

[ORAL ARGUMENT NOT YET SCHEDULED]

No. 26-8001

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In re: District of Columbia,
Petitioner.

On Petition for Permission to Appeal from the
United States District Court for the District of Columbia,
Case No. 24-cv-0656

**BRIEF FOR ADVOCATES FOR JUSTICE AND EDUCATION, INC.
AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS,
OPPOSING THE PETITION FOR PERMISSION TO APPEAL
AND, IF REVIEW IS GRANTED, URGING AFFIRMANCE**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici.

Except for amicus Advocates for Justice and Education, Inc. and any other amici who had not yet entered appearances in this case as of the filing of respondents' brief, all parties, intervenors, and amici appearing in this Court are listed in respondents' certificate.

Plaintiffs below and respondents here are Crystal Robertson, on behalf of herself and her minor child D.R.; Elizabeth Daggett, on behalf of herself and her minor child H.D.; Joann McCray, on behalf of herself and her minor child J.C.; Veronica Guerrero, on behalf of herself and her minor child A.F.; Marcia Cannon-Clark, on behalf of herself and her minor child B.R.C.; David Clark, on behalf of himself and his minor child B.R.C.; and The Arc of the United States.

Defendant below and petitioner here is the District of Columbia.

The United States was an interested party below but has not appeared in this Court. Friendship Public Charter School participated as amicus curiae in support of Plaintiffs before the district court but has not appeared in this Court.

B. Rulings Under Review.

As petitioner, the District seeks interlocutory review of the district court opinion and order dated January 16, 2026. Dkt. Nos. 120, 121.

C. Related Cases.

This case has not previously been before this Court or any other court. Amicus curiae Advocates for Justice and Education, Inc. is not aware of any related cases pending before this Court or any other court.

s/Samantha L. Chaifetz
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, undersigned counsel for amicus curiae Advocates for Justice and Education, Inc. (“AJE”) states that AJE is not a publicly held corporation and does not have any parent companies or other shareholders that have ten percent (10%) or greater ownership in AJE.

s/Samantha L. Chaifetz
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STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Pursuant to D.C. Circuit Rule 29(a), undersigned counsel for amicus curiae AJE certifies that counsel for all parties have consented to the filing of this brief.¹

Pursuant to D.C. Circuit Rule 29(d), undersigned counsel for amicus curiae certifies that a separate brief is necessary. Amicus AJE, which serves as the federally designated Parent Training and Information Center for the District of Columbia under the Individuals with Disabilities Education Act (“IDEA”), is a nonprofit, nonpartisan organization dedicated to ensuring that children and youth in the District, particularly those who have disabilities and special health care needs, receive appropriate education and health services. AJE works to empower families, youth, and the community to be effective advocates in this regard. Through its work with and on behalf of students with disabilities, AJE has experience and expertise relevant to this litigation concerning the District’s failure to provide education-related transportation services as required by law.

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¹ No party’s counsel authored this brief in whole or in part, and no party or party’s counsel, or any other person, other than amicus curiae or its counsel, made a monetary contribution to its preparation or submission.

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GLOSSARY

AJE	Advocates for Justice and Education, Inc.
IDEA	Individuals with Disabilities Education Act
IEP	individualized education program
OSSE	Office of the State Superintendent of Education

STATEMENT OF INTEREST OF AMICUS CURIAE

Founded three decades ago, AJE is a nonprofit, nonpartisan organization dedicated to helping children and youth in the District of Columbia, especially those with disabilities, to access appropriate educational and health services. AJE has assisted thousands of District families through a range of free services, including individual advocacy, legal representation, caregiver support and training, and public advocacy for systemic improvements. Pursuant to the Individuals with Disabilities Education Act (“IDEA”), the U.S. Department of Education has designated AJE as the Parent Training and Information Center for the District. In that role, AJE provides information, training, and support to families of students with disabilities as they navigate the District’s public education system and advocate for the services their children need, including education-related transportation services. As a Parent Training and Information Center, AJE is also charged with working to improve the government systems serving students with disabilities, including the District’s education-related transportation system.

AJE’s advocacy efforts extend to education-related transportation services because the IDEA guarantees appropriate transportation services for qualifying students. Through its work with families and schools, AJE has seen how inadequate and unreliable transportation services deny students with disabilities their rightful access to public education and impose substantial burdens on families. Because

transportation is critical to the realization of educational rights for students with disabilities, this litigation carries profound consequences for the work AJE does and the families AJE serves. AJE submits this brief to highlight the costly and painful consequences of the District's systemically dysfunctional transportation system, which subjects students to unsafe, unreliable, and inappropriate transportation services.

