



October 14, 2022

This Complaint is filed jointly by Greater Boston Legal Services and Massachusetts Advocates for Children on behalf of their clients, Boston Public Schools' Special Education Parent Advisory Council, represented by Massachusetts Advocates for Children, and the following students and families:

1. [REDACTED] hereinafter "Ali and Ahmed Doe" (pseudonyms), and their parents [REDACTED], represented by Massachusetts Advocates for Children.
2. [REDACTED] hereinafter "Ellie Doe" (pseudonym), and her parents [REDACTED] represented by Greater Boston Legal Services.
3. [REDACTED] hereinafter "Julia Doe" (pseudonym), and her mother [REDACTED] represented by Massachusetts Advocates for Children.
4. [REDACTED] hereinafter "Joshua Doe" (pseudonym), and his mother [REDACTED] represented by Greater Boston Legal Services.
5. [REDACTED] hereinafter "Daniel Doe" (pseudonym), and his mother [REDACTED] represented by Greater Boston Legal Services.

A. STATEMENT OF CURRENT CONCERNS

This Complaint is brought on behalf of students with disabilities and their families who are experiencing significant barriers to their education due to the systemic disarray of the Boston Public Schools ("BPS" or "the District") transportation and special education departments. The Complainants herein are the parents and guardians of six students with disabilities, living in Boston, Massachusetts, two of the students are siblings. Additionally, given the systemic nature of the problem, Boston Public Schools' Special Education Parent Advisory Council ("BPS SpEdPAC") joins as a Complainant on behalf of all students with disabilities who are residents of Boston, who have been found eligible for special education transportation services, and have been denied a free appropriate public education due to lack of the transportation services, delayed buses, and other failures to provide required modifications, special equipment, assistance, qualified attendants or monitors, in-service training of transportation staff, and other particular precautions and services required by students. The systemic disarray of the BPS transportation and special education departments deprives thousands of Boston children, many of whom are low-income students with disabilities and students of color, of what cumulatively amounts to weeks or months of learning time. It is clear that the systemic disarray results in structural racial inequities, disproportionately depriving Black, Latinx, and multilingual students with disabilities of a free appropriate public education ("FAPE").

For years, the Department of Elementary and Secondary Education ("DESE") has identified the serious challenges and significant deficiencies of the BPS transportation and special education departments. DESE's Problem Resolution System Office ("PRS") must address this long-standing non-compliance and failure to provide FAPE. At the cross section of these two systemic challenges are the transportation services for students with disabilities, who are entitled to transportation services to access their education. Unfortunately, as this Complaint shows, students with disabilities are disproportionately and systemically deprived of transportation services in clear violation of federal and state law. These issues have persisted

for years without improvement. DESE, and particularly PRS, must identify immediate remedies, not only to address the needs of the individual students identified in this Complaint, but for all Boston students. DESE and BPS must vigorously monitor the implementation of the Systemic Improvement Plan transportation and special education goals and develop systemic remedies as detailed herein to provide transportation to students, even when BPS transportation fails.

1. Historical Background: BPS Transportation

DESE conducted its first District Review of BPS in fall 2019 and published a District Review Report in March 2020 (“2020 District Report”). The 2020 District Report identified significant issues within BPS, some of the most concerning of which were systemic issues with the special education and transportation departments. The 2020 District Report stated special education services were in, “systemic disarray, [and] do not provide appropriate learning opportunities in the least restrictive environment for all students with disabilities.” 2020 District Report. The report also identified systemic issues with BPS transportation stating, “parent frustration with the longstanding and worsening challenge of poor on-time bus performance is significant, and the amount of lost instructional time is a major concern.” Id. “Over many years, the district has engaged in numerous efforts, and tapped multiple experts and innovators, in its efforts to make the busing system more reliable and affordable...[h]owever, at the start of most school years, delayed and misrouted school busses cause students to be late getting to school or getting home, resulting in lost learning time and distressed students, parents, educators, and civic leaders.” Id. In the 2020 District Report, DESE emphasized the importance of a functioning, equitable transportation system, a key service to allow all students to access their education. 2020 District Report.

Following the 2020 District Report, on March 10, 2020, DESE and BPS entered into a Memorandum of Understanding (“MOU”). BPS agreed to improve its performance in key areas, including special education and transportation. Throughout the term of the MOU, DESE reported that it struggled to gain an accurate picture of BPS’ performance in the key areas, especially transportation. The District reported inaccurate or misleading data to DESE, including failing to report uncovered bus routes in data for on-time arrivals of buses. 2022 District Report.

To assess the District’s progress, in spring 2022, DESE conducted a Follow-Up District Report (“2022 District Report”). The 2022 District Report found that, “District leaders have not prioritized two BPS functions in crisis. Special education and transportation were identified as critical BPS priorities in the BPS-DESE MOU, yet these functions have stagnated and, in some cases, further deteriorated since 2020. The deficiencies in these areas disproportionately affect many of BPS’ most vulnerable students and the district lacks the requisite staff capacity for improvements...District oversight in the areas of the special education and transportation remain a critical issue...these departments need systemic reform and there remain no clear pathways to secure this.” 2022 District Report. “When transportation services are unreliable, family and student daily routines are disrupted, and students lose valuable instructional time. Both late bus arrivals and uncovered routes are major operational challenges for BPS. Uncovered routes in particular have substantial equity impacts: while some families are able to find other means to transport their children to school, **others cannot, with the result that some students are missing full days of school. Students with disabilities are disproportionately affected.**” Id. (emphasis added).

