



# Massachusetts Department of Elementary and Secondary Education

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February 24, 2023

Mary Skipper, Superintendent  
Boston Public Schools  
2300 Washington Street  
Roxbury, MA 02119

Re: Intake PRS 7993  
Complaint: Special Education Transportation  
**Letter of Finding**

Dear Superintendent Skipper:

The Massachusetts Department of Elementary and Secondary Education (Department) received a statement of concern from Greater Boston Legal Services (GBLS) and Massachusetts Advocates for Children (MAC) on behalf of individual students and families and the Boston Public Schools' Special Education Parent Advisory Council on behalf of all Boston Public Schools students with disabilities who are eligible for transportation services according to their Individualized Education Programs (collectively the Complainants) involving the Boston Public Schools (District) on October 17, 2022 (Filing Date). The Department's review determined that the District is out of compliance with certain requirements. We are advising the District now of this finding, as well as of the required corrective actions.

## **I. Summary of the Investigation and Concerns**

The Problem Resolution System (PRS) Specialists inquiring into this matter took the following steps:

- Reviewed the statement of concern and supporting documentation.
- Requested a Local Report from the District.
- Granted an extension to the District of the due date for the Local Report until December 5, 2022 due to the volume of information to be produced.
- Reviewed the District's Local Report and supporting documentation submitted to the Department, including but not limited to select District policies and procedures, certain records relating to forty students with disabilities (Sampled Students) eligible for transportation services under their Individualized Education Programs (IEPs) randomly

selected from schools across the District's nine regions and students in out-of-district placements (Sampled Schools), bus route on-time performance (OTP) data across the District, and certain data related to uncovered bus routes across the District.

- Issued a Letter of Extension on the Department's timeline to issue a finding on December 5, 2022 due to exceptional circumstances that included a large volume of records that needed to be produced and reviewed.
- Granted an extension of the 10-day period during which the Complainants may respond to the District's Local Report until January 16, 2023, due to the volume of information to be reviewed.
- Requested additional information from the District.
- Reviewed additional information provided by the District.
- Spoke with the District's Assistant Superintendent for Data Strategy and Implementation, the District's PRS Coordinator, Implementation Manager for the Systemic Improvement Plan, and Deputy Director of Transportation.
- Reviewed Complainants' response to the District's Local Report received on January 11, 2023.
- Reviewed relevant state and federal laws and regulations.
- Consulted with other PRS and Department staff.

PRS requested that the District report on the following concerns raised by the Complainants, which included but were not limited to:

- The Complainants alleged that the District has systematically failed to provide transportation services to students with disabilities who are entitled to transportation services pursuant to their respective Individualized Education Programs (IEPs). The Complainants alleged that the District has failed to provide 1:1 or general bus monitors to students, failed to ensure that those monitors who are assigned to support students are properly trained, failed to provide transportation services to some students entirely, failed to provide timely transportation, failed to notify or delayed notice to families related to transportation issues, and failed to provide required modifications, special equipment, assistance and other transportation services specified in the students' IEPs. The Complainants further alleged that the District's systemic failure to provide these transportation services constitutes non-compliance on the part of the District, and has denied students their right to a free appropriate public education (FAPE). Complainants reported that on occasions when the District did not provide transportation services, students' families had to do so, causing significant financial and other burdens on families of students with disabilities.
- The Complainants alleged that since September 8, 2022, the District has failed to provide Ali Doe<sup>1</sup> and Ahmed Doe, who are students who receive special education services from the District, with a bus monitor who is seizure trained, as required by their IEPs.
- The Complainants alleged that at the start of the 2022-2023 school year, the District failed to provide Ellie Doe, a student who receives special education services, with timely access to transportation services, including a specialized medical safety vehicle providing door-to-door transportation, and a gender specific, seizure trained 1:1 monitor, as

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<sup>1</sup> This letter uses pseudonyms referenced in the statement of concern.

required by her IEP. Specifically, Complainants alleged that the District failed to have transportation in place for the start of Ellie Doe's first day of a new placement, failed to communicate with Ellie Doe's parent regarding transportation delays, and failed to ensure that potential transportation providers were aware of Ellie Doe's unique needs. The Complainants also alleged that the District failed to provide special education transportation services to Ellie Doe on September 28-30, 2022 and October 3-13, 2022.