INTRODUCTION

For students with disabilities, the District's transportation services are not a luxury but a legal right. Being able to get to school in a safe and timely fashion ought to be a given for these students. Yet year after year, AJE has seen the District fail to provide reliable and appropriate transportation to students with disabilities.

In AJE's experience, the start of each school year is marked by widespread uncertainty and frustration for students with disabilities and their families: Will the District develop a remotely reasonable plan to transport a student to and from her school? How many days, weeks, or months of educational time will be missed for lack of appropriate transportation? As the school year progresses, the problems presented by the District's transportation system persist: On a typical day, there is a good chance that a student and his parent or caregiver will wait for a bus that never comes or arrives long after its scheduled pickup time. They will face considerable

stress and incur significant costs as they are forced to come up with their own transportation solutions or miss school. Assuming they are lucky enough to have the student's District bus arrive, the ride that follows is often exceedingly long, delivering the student to school well after the starting bell. And because of inadequate staffing and deficient equipment, conditions on the District buses regularly raise safety concerns and compromise students' readiness to learn when they finally arrive at school. At the end of the day, the return trip is equally fraught. It may stretch for hours, expose students to unsafe conditions that trained transportation staff should prevent, and leave parents frantically trying to locate children who are hours overdue.

As this amicus brief explains, these are not isolated mishaps or occasional inconveniences but the consistent results of a broken system—a system whose recurring and critical deficiencies prevent students with disabilities from fully accessing the free and appropriate public education promised by law. Recognizing this, the district court certified a Rule 23(b)(2) class of students with disabilities who, since March 2022, have needed District-provided transportation to attend school and have experienced, and will continue experiencing, unsafe, unreliable, or inappropriate transportation services. JA1493. The court's ruling rested on substantial evidence of problems that are structural, not episodic—faulty route planning, chronic delays, and inadequate staffing, training, equipment, and oversight

throughout the District's transportation system for students with disabilities. Because these transportation deficiencies pose a common threat to class members, the district court concluded that their legality—and plaintiffs' rights to declaratory and injunctive relief—could be adjudicated on a class-wide basis. JA1474.

This Court should not disturb that ruling. For years, amicus AJE has observed how the District's transportation system fails students with disabilities—exposing them to unsafe conditions, depriving them of instructional time and educational services, and imposing recurring burdens on them and their families—and ultimately denies them proper and equal access to the free, public education to which they are entitled by law. Despite the longstanding advocacy efforts of AJE and others, the system remains fundamentally infirm. This litigation thus concerns an entrenched and pervasive problem that poses a common source of harm and, as the district court's ruling recognized, warrants class-wide resolution.

ARGUMENT

THE DISTRICT’S FAILURE TO MAINTAIN A SAFE AND RELIABLE TRANSPORTATION SYSTEM IMPOSES SERIOUS, COMMON HARMS ON STUDENTS WITH DISABILITIES AND THEIR FAMILIES.

A. The experiences of students and the District’s own data reveal a broken transportation system.

Federal law requires the District to provide appropriate transportation to qualifying students with disabilities, and the Office of the State Superintendent of Education (“OSSE”) is the District agency responsible for ensuring that this service is properly provided to those who need it. *See* 20 U.S.C. § 1401(26)(A); 34 C.F.R. §§ 300.34(a), (c)(16); D.C. Code §§ 38–2602, 38–2907; 5-A D.C.M.R. § 3012.18. As relevant here, OSSE is expressly charged with the transport to and from school of students with disabilities whose individualized education programs (“IEPs”) recognize that they need this service to access a free, appropriate public education. OSSE’s responsibility extends to students enrolled in District public schools or public charter schools, as well as students with nonpublic school placements. *See, e.g.,* D.C. Code § 38–1802.10.

OSSE does not dispute that it is obligated to provide safe and timely transportation to the students it serves. Instead, OSSE claims that it already does so. *See, e.g.,* D.C. OSSE, Division of Student Transportation, <https://osse.dc.gov/service/student-transportation> (asserting that “[t]he Division of Student Transportation provides safe, reliable, and efficient transportation services

that positively support learning opportunities for eligible students from the District of Columbia”). But, as the record shows and as AJE can attest, that claim does not accord with reality for the families who depend on OSSE transportation. In reality, the District’s buses are chronically late or missing, inadequately staffed, and ill-equipped to meet the needs of the vulnerable population they are entrusted to serve. The result is an unsafe and unreliable system that deprives students with disabilities of access to a free and appropriate education. Both the stories of District students entitled to OSSE’s transportation service and the District’s own data bear this out.