The disarray of BPS’ transportation uniquely impacts students with disabilities, like the Complainants here, who require specialized transportation to access their education. As described *infra* under *Legal Entitlements to Transportation Services*, students with disabilities are entitled to the transportation services identified in their Individualized Education Program (“IEP”), as determined by their special

education team. Students with disabilities are disproportionately experiencing late buses, uncovered bus routes, and inconsistent or absent bus monitors, further depriving them of FAPE. See infra.

In the 2022 District Report, DESE made specific recommendations to address the BPS transportation crisis, “[b]uild on the progress and momentum being made with the current transportation communication by adding an additional notification for families affected by uncovered routes. Consider providing alternative options for uncovered routes in this communication (e.g., vouchers, parent reimbursement, etc.). Use disaggregated student data to identify the impact of uncovered routes and address the inequity that those routes have on teaching and learning, paying explicit attention to students with disabilities.” 2022 District Report.

On June 27, 2022, to address the need for urgent action on the long-standing challenges facing BPS, DESE and BPS entered into a Systemic Improvement Plan (“SIP”). The SIP explicitly prioritizes the areas of special education and transportation and sets specific objectives for BPS including:

- Immediately begin implementing the operational reforms negotiated between BPS and the school bus drivers’ union, ratified by the union on May 24, 2022, to improve on-time arrivals and eliminate uncovered bus routes.
- Achieve a district-wide school bus on-time arrival rate of 95% or better each month. The on-time arrival rate includes all scheduled bus routes.
- Ensure 99% of BPS school buses will arrive at school within 15 minutes of the start of the school day.
- Report on-time arrivals rates to DESE each month, beginning in August 2022 (in order to capture information inclusive of all bus routes, including approved special education school bus routes, charter school bus routes and any uncovered routes).
- By August 15, 2022, launch a diagnostic evaluation of the current BPS transportation system in order to analyze efficiency, performance, equity, and cost. The diagnostic should yield recommendations for route and schedule planning and optimization as well as updated service parameters.

On September 8, 2022, a Memorandum on Operational Reforms in Transportation was sent from BPS Acting Superintendent Drew Echelson to Deputy Commissioner Russell Johnston and reported, “BPS is concerned about being able to achieve the 95% on-time performance outlined in the Systemic Improvement Plan, given the closure of the MBTA Orange Line for one month. We look forward to discussing this metric in more detail with DESE staff following the first day of school.” BPS Transportation Memorandum, September 8, 2022.

The long-standing non-compliance with DESE’s monitoring and failure to improve the transportation system continues to have widespread negative impacts on Boston students and families. This school year, students are not receiving appropriate or consistent transportation services. Parents are being forced to pick up and drop off their children, experiencing weeks without consistent transportation for their children. Students with disabilities, who may require door to door transportation, bus monitors, or other accommodations, are not receiving these special education services to address their specific needs. Buses are failing to pick students up on time, to drop them off at school on time, and to get them home on time. Parents are not receiving prompt, accurate notifications of issues with transportation services. Some families are receiving last minute notice of changes to transportation services, not receiving notifications at all, or are not receiving any communications in the language of the home.

These issues are depriving students of days or weeks of education at a time and, for students with disabilities, critical special education services they are entitled to receive are being missed. Some students that require consistent provision of required transportation to access their education are becoming dysregulated, refusing to attend school, and demonstrating increased anxiety and aggression. Parents are struggling to maintain their employment, some have lost their jobs, and cannot find appropriate care for their children.

BPS transportation services remain inadequate, in complete disarray, and disproportionately impact students of color and students with disabilities. Neither the BPS Helpline nor the Transportation Hotline are adequately resolving the concerns that families are raising. BPS is unable to achieve the 95% on-time performance requirement outlined in the SIP and it is long beyond time for problem-solving and solutions for Boston students and families.

2. Legal Entitlement to Transportation Services

Students with disabilities are entitled to a free appropriate public education including special education and related services. 20 USC § 1401(9); G. L. c. 71B, §1. “Related services” are defined as “transportation, and such other support services...as may be required to assist a child with a disability to benefit from special education.” 20 USC § 1401(26); 34 CFR 300.34(c)(16); 603 CMR 28.05(5); 28.06(8). When transportation services are determined necessary for a student to benefit from special education, the service must be included in the student’s IEP. 603 CMR 28.05(5)(b). An eligible student’s entitlement to FAPE is a fundamental aspect of special education, and must be provided at public expense and under public supervision at no charge to parents. 20 USC § 1401(9), (29). Unfortunately, this fundamental entitlement of special education is being routinely violated by the District. For purposes of special educational decision-making, and as used herein, “parent” shall mean “father, mother, legal guardian, person acting as a parent of the child, foster parent, or an educational surrogate parent appointed in accordance with federal law. Legal authority of the parent shall transfer to the student when the student reaches 18 years of age.” 603 CMR 28.02(15).