- The Complainants alleged that since the start of the 2022-2023 school year, the District failed to provide Julia Doe, a student who receives special education services from the District, with transportation services consistent with her IEP. Specifically, Complainants alleged that the District failed to consistently provide Julia Doe with a 1:1 monitor.
- The Complainants alleged that during summer 2022 and during the 2022-2023 school year, the District failed to provide Joshua Doe, a student who receives special education services from the District, with reliable transportation services. Specifically, the Complainants alleged that the District failed to provide Joshua Doe with consistent transportation during his Extended School Year (ESY) program. Additionally, Complainants alleged that the District failed to provide Joshua Doe with reliable transportation at the start of the 2022-2023 school year, which required Joshua Doe's parent to transport him to school.
- The Complainants alleged that the District failed to timely provide special education services to Daniel Doe, a new resident of Boston, MA. Specifically, the Complainants alleged that the District failed to provide Daniel Doe with appropriate special education services including transportation from September 8, 2022 to September 20, 2022. Furthermore, the Complainants alleged that the District failed to provide Daniel Doe with special education transportation from September 20, 2022 until September 28, 2022.

Consistent with the Department's authority, the Department investigated violations alleged to have occurred not more than one year prior to October 17, 2022.

The Department investigated these claims pursuant to G.L. c. 71B, § 3:

*If a child with a disability requires special education and related services in accordance with the provisions of the federal Individuals with Disabilities Education Act . . . and federal and state regulations promulgated pursuant thereto, such services shall be made available.*

And G.L. c. 71B, § 5, which states:

*Any school committee which provides or arranges for the provision of special education pursuant to the provisions of section three shall pay for such special education personnel, materials and equipment, tuition, room and board, transportation, rent and consultant services as are necessary for the provision of special education...*

And 603 CMR 28.05(5), which states:

*(5) Transportation. The Team shall determine whether the student requires transportation because of his or her disability in order to benefit from special education.*

*(a) Regular transportation. If the student does not require transportation as a result of his or her disability, then transportation shall be provided in the same manner as it would be provided for a student without disabilities. In such case, the IEP shall note that the student receives regular transportation, and if the school district provides transportation to similarly situated students without disabilities, the eligible student shall also receive transportation.*

- 1. If regular transportation is noted on the student's IEP and the student is placed by the school district in a program located at a school other than the school the student would have attended if not eligible for special education, the student is entitled to receive transportation services to such program.*
- 2. If regular transportation is noted on the student's IEP and the student is enrolled by his or her parents in a private school and receiving services under 603 CMR 28.03(1)(e), such student is not entitled to transportation services unless the school district provides transportation to students without disabilities attending such private school.*

*(b) Special transportation. If the Team determines that the student's disability requires transportation or specialized transportation arrangements in order to benefit from special education, the Team shall note on the student's IEP that the student requires special transportation. In such circumstances, transportation is a related service.*

- 1. The Team shall determine necessary modifications, special equipment, assistance, need for qualified attendants on vehicles, and any particular precautions required by the student and shall document such determinations in the student's IEP. If specialized arrangements can be provided on regular transportation vehicles, the school district shall make such arrangements.*
  - a) The district shall arrange to have eligible students who use wheelchairs transported in vehicles that do not require such students to be removed from their wheelchairs in order to enter or leave the vehicles; provided, however, that this requirement shall not be applicable where a Team or the student's physician recommends that the student regularly transfer in and out of conventional vehicles to or from a wheelchair for therapeutic or for independence training reasons.*
  - b) The Team shall specify whether the student requires assistance in or out of the home, on or off of the vehicle, and in or out of the school. If such assistance is specified, the district shall ensure that it is provided.*
  - c) The Team shall specify if the student has a particular need or problem that may cause difficulties during transportation, such as seizures, a tendency for motion sickness, behavioral concerns, or communication disabilities.*

2. *If special transportation is noted on the student's IEP, the student is entitled to receive transportation services to any program provided by the public school and in which the student participates.*

And 603 CMR 28.05(7)(b), which states:

*Upon parental response to the proposed IEP and proposed placement, the school district shall implement all accepted elements of the IEP without delay.*

And 603 CMR 28.06(2)(d)(2), which states:

*The school district shall not delay implementation of the IEP due to lack of classroom space or personnel, shall provide as many of the services on the accepted IEP as possible and shall immediately inform the parent in writing of any delayed services, reasons for delay, actions that the school district is taking to address the lack of space or personnel and shall offer alternative methods to meet the goals on the accepted IEP. Upon agreement of a parent, the school district shall implement alternative methods immediately until the lack of space or personnel issues are resolved.*

And 603 CMR 28.06(8), which states:

*Transportation Services. The term transportation providers shall include the driver of the vehicle and any attendants or aides identified by the Team. The school district shall provide a qualified attendant on each vehicle that transports one or more students in need of special education, when such attendant is recommended by the Team in accordance with 603 CMR 28.05(5)(b).*

*(a) The district shall not permit any eligible student to be transported in a manner that requires the student to remain in the vehicle for more than one hour each way except with the approval of the Team. The Team shall document such determination on the IEP.*

*(b) The school 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.*

*(c) The district shall provide an in-service training program for transportation providers. Such 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.*

*(d) The district shall make sufficient inspections of equipment and unannounced spot checks throughout the year to ensure compliance with these requirements,*

*and with all applicable state and federal safety and equipment laws, including M.G.L. c. 90.*

And 603 CMR 28.07(6), which states:

*If a parent provides transportation to an eligible student requiring special transportation consistent with the requirements of 603 CMR 28.05(5)(b), the school district shall reimburse such parent the prevailing rate per mile for state employees. Reimbursement shall be for no more than the round-trip distance between the home and the school for school attendance and school-sponsored extracurricular activities. Mileage shall be determined based on a direct route between the student's home and school. No parent shall be obligated to provide such transportation.*

And 20 U.S.C. § 1401(9), which states:

*(9) Free appropriate public education*

*The term “free appropriate public education” means special education and related services that—*

*(A) have been provided at public expense, under public supervision and direction, and without charge;*

*(B) meet the standards of the State educational agency;*

*(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and*

*(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.*

And 20 U.S.C. § 1401(26)(a), which states:

*The term “related services” means transportation, and such developmental, corrective, and other supportive services...as may be required to assist a child with a disability to benefit from special education...*

And 34 C.F.R. § 300.34, which states:

*(a) Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education... (c)(16) Transportation includes - (i) Travel to and from school and between schools; (ii) Travel in and around school buildings; and (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.*

And 34 C.F.R. § 300.101(a), which states:

*A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).*

And 34 C.F.R. § 300.323(f), which states:

*IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency -*

*(1) Conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and*

*(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.*

## **II. Brief Background Relating to Transportation**

The District is required to provide transportation to its students in accordance with the applicable federal and state requirements.<sup>2</sup> For example, the District must provide or arrange for the provision of transportation for students with disabilities whose IEPs indicate that they require transportation as a related service (Transportation-eligible Students).<sup>3</sup> Districts may also choose to provide transportation to a wider range of students than those that are specifically entitled to transportation under state or federal law. The District reported that it provides transportation to approximately 21,500 students daily.

An IEP for a Transportation-eligible Student may reflect that the student with disabilities needs transportation on a special transportation vehicle or a regular vehicle with modifications, specialized equipment, or other necessary accommodations. Some students with disabilities may need door-to-door or corner-to-corner transportation, a general or 1:1 monitor, vehicles that can accommodate a wheelchair, a child safety restraint system, or other necessary accommodations required by their unique needs.

The District provides transportation to its students in partnership with a bus contractor (Vendor). According to the District's Superintendent's Circular TRN2 on Student Transportation Safety and Discipline, the District's Transportation Department (Transportation Department), among other duties, acts as liaison between the District and the Vendor, creates bus routes, monitors compliance, records complaints, provides families with advice to assist in the resolution of concerns, and communicates with families about uncovered or delayed routes through the School Messenger system. The Vendor operates a fleet of BPS vehicles and manages personnel on a day-to-day basis.

According to the District, drivers are assigned to designated, regular routes. The District's goal is to have a consistent driver assigned to every route every day with a pool of substitute (stand-by)

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<sup>2</sup> See e.g., G.L. c. 71, § 68; G.L. c. 71B, § 3.

<sup>3</sup> G.L. c. 71B, § 3; 603 CMR 28.05(5)(b); 34 C.F.R. § 300.34(a).

drivers to cover planned and unplanned absences. The Transportation Department and the Vendor, per the collective bargaining agreement with the drivers, have a process in place to address routes without a driver on any given day – whether due to a long-term, short-term, expected, or unexpected absence. Each morning at 5:15 a.m. and each afternoon at 12:50 p.m., the Vendor conducts a process at each bus yard in which stand-by drivers, in order of seniority, select their routes for the shift from the list of available routes. Any work still unassigned at the completion of the bid is then assigned, starting with the least senior stand-by personnel available. As a result, according to the District, which routes are uncovered varies daily. Due to the process used for selection of uncovered routes, if a route does not have a consistent, assigned driver, it might end up being covered some days but not others. The District reported in an email to the Department that the route selection process is similar for bus monitors.