1. The experiences of students who rely on OSSE’s transportation services expose consistent, systemic failures.

Amicus AJE works with families struggling to get their children with disabilities to and from school in safe and timely fashion despite OSSE’s deficient transportation system. Year after year, AJE sees the same dysfunction—the system’s inability to reliably deliver safe and appropriate transportation services as promised by law. Year after year, AJE sees the common harms students and their families suffer by virtue of this dysfunction—lost instructional time and mandated services; physical and emotional strain on students; threats to student safety and dignity; and substantial burdens on families forced to spend time and money compensating for the system’s failings. And, year after year, AJE urges the District to address the common and consistent hallmarks of the systemwide dysfunction—poor route planning, understaffing, deficient equipment, and faulty communication, all of

which contribute to unreliable, unpredictable, and unsafe commutes. *Cf.* JA321–38 (expert testimony attributing the dysfunction to the District’s failure to implement recognized best practices); JA230–40 (same).

AJE’s frontline experience confirms the systemic nature of the problem. As one AJE Parent Support Specialist explained, transportation always “manages to come up,” even when a family initially seeks help with an educational issue unrelated to school transportation. Statement of Salima Driss, Parent Support Specialist, AJE (on file with amicus counsel). Even when “the school and the family agree on what is needed and everyone is proactive,” families and schools “just can’t seem to get OSSE-DOT [OSSE’s Division of Student Transportation] to do their part in a timely fashion.” *Id.* That recurring experience reinforces what the record shows: The relevant problem is not isolated service lapses, but a systemwide failure that produces predictable harms across families served by OSSE.

Even a small selection of the stories of families that rely on OSSE’s transportation services underscores the commonalities that AJE has long observed and highlights the need for class-wide equitable relief to address systemic dysfunction. We include the stories of just three students here—Z., Q.M., and A.B.—but, taken together, they leave no doubt that requiring families of students with disabilities to fight *individually* for the *systemic* relief that is needed is neither

feasible nor just. The only appropriate and viable route to meaningful relief is through class-action litigation.

Consider Z., a nonverbal child who depends on OSSE transportation to reach her school, and her mother. *See* D.C. Council, Public Oversight Hrg. on Special Educ. Transp., Testimony of G. Dave (“Dave Testimony”) 1 (Oct. 28, 2025), <https://lims.dccouncil.gov/Hearings/hearings/953>. Z.’s mother testified before the D.C. Council about days when the scheduled bus “simply never arrived.” *Id.* at 2. She described the challenges of managing the situation, simultaneously waiting on hold as OSSE staff try to get information about the missing bus and trying to help Z., who—distressed by the wait—is “crying” and “banging her head on a cement sidewalk.” *Id.* When Z.’s mother was forced to transport Z. to school, not only did Z. arrive late but her mother (a teacher) arrived to work some two-and-a-half hours late. *Id.*; *see also id.* at 11–12 (documenting the stress and anxiety associated with relying on chronically unreliable OSSE transportation services).

Email correspondence that Z.’s mother shared with the Council shows that the District responded to concerns about untimely transportation by proposing to eliminate the IEP requirement that Z. travel with a personal aide. The District claimed that removing the requirement would facilitate the bus’s timely arrival. Dave Testimony 2, 4. Lacking any alternative, Z.’s mother reluctantly agreed after being assured that OSSE would properly secure Z. in her seat on the bus. *Id.*

(explaining that as Z. is unable to speak or make any safety adjustments, she depends entirely on those transporting her to protect her). But Z.’s mother received photographic evidence that OSSE failed to keep its word, and Z. was not properly restrained. *Id.* at 1, 3, 4–5. In her testimony to the Council, Z.’s mother observed, “Families like mine already face overwhelming challenges.” *Id.* at 3. She implored the District to step up and reliably “provide access to education in a safe and dignified manner” without forcing parents “to beg, document, and repeat the same pleas just to keep their children safe.” *Id.*