Transportation services, like all special education and related services *must be implemented without delay* upon parent acceptance of a proposed IEP and proposed placement. 603 CMR 28.05(7)(b). The legal obligation of the District is clear, the District must provide students with disabilities with a free appropriate public education including transportation services *without delay*. *Id.* Disregarding this obligation, the District has systematically failed to provide required transportation services to students with disabilities, depriving these students of FAPE. Instead, the District has left students with disabilities for days or weeks without their required transportation services, alerting families at the last minute (or not at all) to uncovered or delayed bus routes, and requiring parents to find alternative transportation options with little to no support.

In a few instances, including for some of the Complainants, the District advised families that their only option was for the family to transport their children to school or risk the student missing days or weeks of education. The District has advised some families that they may be reimbursed for transporting an eligible student due to the lack of available District transportation, but families are inconsistently informed of the availability of these reimbursement procedures. See Exhibit Parent Reimbursement Instructions. The current BPS reimbursement procedures can take months to process, disproportionately harming low-income families. Further, the current system requires families to register with the District as a “vendor” and to input a social security number in order to be reimbursed, violating the rights of immigrant children that have a right to public education regardless of immigration status. Plyler v. Doe, 457 U.S. 202 (1982).

Requiring transportation reimbursement as a result of a lack of available BPS transportation services is a direct violation of the District’s obligations to provide students with disabilities with FAPE. While parents must be provided with reimbursement for *voluntarily* transporting their students to school, “[n]o parent shall be obligated to provide such [special education] transportation.” 603 CMR 28.07(6) (emphasis added). BPS routinely violates this legal obligation and leaves students with disabilities at home without transportation requiring parents to provide transportation to students with disabilities. For parents that are unable to provide such transportation, students are left at home without any education.

As reported in the 2022 District Report, “[w]hen transportation services are unreliable, family and student daily routines are disrupted, and students lose valuable instructional time...[u]ncovered routes in particular have substantial equity impacts: while some families are able to find other means to transport their children to school, others cannot, with the result that some students are missing full days of school.”

For these Complainants, and for all impacted Boston students with disabilities, BPS must immediately come into compliance with its legal obligations to provide special education transportation at public expense and under public supervision and direction. See 20 USC § 1401(9); G. L. c. 71B, §1. BPS cannot require any parent to provide such legally entitled transportation services, especially given the impact on students with disabilities when families are unable to provide transportation themselves. It is a clear denial of FAPE when students are deprived of transportation services thereby missing partial or entire school days or becoming so dysregulated they cannot access their education.

B. ORGANIZATIONAL COMPLAINANT

The Boston Public Schools’ Special Education Parent Advisory Council (“BPS SpEdPAC”) is an independent citywide parent advocacy organization with the sole purpose of sharing information and resources to help all families of students with disabilities in the district understand their rights and options accurately and comprehensively. The BPS SpEdPAC works with the Boston Public Schools system to ensure that children with disabilities get the services and support they need to develop to their full potential. The BPS SpEdPAC is a multi-lingual, multicultural, council made up exclusively of parent volunteers, with a membership of approximately 11,500 families. The SY 2022-2023 Chair of the Boston SpEdPAC Executive Board Officers is Roxann Harvey. Ms. Harvey has been the Chair since 2019 and prior to that was the Vice Chair in 2018.

The BPS SpEdPAC is established by law under Chapter 71B, § 3 of the Massachusetts General Laws. The parent advisory council duties include but are not be limited to:

- Advising the district on matters that pertain to the education and safety of students with disabilities.
- Meeting regularly with school officials to participate in the planning, development, and evaluation of the school district’s special education programs.
- Establish by-laws regarding officers and operational procedures.
- Provide information and support to members through direct communication and outreach, including monthly meetings.

Meetings of the BPS SpEdPAC are generally held on the fourth Thursday of the month during the school year. At the General Meeting on September 22, 2022, held virtually via Zoom, Massachusetts Advocates for Children presented a training for BPS SpEdPAC members on Basic Rights in Special Education and the topic of transportation was raised.

There were approximately 200 families in attendance at the virtual General Meeting. Over half of the families in attendance expressed serious concerns regarding their childrens' BPS transportation, similar to those outlined supra at Section A1, pg. 3. Given the nature of those concerns, many of those families had a separate impromptu meeting, via Zoom breakout room, with the BPS Director of Transportation, Delavern Stanislaus; Assistant Director of Special Education Services Mary Marcella; Assistant Directors of Special Education Lauren Shannon and Heidi Cahoon-McEwen. BPS staff in attendance appeared overwhelmed by the number of parent complaints and concerns reported at the General Meeting. In the end, BPS staff were unable to provide adequate solutions for families that were not receiving their required special education transportation services. Families were told they would have to wait for additional drivers or monitors to be hired before students could receive their special education transportation services and, in the meantime, parents were told to transport their children themselves at their own expense, and then seek reimbursement from the District. For parents that could not transport their students, they were referred to file complaints with the BPS Transportation Hotline or BPS Helpline Support, both of which many families had already tried and were ineffective at resolving their transportation issues.

These serious challenges and significant deficiencies of BPS transportation have been ongoing for many years. Ms. Harvey and other members of the BPS SpEdPAC board have been advocating for reliable, appropriate, and consistent transportation for many years through meetings with multiple BPS Superintendents, including the current Superintendent, as well as testifying before the School Committee.