According to the District, at times, in order to address student needs not met under the transportation contract with the Vendor, the District contracts with additional third-party providers. Those contractors provide the vehicles, drivers, and monitors.

### **III. Findings of Facts and Conclusions Relating to Individual Students**

#### **A. Students Ali and Ahmed Doe**

Ali and Ahmed Doe are brothers who receive special education services from the District. According to their IEPs, the students require transportation services in the form of a special transportation vehicle, door-to-door pick-up and drop-off, and the presence of a 1:1 monitor who is trained in responding to seizures.

The Complainants alleged that, as of the Filing Date, the District had failed to provide the transportation services required by Ali and Ahmed Doe's IEPs. Specifically, they alleged that the District failed to provide a bus monitor who is seizure trained. Due to the need for the students to have an adult in close proximity at all times to ensure the students' safety, as stated in their IEPs, the lack of an appropriately-trained monitor resulted in a failure to provide any transportation services because the students were unable to safely utilize a bus without a monitor.

The District provided a transportation log for the brothers between the first day of school for the 2022-2023 school year and the Filing Date. That log demonstrates that their bus stop was not serviced in the mornings or afternoons on any day during that five-week time period. The narrative in the District's Local Report, copies of emails provided by the District, and the Complainants' response show that the District began providing transportation to Ali and Ahmed Doe as of October 31, 2022, which means that the District failed to provide Ali and Ahmed Doe with transportation services for a period of seven weeks. The District's Local Report confirmed that this lapse in transportation services was the result of a lack of a monitors.

The District stated in its Local Report that when the District eventually provided transportation, Mr. and Mrs. Doe postponed transportation in the afternoons due to family circumstances. The District reported that the family requested that afternoon transportation begin on November 30, 2022, which it did.



Despite the lack of District-provided transportation for seven consecutive weeks, according to the attendance record provided by the District, Ali only missed one day of school during that time period and was tardy four times. Ahmed's attendance record shows he was absent eleven times and tardy three times.

**The Department finds that the District did not comply with G.L. c. 71B, §§ 3, 5, 603 CMR 28.05(7)(b), 34 C.F.R. § 300.34, 20 U.S.C. § 1401(9), and 34 C.F.R. § 300.101(a) in the matter of Ali and Ahmed Doe because it failed to provide Ali and Ahmed Doe with transportation services that their IEP Teams had determined they required from the start of the 2022-2023 school year until October 31, 2022.**

The District did not provide transportation to Ali and Ahmed Doe until October 31, 2022. Prior to October 31, 2022, their bus routes could have been covered by stand-by monitors, had monitors bid on their routes.

Once the District began providing transportation on a Vendor-operated route on October 31, 2022, the paraprofessional who works with Ali during the school day, Mr. W, began serving as Ali's 1:1 monitor on the bus. Due to Mr. W's ongoing experience with Ali, he did not require additional training. The Department finds that his level of familiarity met the requirement in 603 CMR 28.06(8)(b) as to Ali Doe.

In contrast, the 1:1 monitor assigned to Ahmed was not initially aware of his needs. An email string included in the supporting documentation to the District's Local Report showed that the Transportation Department assigned a morning monitor to Ahmed on October 31, 2022. However, an email from the school's Director of Special Education stated that: "There were 2 other monitors on the bus but they didn't know who was for [Ahmed]. I spoke to them and stated what [Ahmed] needs to be safe on the bus. Also, they need to be seizure trained." According to the same email string, when Ali and Ahmed began riding an afternoon bus on November 30, 2022, Mr. W continued to be Ali's monitor, and the District was still working on finding an afternoon monitor for Ahmed.

**The Department finds that the District did not fully comply with 603 CMR 28.06(8)(b) and (c) in the matter of Ali and Ahmed Doe because once the District began providing transportation services on a Vendor-operated route, there were personnel with the required in-service training and a monitor on the bus familiar with Ali's needs, but the monitor assigned to Ahmed was not initially provided with student-specific information.**

The Complainants alleged that Ali and Ahmed Doe's family received notification of a lack of transportation services either last-minute or not at all. The Complainants further alleged that the District provided no updates to the family regarding any efforts or progress towards hiring a designated monitor for the students.