The testimony of families included in the district court record likewise describes the harms caused by cancellations and delays, unpredictable schedules or routes, and inadequate staffing. The declaration of the mother of Q.M., a fifteen-year-old student with multiple impairments, explained that the OSSE bus rarely arrived on time. JA1083. Q.M.’s mother often waited with him for more than an hour past the scheduled pickup time, not knowing when or whether the bus would come. *Id.* Q.M.’s mother estimated that he missed four to five days of school per month because of bus delays or cancellations. The afternoon bus service was no more dependable: Although Q.M.’s school was just a ten-minute drive from his home, he frequently did not arrive until 7:00 p.m.—nearly four hours after school

ended. JA1084.² On more than one occasion, unable to obtain any information from the OSSE Parent Call Center, his mother called 911 to locate Q.M. when, hours after he was due home, the bus still had not arrived. JA1084.

The mother of A.B., a nine-year-old with severe autism and very limited communication abilities, explained how OSSE’s dysfunctional transportation system jeopardized A.B.’s safety and well-being. JA1325. During the 2024–25 school year, OSSE subjected A.B. to a slew of scheduling changes and countless staffing variations, including substitute drivers up to three times each week and varying attendants. JA1326. Substitute staff were unfamiliar with A.B. and the route, causing long delays, depriving A.B. of appropriate care, and impeding communication with A.B.’s parents. *Id.* (explaining that “swing staff” lacked OSSE-provided phones with parents’ contact information); *see* JA1327 (explaining A.B. arrived home late several times per week throughout the year).

Her mother’s declaration recounted that, when A.B.’s trip home from school stretched to at least 90 minutes for five consecutive days, she arrived home each day having soiled herself through her pull-ups and training pants. JA1326–27. This experience later repeated when, due to substitute staffing, the trip home each day

² Others report similar experiences. *See, e.g.,* AJE Parent Ambassadors, Joint Statement on Reliable, Safe, and Accountable Transportation Accommodations for DC Students with Disabilities and Special Health Care Needs 1–2 (Sept. 16, 2026) (on file with amicus counsel) (caregiver reported routine late bus arrivals even after moving to be only seven minutes away from school).

stretched to two-and-a-half hours. JA1327. And A.B. regularly arrived home with her safety harness, required by her IEP, improperly secured. JA1329.

A lack of timely communication compounded the dysfunction. A.B.'s mother noted that, while OSSE purports to provide text notifications of bus delays, their family never received such alerts. JA1327. A.B.'s mother recounted calling the OSSE Parent Call Center three to five times weekly to locate her child when the bus ran late and waiting on long holds while a representative tried to locate the bus. JA1327–28. And she shared a particularly harrowing incident in which she called the OSSE Parent Call Center to locate A.B., whose arrival was hours overdue, and was told—mistakenly, it turned out—that A.B. was missing from the bus. JA1328–29. A.B.'s mother's declaration also described the ways in which the District's endless transportation failures adversely affected the whole family. *See, e.g.*, JA1329 (explaining that she or A.B.'s father was late to work at least once a week due to OSSE bus delays).

The common thread in the stories of Z., Q.M., and A.B. is the pertinent one: They have all suffered because of a transportation system that does not operate safely or reliably, and they would all benefit from injunctive relief requiring the District to rectify its systemic failures and comply with the law.

2. While OSSE’s reporting on its own performance is suspect, the agency’s own data confirm chronic dysfunction in the transportation system.

OSSE’s reporting on its transportation performance, which invokes the agency’s preferred metrics, masks the problem of untimely transportation. For FY2025, OSSE touted an average of 95% of bus routes dispatched on time. D.C. OSSE, Special Education Transportation, FY2025 Performance Accountability Report 6–7 (Jan. 15, 2026), <https://perma.cc/7VAA-NBTH>. There is reason to doubt the accuracy of this reported rate. JA1390 (suggesting that DOT Updates webpage “appears to underreport the number of late terminal departures”). But—even if that number were credited—OSSE’s timeliness metric measures whether buses leave the *terminal* on schedule, *not* whether they deliver any child to *school* before instruction begins. FY2025 Performance Accountability Report 6 (addressing “on-time terminal dispatch rate” only); *see also* JA583 (calling this a “proxy measure to whether students will experience service delays”). Expert analyses of OSSE rides confirm what students and families know from experience: A bus’s timely departure from the terminal says little about the timeliness of its arrival at school. JA1391–92 (reporting on an expert analysis of rides, which found terminal departure times and timely school arrivals had a correlation of just about 0.08—that is, only a weak correlation); *see* JA1472–73 (summarizing evidence). After all, even when buses depart the terminal at or close to their scheduled time, they may arrive at school late

because of other systemic deficiencies, such as poor route planning and delays in getting students on board due to inadequate staffing. And it is, of course, the arrival time *at school* that most directly determines whether a student misses out on instructional time and other educational opportunities.