Every day these transportation concerns are not being resolved is another day these children are being harmed. Buses are failing to transport students to and from school on time. Students with disabilities, who require door to door transportation, bus monitors for safety reasons, or other accommodations, are not receiving these agreed upon special education services in their IEPs. Because bus monitors are not being provided on many buses, students with disabilities with serious health or safety concerns are all too often being left without required services. Some students cannot get to school when there is no bus monitor and the bus will bypass their stop if a monitor is not on board. Caregivers are not receiving prompt, accurate notifications of issues with transportation services and are often receiving last minute notification of changes to transportation services. Caregivers are missing work, jeopardizing their jobs by having to leave work early or arrive late, and are struggling to maintain their employment. Many families do not have access to any vehicle and/or do not have their driver's license to transport their children to school if the bus does not come. Children's routines are being upended. Students that require a consistent routine become dysregulated, cannot access the curriculum, and often cannot regain composure and end up losing a full day of learning. Many families cannot afford to pay for Ubers, Lyfts or taxis. Families that can pay for these ride services or drive their children will be reimbursed after-the-fact for trips or mileage but BPS requires a caregiver's Social Security number in order to pay them back. Reimbursement can often take months before payment is made. For many families, they are draining their bank accounts to pay for alternate transportation for their children and families have to forgo other critical necessities.

Additionally, the BPS' GPS transportation tracking system is not providing any information on some bus routes and is displaying inaccurate data, including student pick-ups and drop-offs that did not occur because the bus drove by the stop without stopping at some required door-to-door stops. The SIP calls for accurate data and accountability for BPS on improvements to special education and transportation. For years, DESE has struggled to receive accurate data on these issues, and there continues to be data accuracy issues with BPS' transportation system.

Finally, the BPS SpEdPAC has received complaints that all staff providing transportation services, including bus drivers and monitors, are not appropriately trained under 603 CMR 28.06(8). The District must provide in-service training programs to transportation providers, “[s]uch training program shall acquaint transportation providers with the needs of the students they are transporting and shall be designed to enable the transportation providers to meet those needs. All transportation providers shall be required to complete such in-service training prior to providing transportation services to eligible students.” 603 CMR 28.06(8). The District “shall give transportation providers clear, written information on the nature of any need or problem that may cause difficulties for a student receiving special transportation along with information on appropriate emergency measures that may be necessary.” Id. The District must come into compliance with its obligation to appropriately train transportation providers, including bus drivers and monitors, to meet the needs of the District’s students with disabilities.

C. INDIVIDUAL COMPLAINANTS

1. “Ali and Ahmed Doe”

“Ali Doe” and “Ahmed Doe” (pseudonyms) are eleven (11) years old and in the fourth (4th) grade. The twins live with their parents, A. and L. Doe. Ahmed presents with autism, health impairment, and intellectual impairment. Ali presents with intellectual impairment and autism. The twins also have epilepsy. Ahmed and Ali are diagnosed with [REDACTED] Ahmed and Ali both require door-to-door transportation services.

Since September 8th, the beginning of the 2022-2023 school year, there has not been a bus monitor assigned to the twins’ bus. Each of the twins’ IEPs provide for a bus monitor (shared between the two boys) who is seizure trained. The twins each have problems with transitioning and require assistance on stairs. It is unsafe for the twins to make transitions without the help of an adult. See Ali Doe IEP; Ahmed Doe IEP. Because of these safety concerns, as documented in the IEPs, the twins cannot ride the bus without a monitor. Ms. Doe has been in communication with the District about the bus monitor, but the District has provided no updates or plans to fill the role.

The twins’ inconsistent transportation services impact all aspects of their day. Because the twins’ schedule changes frequently and Ms. Doe must, without adequate notice or planning, rely on Uber to transport them to school, the twins are deprived of a consistent schedule in the morning. Ahmed cannot understand why he cannot ride the bus and has tantrums frequently in the morning. When Ms. Doe does arrive at the school with the twins, she has to wait until another adult can assist Ms. Doe to transition both of the boys into their classroom. Both of the twins are dysregulated and they have difficulty transitioning through the rest of the day. The failure to provide adequate transportation services in accordance with their IEPs deprives the twins of FAPE.

Ms. Doe has had to provide transportation for her sons through Uber, spending her own limited resources due to BPS’ failure to comply with their IEPs. This has created significant hardship, given the high costs. On average, Ms. Doe pays \$30 per trip, and she takes the trip in the morning and the afternoon. She has made this trip every day since school began on September 8th and continues to do so. Thus, to date she has had to spend approximately \$1500 to provide transportation for her twins. Additionally, Ms. Doe cannot apply for reimbursement because the District’s process requires a social security number. As a recent newcomer to the United States, Ms. Doe does not have a social security number.

Due to educational placement concerns, the twins moved to another BPS school on October 11th, 2022. The twins still do not have a bus monitor and the school has not reached out to or communicated at all with Ms. Doe regarding the lack of a required bus monitor.

The District's obligation is clear, they must provide special education services at public expense and under public supervision, “no parent shall be obligated to provide such transportation.” 603 CMR 28.07(6); see 20 USC § 1401(9), (29). The District has failed to meet its legal obligation to provide the twins’ required special education transportation services and they are thus deprived of FAPE. The District must immediately provide the twins legally entitled transportation services, and inform their parents in writing of the actions the District is taking to address the lack of personnel and offer alternative methods to provide such transportation, **at public cost and public supervision.** See 603 CMR 28.06(2)(d)(2). The District must immediately reimburse Ms. Doe for the \$1,500 she has paid to Uber her children to and from school, without requiring a tax identification number for reimbursement.

