA”) is responsible for ensuring that children are provided a FAPE. To provide a FAPE, an LEA must implement an IEP that affords the student the necessary and requisite services to enable the student to make progress and to curriculum to the greatest extent possible. 20 U.S.C. § 1412(a)(1)(A); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 203 (1982). A state educational agency is ultimately responsible for the provision of FAPE to a student. 34 C.F.R. § 300.149(a)(1). While the state educational agency (“SEA”) has the discretion to delegate responsibility to local agencies, federal law holds the SEA ultimately responsible for ensuring the appropriate implementation of special education services for the students in that state. *Charlene R. v. Solomon Charter Sch.*, 63 F. Supp. 3d 510, 515-516 (E.D. Pa. 2014). In addition, Pennsylvania state law designates the Department as the SEA for the “delivery of early intervention services for all eligible young children.” 11 Pa. Stat. § 875-304(a)(1). The Department may fulfill this responsibility by delegating it through a written agreement with local education agencies. 11 Pa. Stat. § 875-304(a)(3).

Children also have a legal right to be educated in the least restrictive environment. 20 U.S.C. § 1412(a)(5)(A). Children with disabilities must, to the maximum extent appropriate, be educated alongside other children. *Cordero v. Pennsylvania Dep’t of Educ.*, 795 F. Supp. 1352, 1359-1360 (M.D. Pa. 1992) (finding IDEA violations where LEAs failed to facilitate access to specialized schools for children with disabilities who were eligible to attend and where children instead remained at home, a much more restrictive placement where they had little contact with other children as per 22 Pa. Code § 14.42(e)); *see also In re: Student with a Disability*, 121 LRP 19257 (N.H. State Educ. Agency, Apr. 2, 2021) (IDPH-FY-21-01-016) (finding that where a specialized program could implement the services in an IEP, a home-based program is a more restrictive environment than a specialized program).

In this case, DCIU is responsible for any failure to ensure that appropriate transportation was promptly coordinated, which is part of DCIU’s overarching duty to ensure a FAPE to [REDACTED], [REDACTED], and similarly situated children. As the EI LEA for Delaware County, DCIU is responsible for ensuring that eligible children receive a FAPE, which includes providing related services tailored to their individual needs. DCIU also bears responsibility for ongoing progress monitoring, timely reevaluations, and ensuring that students’ Individualized Education Programs (“IEPs”) are developed and implemented in full compliance with state and federal law. *See* 20 U.S.C. § 1414; 34 C.F.R. §§ 300.320–300.324; 22 Pa. Code §§ 14.124, 14.131. OCDEL and DCIU failed to appropriately provide transportation as a related service pursuant to children’s IEPs, and they have failed to address or rectify the significant service and programming deprivations that occurred as a result of the failure to provide transportation.

DCIU also bears responsibility for ensuring that children can access a FAPE in the least restrictive environment. 20 U.S.C. § 1412(a)(5)(A). Without appropriate transportation services, ■■■■■, ■■■■■, and similarly situated children have been consistently deprived of both part-day and full-day programming alongside other children in the setting that had been determined appropriate for them to make progress. Instead, these children remained at home without access to peers on days transportation was not appropriately provided, or, as in the case of ■■■■■, arrived at school so late that they were immediately put on the return bus. Even when transportation did arrive to the school, the service was implemented so inappropriately that children's disability-related behaviors were escalated but unaddressed, leading to an increase in unsupported disability-related challenging behaviors that prevented children, such as ■■■■■, from accessing a FAPE, related services, and peers. As such, beyond related service deprivations, OCDEL and DCIU failed to ensure that children could access a FAPE in the least restrictive environment, and failed to identify, evaluate, and support new disability-related needs that arose from the failure to provide transportation.