Notwithstanding OSSE’s use of an unreliable “on-time” metric, the agency’s own data confirm the transportation system’s unreliability. OSSE’s historic logs and responses to oversight inquiries highlight both the typicality and persistence of the problem of delays and cancellations. In its FY2022 oversight responses, for example, OSSE reported data it had collected over a five-week period in January to February 2023 that showed an aggregate average of 80 buses leaving the terminal late each morning (approximately 15% of the morning routes). JA583, JA589–90, JA602; *see also* JA32 (citing data showing 1,500 route delays and cancellations over the 33 weekdays from January 30, 2023 to March 15, 2023). And according to OSSE’s own manual audit of a typical day, half of these late terminal departures involved significant delays of more than 15 minutes, and 10% of those were delays of more than 40 minutes. JA583.

Moreover, OSSE’s FY2022 oversight responses made clear that such chronic delays and cancellations were nothing new. The agency touted its work to establish a website to show which buses are “down or delayed,” “so that parents can make necessary arrangements in the morning and afternoon,” JA587–88—as if shifting

transportation responsibilities to parents were permissible and to be expected.³ In any event, as discussed *infra*, the website did not prove to be a solution. To this day, the District’s transportation system remains plagued by inadequate communication with, and the undue shifting of transportation burdens to, parents and caregivers.

Unsurprisingly, the following school year, 2023–2024, brought more of the same. Again, even using its preferred metric of on-time terminal dispatches, OSSE acknowledged more than 1,000 bus delays and cancellations in the first five months of the school year. JA32, JA69; *see* JA1472 (noting 3,200 disruptions over a 110-day period that included this portion of the 2023–2024 school year). And OSSE data showed that nearly all bus routes were delayed multiple times. *See* Pls.’ Mot. for

³ While OSSE acts primarily by operating or contracting for bus service between students’ homes and schools, it launched a limited Parent Stipend Program in FY2025. The Program—which promises to pay up to \$400 monthly to certain parents or guardians who agree to opt out of the traditional OSSE-provided transportation entirely and “self-transport” their students with disabilities—also raises burden-shifting concerns; it makes families wholly responsible for their child’s transportation while capping payments at an amount that is woefully inadequate to cover the actual costs of appropriate transportation for many disabled students. *See* D.C. OSSE, Special Education Transportation, FY2025 Performance Accountability Report 6, 12 (Jan. 15, 2026), <https://perma.cc/7VAA-NBTH>. AJE Parent Support Specialist Tamiesha Lawrence has noted that a stipend of \$400 would cover just two days of transportation for her own child, and, based on her work with families who contact AJE, concluded that the program appears to be “designed to meet OSSE’s needs, not families’ needs.” Statement of Tamiesha Lawrence, Parent Support Specialist, AJE (on file with amicus counsel). Nonetheless, more than 800 families have signed up—far above OSSE’s initial aim—seeming to underscore the depth of their frustrations with OSSE’s bus transportation. *See* FY2025 Performance Accountability Report 6.

Prelim. Injunction 7–8 (D. Ct. Dkt. 4-1) (450 of the roughly 500 bus routes affected multiple times and 300 on multiple, consecutive days); *see also* Friendship Charter Sch. Amicus Br. 7–8 (D. Ct. Dkt. 81).

Over the last two school years, delays and cancellations have remained a serious and widespread problem. Indeed, perhaps most troubling of all is the data from this period showing that, while OSSE acknowledges that it is required to deliver students to school on time, OSSE has nonetheless *designed* its transportation system to deliver at least some of these students late. One expert’s study of October 2024 trip tickets identified route-school combinations where students were *scheduled* to arrive after the first bell even if the bus ran “on time” precisely as planned. JA1472–73; *see* JA1383–84 (using a mix of data provided by individual schools, the District, and OSSE to identify, *inter alia*, 303 students assigned to routes scheduled to arrive late). The analysis makes clear that OSSE has not merely failed to remove impediments to students’ on-time arrivals (*e.g.*, resolving staffing shortages that cause cancellations and delays); the agency’s faulty route planning has affirmatively ensured missed school time.⁴

⁴ Declarations in the record reflect this and further reveal that OSSE has designed afternoon bus routes that deprive students of instructional time by requiring them to depart school early. *See, e.g.*, JA1276 (requiring K.G. to depart 15 minutes early, causing him to miss a portion of his general education class, one of the only times he was with non-disabled peers).