2. “Ellie Doe”

“Ellie Doe” (pseudonym) is a twelve (12) year old Boston Public Schools student with a disability. Ellie lives with her parents, B. and M. Doe [REDACTED]. Ellie has extremely complex disabilities [REDACTED]. Ellie’s disabilities include moderate to severe intellectual disability, autism spectrum disorder, limited verbal language, intractable (untreatable) epilepsy. Ellie has been a special education student on an IEP since early childhood. Ellie’s IEP contains transportation services including a specialized medical safety vehicle providing door-to-door transportation, and a gender specific, seizure trained 1:1 monitor. See Ellie Doe’s IEP.

On August 24, 2022, BPS agreed to place Ellie at an out-of-district placement and, on September 22, 2022, Ellie was accepted into such a placement [REDACTED]. On September 28, 2022, BPS sent an updated IEP to consent to placement [REDACTED], which Ms. Doe signed that same day. On September 28, 2022, Ellie had her first day of school [REDACTED]. Per Ellie’s IEPs, Ellie is entitled to transportation services door-to-door, including an appropriate 1:1 monitor.

On Monday, September 26, 2022, prior to Ellie’s first day of school, the BPS Director of Special Education [REDACTED] told Ellie’s mother by phone that she was working to set up transportation for Ellie. Also, on Monday September 26th, BPS communicated, through counsel, communicated via email that, “Boston is working on transportation now. I will follow up when I have the details.” Despite these communications, on Tuesday, September 27th at 2:36 p.m., less than one day before Ellie’s first day [REDACTED] BPS counsel communicated that, “Transportation will not be in place for tomorrow. I am trying to get a date by which it will be in place. In the meantime, we can reimburse parent for mileage if she elects to transport.”

Recently, between October 6th and October 13th, Ms. Doe has received communications from multiple, different transportation companies regarding possible transportation for Ellie. These companies have been unaware of Ellie’s gender, disabilities, or required IEP services (1:1 female, seizure trained monitor), and these companies are not associated with BPS Transportation Department. Ms. Doe has been extremely concerned about Ellie’s possible safety on such transportation and whether the staff will be appropriately seizure trained. Further, Ms. Doe has received no communication from the District explaining if and when transportation will be initiated.

Boston Public Schools failed to provide any special education transportation services to Ellie on September 28-30 and October 3-13. The District informed Ellie's parents that they will have to arrange transportation for Ellie to and from school in the meantime, and has not provided any information on when transportation will be available to Ellie. To date, Ellie continues to be deprived of her transportation services.

This has left Ellie's parents with the responsibility of driving Ellie to and from their home [REDACTED] [REDACTED] twice daily. Ms. Doe works as a paraprofessional and Mr. Doe works as [REDACTED] driver. [REDACTED] Mr. Doe has tried to support this gap in transportation for Ellie on days that he does not have dialysis treatment, but Mr. Doe can no longer transport Ellie on any day of the week. Mr. Doe received a warning at his employment that he could not continue to use sporadic, last minute time off (which he was taking to transport Ellie) or he would risk his employment status. Ms. Doe has therefore been driving Ellie to and from school twice daily. This is no small feat, the commute to school and work or home can take between 40 minutes or up to 2 hours each way. At this point, Ms. Doe is concerned she will be forced to choose between transporting her daughter to school and keeping her job.

This is not the first time that Ellie has issues with BPS transportation issues, although this current Complaint only addresses the current 2022-2023 school year. The impact on Ellie of inconsistent transportation services, including monitors, has been well documented. When Ellie's bus is missing, delayed, lacks a monitor, or her schedule changes at the last minute, Ellie becomes increasingly non-compliant, resistant to attending school or getting on the bus altogether, and she is increasingly aggressive and dysregulated throughout the day. This school year, Ellie has started becoming increasingly dysregulated and refuses to get out of the car when she arrives at school in the morning. Without the support of the 1:1 monitor that Ellie requires, Ms. Doe is struggling to manage Ellie's behaviors, which have included school refusal and increased aggressions (hitting).

The District's obligation is clear, they must provide special education services at public expense and under public supervision, "no parent shall be obligated to provide such transportation." 603 CMR 28.07(6); see 20 USC § 1401(9), (29). The District has failed to meet its legal obligation to provide Ellie with her special education transportation and thus deprived her of FAPE. The District must immediately provide Ellie with her legally entitled transportation services, and inform her parents in writing of the actions the District is taking to address the lack of personnel and offer alternative methods to provide such transportation, **at public cost and public supervision.** See 603 CMR 28.06(2)(d)(2).

3. "Julia Doe"

"Julia Doe" (pseudonym) is a fourteen (14) year old student [REDACTED] Julia lives with her mother, M. Doe. Julia presents with intellectual, neurological, communication, and physical disabilities and is placed in a highly structured, separate classroom setting. Julia uses a wheelchair. Julia suffers from frequent seizures that must be regularly monitored as Julia is nonverbal and cannot communicate when she has experienced a seizure. Julia's IEP states that she should receive door-to-door transportation, in a wheelchair accessible van with a 1:1 seizure trained, female monitor. See Julia Doe's IEP.