Pennsylvania courts and hearing officers have found that the SEA is ultimately responsible for ensuring that children are provided the related services necessary for FAPE, and that transportation issues such as those described herein constitute deprivations of FAPE. In a similar case in which an eligible young child entitled to transportation to their early childhood specialized environment was subject to excessive ride duration and chronically late arrivals, the Hearing Officer found that the child had been deprived of FAPE. *B.B. v. Pa. Dept. of Ed.*, 18911-16-17-KE, (Culleton, July 17, 2017). While attempting to correct the issue, the child's parent was passed from the preschool program to the LEA to the school district that contracted with bussing providers, none of whom would correct the deficiencies in the child's transportation. *Id.* Relying on the Department's failure to delegate such responsibility, the Hearing Officer held that the "[Department] alone is ultimately responsible to ensure that Student receives appropriate transportation to the Center" and ordered the Department to resolve future transportation issues and provide compensatory education services to the child. *Id.* At 17. Accordingly, the Department was recognized as responsible for the *provision* of appropriate transportation services for eligible young children in Philadelphia. *Id.* Upon information and belief, as is the case for DCIU, the Department had not expressly delegated its responsibility to ensure the delivery of appropriate transportation as a related service to either the LEA or school district.

The denial of FAPE to ■■■■■, ■■■■■, and similarly situated children presents the same problem exemplified in *B.B. v. Pa. Dept. of Ed.*, a problem which continues to plague Pennsylvania's EI system. Despite being entitled to transportation services and their parents' consistent attempts to work with both DCIU and Upper Darby to ensure that their children could access their education, neither DCIU nor Upper Darby accepted responsibility for the transportation issues or worked to solve the issues. ■■■■■ aged out of the EI system before his transportation issues were ever solved, and as a direct result of the transportation failures, experienced regressions and did not receive all related services, including the specialized instruction time he was entitled to. ■■■■■ has experienced and continues to experience significant transportation issues for nearly a year, and she continues to be deprived of her specialized instruction services in full, as well as other related services such as ■■■■■ Neither of them could fully access their service site or fully

engage in programming due to the failure of OCDEL, DCIU, and Upper Darby to provide appropriate transportation as a related service. Further, because neither child could fully access their program, and particularly for [REDACTED], who can only access an extremely limited portion of her programming, neither child's IEP goals could be implemented as written, and appropriate progress monitoring could not be conducted for either child. These concerns are also systemic and impact many more similarly situated children than the Named Complainants.

In addition to the joint failures of DCIU and Upper Darby, OCDEL is directly responsible because it has not delegated the duty to provide transportation to [REDACTED], [REDACTED], or similarly situated children to a single point of contact with the authority to compel necessary parties to provide mandated transportation nor has it otherwise assumed direct responsibility to provide transportation.

I. Proposed Remedy

In light of the foregoing, we respectfully request that the Bureau undertake the following actions:

1. Conduct a full and comprehensive investigation of the allegations contained herein pertaining to [REDACTED], [REDACTED], and similarly situated students, including identifying the extent to which young learners entitled to EI Preschool services from DCIU have been deprived of transportation as a related service.
2. Directly issue compensatory education to [REDACTED], [REDACTED], and similarly situated students for the denial of special education and related services constituting a deprivation of a free appropriate public education from March 18, 2025 through August 2025 for [REDACTED] and through the present for [REDACTED]. This is the joint responsibility of both the Department and DCIU.
3. Formally delegate through a legally enforceable contract, memorandum of law, or other written legal instrument to a responsible entity the clear legally enforceable duty to appropriately deliver transportation as a related service for eligible young children in Delaware County. The Department's assigned delegee shall develop a procedure to ensure accountability for the provision of timely and appropriate transportation services. This procedure shall include DCIU designated as a single point of contact for families regarding transportation issues as part of its duty to ensure the provision of a child's FAPE, including transportation as a related service.
4. Require DCIU to issue guidance to all stakeholders with contact information for the designated single point of contact for families to contact regarding transportation issues.

The Parents have granted permission to release confidential information and verified the allegations contained herein. We appreciate the Bureau's prompt attention to this matter.

Respectfully Submitted,



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