Finally, OSSE’s reports also confirm inadequate staffing—a factor contributing to the transportation system’s unreliability. The reports acknowledge problematic rates of employee “call-outs,” or absenteeism, and the need for additional bus drivers and attendants. *See, e.g.*, Responses to Fiscal Year 2025 and 2026 Performance Oversight Questions 295 (Feb. 25, 2026), <https://perma.cc/TN4J-FZP4>. (acknowledging an average daily absenteeism rate of 31% among bus drivers and attendants in FY2025); FY2025 Performance Accountability Report 8 (linking staffing shortage to District hiring freeze); *see also* JA884 (FY2023 Oversight Responses).

B. The District’s dysfunctional transportation system is a common source of profound harm to students with disabilities and their families.

Students with disabilities and their families pay the price for the District’s dysfunctional transportation system. When families come to AJE for help because their children are being subjected to unsafe, unreliable, and otherwise inappropriate transportation services, AJE observes a common set of harms—chief among them, lost educational opportunities. At bottom, transportation failures prevent affected students from fully accessing the free and appropriate public education they are owed. In addition, AJE has found that the financial, logistical, and emotional strain on parents and caregivers can hardly be overstated.

1. The District’s systemic failures prevent students from fully participating in and benefiting from the educational services guaranteed by law.

OSSE’s transportation failures rob students of instructional time and other disability-related services guaranteed by law. AJE is familiar with cases where students have been left without any access to school. For example, during the 2025–26 school year, a student who uses a wheelchair and is fully reliant on caregivers had an IEP entitling him to appropriate transportation services, but because OSSE staff were not prepared to provide the necessary services, the student missed virtually the entire school year. The student managed to attend just a handful of days when private, non-OSSE assistance was available.⁵

Even when the loss of access is not so extreme, the toll on a student’s education is significant. The common experience of chronic bus delays or cancellations is more than sufficient to impose real harm. Recall Q.M., who hardly had a single school week in which he was not late at least once because of OSSE bus delays, and missed school “completely” four or five times each month because the bus failed to show. JA1084. Likewise, the chronic inconsistency in A.B.’s morning transportation frequently caused her to miss morning IEP services, breakfast, and time with her peers. JA1327.

⁵ The student’s story is included with the permission of his family based on information shared with AJE.

The immediate consequences for a student who arrives late or is required to leave early due to bus scheduling are self-evident. Time meant for instruction, other IEP-related services, or socializing with peers is lost and cannot be recaptured. But the implications of the system's dysfunction reach further: Faced with unpredictable disruptions, teachers, aides, and disability-service providers are forced to interrupt instruction, adjust schedules, and alter plans. For students whose IEP services are tied to specific times of day, routines, providers, or classroom settings, untimely transportation can disrupt the very conditions that make those services effective.⁶

Furthermore, the effects of missed school days compound. Research shows that the consequences of absences accumulate over the course of a student's education. Children who are chronically absent in preschool, kindergarten, or first grade are markedly less likely to read at grade level by third grade. *See Chronic Absenteeism*, U.S. Dep't of Educ. (Aug. 21, 2025), <https://www.ed.gov/teaching-and-administration/supporting-students/chronic-absenteeism>. Those who cannot read at grade level by then are four times more likely not to complete high school. *See Nat'l Ctr. on Educ. Outcomes*, Brief No. 15, *Students with Disabilities and Chronic Absenteeism 2* (Apr. 2018), <https://nceo.umn.edu/docs/OnlinePubs/>

⁶ Other transportation failures contribute to the same central harm. Students who arrive to school worn-out, injured, or strained (physically or emotionally) by poorly routed commutes, understaffed buses, or other inappropriate conditions are not positioned to fully participate in and benefit from the educational opportunities presented to them.