Ms. Doe and Julia have had transportation issues for years with BPS, including issues reported in a PRS complaint filed previously by Ms. Doe (PRS Complaint No. 1309), but this Complaint focuses on the 2022-2023 school year. Since the beginning of this school year, Julia has not received her required IEP transportation services. On September 8, 2022, BPS informed Ms. Doe that there was a general bus monitor, but that there was no 1:1 monitor assigned to Julia as required by her IEP to meet her serious neurological and physical needs. There was no 1:1 monitor for either the morning or afternoon bus trips so Ms. Doe had to provide transportation to and from school. BPS did not have any available 1:1 bus monitor for Julia until the following week on September 12th. There is currently a morning 1:1 monitor for Julia. However, there has not been a consistent afternoon 1:1 monitor. BPS reports that there are various monitors on standby for Julia's afternoon trip.

Due to the inconsistency, Ms. Doe often has to pick up Julia from school. Ms. Doe has to check daily as to whether Julia will have a bus monitor because the staffing is so inconsistent. Ms. Doe has also raised concerns as to the accuracy of the data BPS is collecting relating to transportation. Julia's bus does not arrive for pickup/drop off, yet the BPS system marks the bus as present. Ms. Doe is unable to work due to BPS' inability to provide safe, reliable transportation. Ms. Doe has had to rely on Uber and public transportation at her own expense. Ms. Doe has not been compensated for any transportation related expenses.

The lack of a consistent bus monitor deprives Julia of the structure and consistency she requires and is also a significant health hazard. Ms. Doe has expressed her additional concern that when bus monitors are provided it appears that they lack the skill and the training necessary to meet Julia's complex needs, including serious health and safety needs. Due to the nature of Julia's disability, it is crucial to understand when a seizure took place and what signs Julia may have been exhibiting before having a seizure. For evident reasons, it is important that Julia be strapped in, while being transported. Without a 1:1 monitor who is assigned to Julia, Julia cannot safely access her education and is deprived of FAPE. In addition to the FAPE concerns, it is essential that the bus monitor be able to effectively communicate with the family in their primary language. Ms. Doe has noted that bus monitors are showing up apparently who do not speak English, a concern for monitors that need to communicate to Ms. Doe if Julia had a seizure or not.

The district has failed to adequately address Julia's lack of appropriate transportation issues and to discuss compensatory services with Julia's family. The District's obligation is clear, they must provide special education transportation services at the public expense and under public supervision, "no parent shall be obligated to provide such transportation." 603 CMR 28.07(6); see 20 USC § 1401(9), (29). The District has failed to meet its legal obligation to provide Julia with special education transportation and thus deprived her of FAPE. The District must immediately provide Julia with her legally entitled transportation services, and inform her mother in writing of the actions the District is taking to address the lack of personnel and offer alternative methods to provide such transportation, **at public cost and public supervision.** See 603 CMR 28.06(2)(d)(2).

4. "Joshua Doe"

"Joshua Doe" (pseudonym) is an eight (8) year old BPS student. Joshua is a student with a disability receiving special education services since early childhood. Joshua's primary disability in his IEP is autism

spectrum disorder. Joshua's IEP clearly identifies his needs for transportation services including door-to-door transportation with a child safety restraint system and a general monitor. Exhibit Joshua Doe IEP. Despite his entitlement to special education transportation services, Joshua has experienced repeated issues of uncovered bus routes, unavailable bus monitors, delayed notifications regarding transportation, and delayed buses over the course of months.

During summer 2022, Joshua did not have any available transportation at the start of Extended School Year ("ESY") on July 11 and 15, 2022. Joshua's mother, D. Doe, received last minute communications about his uncovered bus route and was required to pay out-of-pocket for an Uber ride to bring Joshua to school both mornings. Even on days when Joshua's bus was ultimately available, e.g. on July 12, 2022, Joshua's mother received a communication from BPS that there was no available afternoon bus and she was required to scramble to find Joshua transportation. Ms. Doe then received a notification that despite the communication, Joshua's bus had appeared at school to pick him up.

Ms. Doe's text from July 11th shows the impact when transportation is unreliable, "[t]oday was the first day of summer school for Joshua and the bus never showed up. I had to take him in an Uber after waiting for so long...Joshua gets anxious to go to school and when he gets impatient he throws tantrums and becomes violent and aggressive and it's too much for me to go through. I can't even trust the transportation during the regular school year. Either the bus doesn't pick him up in the morning or his school calls to tell me that I have to pick him up because there are no buses available to bring him home. I'm beyond frustrated with this system."

Again, just days later Joshua's bus was unavailable, Ms. Doe said, "another day without a bus. I had to call to find out, they didn't even bother to call and let parents know. This is absolutely ridiculous, I am so frustrated because I don't know how this can happen and it seems like it's always Joshua's bus. I have to call ahead of time every morning and yesterday because I called they sent a bus for Joshua. I can't keep taking his punches and screams in the morning over this."

During ESY, Ms. Doe and Joshua's GBLs advocate, Analiza Tavares, communicated regularly with the school to secure Joshua's special education transportation services and they believed BPS had remedied the transportation issues for Joshua.

