Attorney Oroma H. Mpi represented a 5-year-old child with cerebral palsy who lives in non-accessible private housing and had been denied porter service by the New York City Department of Education.

For several years, the NYC Dept. of Education (DOE) has maintained a policy of denying porter service to students who live in private housing. Porter service is needed in situations where a wheelchair-bound child lives in an apartment building without an elevator. Generally, a porter hired by the DOE will carry the student in the wheelchair down the stairs of the apartment building to the sidewalk where the school bus is waiting. Similarly, after school, the porter brings the student back up to the apartment door from the school bus.

The DOE had defended its policy of reserving porter service only for students living in public housing by claiming that the Individuals with Disabilities Education Act (IDEA) does not require the provision of porter service to any student. The DOE further claimed that it should not be responsible for providing this service when parents choose to live in a non-accessible building. Previous attempts by special education advocates to strike down the DOE’s policy were unsuccessful at the impartial hearing level. The DOE settled these individual cases without a clear statement by an Impartial Hearing Officer or a State Review Officer about whether the IDEA mandates the provision of porter service to all students who need it, regardless of whether the student lives in private or public housing.

In this case, the parents of Legal Services NYC-Bronx’s 5-year-old client had obtained their current apartment with the assistance of the homeless shelter where they had been living. The family has been on a waiting list for public housing for a number of years. In the impartial hearing decision on this case, the Hearing Officer agreed with Ms. Mpi’s challenge to the DOE’s policy, concluding that the IDEA requires school districts to provide porter service to those students who need it. In ruling in favor of Ms. Mpi’s client, the Hearing Officer found that the parents had not chosen to live in a building without an elevator, given their circumstances. This decision represents a huge victory for low-income families in New York City with children with disabilities, for whom it is not financially feasible to obtain an apartment in an elevator building.