[NCEOBrief15.pdf](#). In any year from eighth through twelfth grade, a student chronically absent is seven times more likely than peers not chronically absent to leave school without a diploma. *Id.*

The contrast is stark. Among District students graduating in the 2021–2022 and 2022–2023 school years, approximately 70% of students with what OSSE defines as “satisfactory” attendance—missing fewer than 5% of school days—enrolled in college within six months of graduation. D.C. Policy Center, *Chronic Absenteeism as a Barrier to College and Career Readiness in D.C.*, at 2, 4. By contrast, only about 30% of graduates who had missed at least 30% of a school year—a category OSSE calls “profound chronic absence”—enrolled in college within six months of graduating. *Id.* The pattern holds with regard to standardized testing. Across the 2021–2022 and 2022–2023 school years, 35% of District SAT-taking students with satisfactory attendance met the College Board’s college and career readiness benchmarks, compared with just 3% of those SAT-taking students with profound chronic absence. *Id.* at 7.

The stakes are especially high for students with disabilities, who are at heightened risk for leaving high school without a diploma. *See, e.g.*, Nat’l Ctr. on Educ. Outcomes, Brief No. 15, at 4–5 (describing the stubborn graduation gap and achievement gap facing students with disabilities). Because attendance and graduation are tightly linked, closing that gap requires attacking the root causes of

chronic absence—not exacerbating them. *Id.* A transportation system that routinely prevents students from receiving instruction and IEP-mandated services aggravates the very barriers to educational access that it is intended to overcome.

2. The District’s dysfunctional transportation system imposes significant hardships on families.

The systemic failures of the District’s transportation system cost families time and wages, interfere with caregiving, and create enormous stress. As Z.’s mother notes, these are families that often “already face overwhelming challenges.” Dave Testimony 3. Indeed, because of the demands of caring for a child with disabilities, these families may be especially unlikely to have time or income to spare. Roughly half of those who rely on OSSE transportation live in Wards 7 and 8, the District’s lowest-income neighborhoods. D.C. OSSE, Responses to Fiscal Year 2025 and 2026 Performance Oversight Questions 273–74.

Nationally, among some 14,000 families of children with special health care needs, 14.5% saw a caregiver stop working or cut hours because of the child’s condition. Carolyn C. Foster et al., *Children with Special Health Care Needs and Forgone Family Employment*, 148 Pediatrics e2020035378, at 5 (2021). For families of children with intellectual disabilities, the figure rose to 40.9%, and affected households each lost an average of roughly \$18,000 in annual earnings. *Id.* at 2. Those national figures capture caregiving demands beyond transportation, but they reflect precisely the kind of economic harm OSSE exacerbates each time a parent

must stay available to drive a child to school, retrieve a child stranded by a missed route, or simply try to find the child's bus.

AJE's local experience mirrors the national data. Its Executive Director has explained that unreliable transportation is "profoundly disruptive to parents' capacity to work." Statement of Rochanda Hiligh-Thomas, Exec. Dir., AJE (on file with amicus counsel). AJE regularly sees parents and caregivers forced to miss or interrupt work because OSSE has not provided reliable service, and has often seen this lead to job loss or other adverse consequences. These recurring employment harms are another predictable consequence of the systemic transportation failures challenged here.

The stories of families discussed above make these burdens concrete. Z.'s mother explained that she cannot afford to lose her job as a teacher because of hours spent waiting for the OSSE bus or transporting her daughter to and from school when the bus fails to show up. Dave Testimony 2. Q.M.'s mother explained that she found it impossible to maintain stable employment while dealing with the District's unpredictable and unreliable transportation system. JA1084. A.B.'s parents likewise described recurring employment challenges and financial burdens—including spending significant funds on rideshare services to get A.B. to school. JA1329–30.

CONCLUSION

Respondents' lawsuit does not take aim at isolated occurrences affecting small numbers of students in idiosyncratic ways. Instead, it challenges the District's systemwide failure to provide adequate transportation, which results from a consistent and pervasive set of deficiencies: improper route planning, inadequate responses to chronic delays and cancellations, unresolved staffing shortages, insufficient training, and deficient equipment. Amicus AJE can attest that nothing short of class-wide adjudication is appropriate or effective. The consequences of this deficient system—unsafe rides, missed instruction, lost IEP services, strain on students, and burdens on caregivers—are too great to be ignored any longer. For all these reasons, the district court's certification ruling should not be disturbed.

Accordingly, amicus AJE respectfully urges the Court to deny the District's petition for permission to appeal. Alternatively, if the petition is granted, AJE urges the Court to uphold the district court's class certification order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32(a)(7) because the brief contains 4,976 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using the Microsoft Word 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I certify that on September 16, 2026, I filed the foregoing brief electronically using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

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