Yet, at the start of the 2022 school year, just two months after BPS had worked to resolve Joshua's transportation issues for ESY, Joshua was again without his special education transportation services. On September 8, 2022, the first day of school for BPS students, Ms. Doe received no communication from BPS about transportation services but Joshua's bus was unavailable. Ms. Doe was required to drop everything to provide transportation to her son and to pay out-of-pocket for Uber rides to and from school. On September 9, 2022, Joshua was again without transportation. Ms. Doe received a voicemail from BPS that there was no monitor on Joshua's bus, so students who required a monitor would be without transportation. Ms. Doe had to arrange for a neighbor to transport her son to school and pay for an Uber to bring him home at the end of the day.

Ms. Doe has been repeatedly required to drop everything to transport her son to school when BPS transportation fails. Often, this is after waiting for long periods with Joshua for the bus to arrive, without any communication from BPS that transportation is unavailable. When Joshua's schedule is unpredictable and the bus that he was expecting does not arrive, Joshua becomes dysregulated and aggressive. It is clear that the systemic disarray of the transportation department deprives Joshua of FAPE. Ms. Doe has also

been repeatedly required to pay out-of-pocket to transport Joshua to school when she cannot locate a trusted adult to assist her in transporting him last minute. As a low-income parent, Ms. Doe has been forced to decide whether she can afford to send Joshua to school or risk him missing out on valuable education and services.

The District's obligation is clear, they must provide special education transportation services at the public expense and under public supervision, "no parent shall be obligated to provide such transportation." 603 CMR 28.07(6); see 20 USC § 1401(9), (29). The District has repeatedly failed to meet its legal obligation to provide Joshua with his special education transportation and thus deprived him of FAPE.

5. "Daniel Doe"

"Daniel Doe" (pseudonym) is a seventeen (17) year old Boston Public Schools student. Daniel lives with his mother, G. Doe, [REDACTED]. Daniel moved to Massachusetts in summer 2022 with his family from Florida. On August 16, 2022, Ms. Doe went to a BPS Welcome Center and registered Daniel for school. On August 16th, Ms. Doe provided BPS with a copy of Daniel's Individualized Education Program from his last school, in [REDACTED] Florida. See Exhibit Daniel Doe Florida IEP. As such, BPS was obligated to identify a program that could provide Daniel with FAPE, including comparable services to those described in his most recent IEP from Florida. 34 C.F.R. § 300.323(f). Daniel's most recent IEP from Florida dated May 12, 2022 to May 12, 2023, identified his eligibility for special education based on his complex disabilities including intellectual disability, other health impairment, and language impairment. Daniel's IEP also clearly identified his need for special education transportation services due to his "inattentiveness and impulsivity due to ADHD. He has a very severe cognitive disability. He requires transportation for his personal safety with a seatbelt and the closest and safest stop." See Daniel Doe Florida IEP.

After August 16, 2022, Ms. Doe communicated repeatedly with Boston Public Schools Welcome Centers and the Special Education Department attempting to ensure that Daniel was assigned to a school that could meet his needs. However, Daniel remained out of school due to BPS' failure to register him for any school until September 20, 2022. On September 20th, Ms. Doe was notified that Daniel was placed at Community Academy of Science and Health. However, Ms. Doe did not receive any notification of Daniel's transportation assignment. On September 20th and 21st, Daniel remained at home, despite his school assignment, due to a lack of transportation services.

On September 21st, BPS through counsel Lisa Maki, Esq. communicated that, "[t]ransportation will start 9/28. The Transportation Department has to conduct rerouting to provide transportation which usually takes about a week." On September 23, 2022, counsel for Daniel, Becky Reindel, Esq., followed up with BPS regarding alternative transportation for Daniel, since Ms. Doe did not have access to a car and could not afford the cost of private transportation. However, BPS stated that they have no alternatives for families that do not have access to a personal vehicle, "[f]ull reimbursement for the uber or lyft for families without access to a personal vehicle. No, BPS does not have tax[i] vouchers."

BPS failed to provide Daniel with appropriate special education services including transportation due to the failure to register him for an appropriate school from September 8th to September 20th. From September 20th to September 28th, BPS failed to provide Daniel with his special education transportation. Not wanting Daniel to miss any additional education time or special education services, Ms. Doe

undertook the significant cost of transporting Daniel via Lyft rides to and from school daily from September 22th to September 27th. This was not a cost Ms. Doe could afford, and Ms. Doe spent all of her savings on these rides to ensure Daniel could attend his special education program. On September 28th, when transportation was set to begin for Daniel, Ms. Doe received a call in the afternoon and was told that Daniel was not put on his afternoon bus. Ms. Doe was required to “drop everything” to go pick up her son from school.

Daniel was deprived of a free appropriate public education and missed ten (10) full school days from September 8th to September 22nd, due to the District’s failure to register him for school and then failure to provide him with his transportation services on September 21-22. Daniel was further deprived of FAPE due to the District’s failure to provide Daniel with transportation services from September 22nd to September 28th. The District's obligation is clear, they must provide special education transportation services at the public expense and under public supervision, “no parent shall be obligated to provide such transportation.” 603 CMR 28.07(6); see 20 USC § 1401(9), (29). While Ms. Doe was reimbursed by BPS on October 7, 2022, she was required to pay out of pocket at great personal expense for Daniel’s transportation services in violation of BPS’ obligations. The District has failed to meet its legal obligation to provide Daniel with his special education transportation and thus deprived him of FAPE. Due to the number of school days Daniel missed including significant class time and special education services, he is also entitled to compensatory education services.

D. ATTEMPTS TO RESOLVE CURRENT CONCERNS

Individual attempts to resolve these concerns have been described above. However, these problems cannot be adequately addressed on an individual, case-by-case basis. As described below, systemic solutions are required to remedy these systems in crisis.

The Complainants seek relief, after thorough investigation of this Complaint, including a Letter of Finding from PRS finding that the ongoing systemic failure to provide special education transportation services has resulted in a denial of FAPE for the Complainants. The Complainants also seek relief from the District as detailed below in Section E.

E. ACTIONS BY THE SCHOOL YOU BELIEVE WOULD RESOLVE YOUR CONCERNS

1. Immediately provide special education transportation services to the Complainants consistent with their Individualized Education Programs. BPS must reimburse each parent or caregiver immediately for any out of pocket expense or mileage for transporting these students, this process must not require providing social security numbers. Each Complainant’s IEP Team must immediately reconvene to discuss whether compensatory services are necessary in addition to any reimbursement in order to remedy the deprivation of FAPE, including any missed IEP services and/or impact on students progress.
2. Notify all families that the failure to provide IEP transportation services is a deprivation of FAPE. This notification must include all steps the District is taking to provide immediate services to students that are without their required IEP services; any systemic remedies and available solutions for families, including reimbursement procedures; and information on requesting an IEP meeting to discuss any need for compensatory services.

3. Develop a system within student attendance portals that all schools have access to, to accurately report when student tardiness or absence is caused by the District's failure to provide transportation.
4. Implement a new District policy to accurately track student attendance and transportation related attendance issues; regularly (e.g. monthly) review student attendance data, as described above; and proactively provide compensatory education services to eligible students who did not receive their legally entitled IEP and EL services because BPS failed to provide transportation.
5. Accurately report on transportation data as required by the District Reports and Systemic Improvement Plan. Data collection must accurately report on the impact on specific student populations including students with disabilities, English Learner students, Black, Latinx, Asian and Indigenous students, and economically disadvantaged students. Data must also report accurately whether special education services were fully provided including special equipment, assistance, qualified attendants or monitors, in-service training of transportation staff, and other particular precautions and services required by students. This data must be made publicly available by the District.
6. Implement a prompt, accurate notification system and communicate the system to all Boston families to ensure all families, including multilingual families, have access to notifications regarding transportation disruption in their primary language and a primary language contact with the transportation department when questions or concerns arise; ensure that multilingual families are able to meaningfully contribute to solution making. The notification system must be able to immediately communicate a transportation issue to a parent (e.g. unavailable monitor, late bus) and provide the parent with information on the potential solutions to address the transportation issue.
7. Report to all Complainants and make public all records of in-service trainings provided by the District to transportation providers and bus monitors as required under 603 CMR 28.06(8). Provide documented annual training to all bus monitors and bus drivers regarding their obligations to students with disabilities.
8. Create alternative transportation options for families, when BPS transportation fails, that do not require any parent to pay up-front for transportation and seek reimbursement, such as offering taxi vouchers or other non-cash payment options, to bring the District into compliance with their legal obligations to provide FAPE. These transportation options must be provided so that cost does not impact a family's ability to bring their child to and from school when the district cannot provide transportation and ensure that the financial burden is removed from the people most impacted.
9. Improve the reimbursement process for Boston families, when they inevitably do pay for the cost of transportation up front via rideshare app or mileage, as this disproportionately impacts low-income families and their children's access to FAPE. Develop a reimbursement process that can reimburse parents within one to five school days. The reimbursement process must not require a parent to provide a social security or tax identification number.
10. Create a Transportation Advisory Council to work closely with the District and engage in the transportation system evaluation process as required by the SIP. This Council must meet monthly to review BPS transportation data and provide recommendations consistent with the District's legal obligations and the SIP. The Council must include BPS parents and students, the BPS SpEdPAC, BPS staff (including transportation and special education), BPS Helpline and Transportation Helpline staff, and parent and student advocates.
11. Evaluate creative, alternative solutions for improving provision of special education transportation services and all transportation services to Boston families. Report publicly on findings after such evaluation. Solutions including, but not limited to:

- a. A program to pay families who can drop off/pick up their children and incentivize them with immediate compensation, not just reimbursement for mileage per the state rates.
- b. Re-evaluation of the current transportation vendor and other available vendors.
- c. Host a community meeting to focus on solutions, hear what solutions families have and determine what is feasible to implement.
- d. Widen the pool of bus drivers, build the BPS fleet of 15 passenger vans and minivans, which only require a 7D license. Assess other transportation options that do not require a CDL license.
- e. Pay families to be monitors for their child and allow families to recommend monitors.
- f. Incentivize staff to become bus monitors.

Exhibits List

1. Open Letter re: BPS Transportation Concerns, dated September 27, 2022, from Massachusetts Advocates for Children, et. al., to BPS Superintendent Mary Skipper, et. al.
2. BPS-DESE Systemic Improvement Plan, dated June 27, 2022.
3. 2022 District Report
4. 2020 District Report
5. Boston SpEdPAC Slides
6. BPS Parent Reimbursement Instructions
7. All Complainant IEPs