The District confirmed in its Local Report that Ali and Ahmed's family received no notification at the outset of the school year that there was no monitor designated for their children and, therefore, a bus would only pick them up if a stand-by monitor was available. Upon learning that there would be no designated monitor for each student's regular routes, the District was required

under 603 CMR 28.06(2)(d)(2) to *“immediately inform the parent in writing of any delayed services, reasons for delay, actions that the school district is taking to address the lack of space or personnel and shall offer alternative methods to meet the goals on the accepted IEP.”*

According to the District’s Local Report, it is not the District’s practice to send notice to families upon learning that there is no designated monitor for a student or route. Instead, the District reported, its practice is to wait to see if a route would be covered by a stand-by monitor on a day-by-day basis once routes are set each morning and each afternoon and then notify families for whom no stand-by monitor is available via automated phone calls or text. The Department reviewed the information in those automated phone calls and texts to Ali and Ahmed’s family relating to transportation services and found they lacked information required by 603 CMR 28.06(2)(d)(2).

**The Department finds that the District did not comply with 603 CMR 28.06(2)(d)(2) in the matter of Ali and Ahmed Doe because upon learning that there would be no monitor designated for each student’s regular routes, it did not immediately inform the parent in writing of any delayed services, reasons for delay, actions it was taking to address the lack of space or personnel, and offer alternative methods to meet the goals on the accepted IEP. Further, the District’s attempts to meet the notification requirement on a day-to-day basis (i.e., through automated voice and text messages) did not include that information.**

The Complainants further alleged that the lack of services resulted in the students’ parents transporting their children to and from school at their own cost, with no clear and readily accessible opportunity for reimbursement.

Despite the District’s repeated failure to provide transportation to Ali and Ahmed Doe in accordance with their IEPs, the students attended school on most days. Ali’s attendance records demonstrate that he missed one day of school and was late four times between the first day of school and October 31, 2022 when the District began providing transportation. Thus, the Department’s investigation determined that the family provided or arranged for approximately 35 trips to and from the school due to a lack of District-provided transportation.

As explained in more detail below in Section IV, the District requires parents to provide a social security number or tax identification number in order to obtain reimbursement for out-of-pocket expenses incurred in providing or arranging for transportation to and from school when the District fails to do so for Transportation-eligible Students. As the Complainants noted in their statement of concern, Ali and Ahmed Doe’s mother is a recent newcomer to the United States and, therefore, does not have a social security number. In their response to the Local Report, the Complainants stated that Ali and Ahmed Doe’s attorney sought assistance from Boston’s Office of Legal Counsel on January 10, 2023 relating to the reimbursement of Ali and Ahmed Doe’s parent. As of the date of this letter, the Department has not received any indication that Ali and Ahmed Doe’s parent was reimbursed for providing the transportation services the District was required to and failed to provide.

**The Department finds that the District did not comply with G.L. c. 71B, § 5 and 603 CMR 28.07(6) in the matter of Ali and Ahmed Doe because it did not reimburse their family for expenses incurred in transporting their children to and from school due to the District's failure to provide the required transportation.**

### **B. Student Ellie Doe**

Ellie Doe is a resident of Boston who is entitled to special education services. Ellie's IEP Team agreed to place her in an out-of-district placement to meet her complex special education needs. She was scheduled to begin at her new school on September 28, 2022. According to Ellie's IEP, she requires transportation services that include door-to-door transportation on a specialized medical safety vehicle with a female, seizure-trained, 1:1 monitor. The Complainants alleged that the District failed to have transportation in place for the start of Ellie's attendance at the out-of-district placement.

Ellie's scheduled and actual start date at her new school was September 28, 2022. The Complainants alleged that the District failed to provide special education transportation services to Ellie between September 28-30, 2022 and October 3-14, 2022. The Complainants alleged that the District did not notify the family of the possible lack of transportation until September 26, 2022 and the actual lack of transportation until September 27, 2022, the day before Ellie was supposed to begin school at her out-of-district placement.

According to the District's Local Report, the District initially arranged transportation on a vehicle meeting Ellie's needs through a third-party contractor to begin on October 6, 2022. The District reported that it then learned that the contractor was unable to guarantee a 1:1, gender-specific monitor trained to respond to seizures, as required by Ellie's IEP. The Complainants alleged that, between October 6, 2022 and October 13, 2022, Ellie's mother received phone calls from multiple transportation companies regarding possible transportation for Ellie. Her mother reported that those contractors were unaware of Ellie's specific transportation needs outlined in her IEP. The District reported in an email to the Department that it began transporting Ellie to her out-of-district placement on October 17, 2022.

The Complainants alleged that this lack of transportation resulted in Ellie's family having to transport her to and from school. The school is approximately 30 miles from Ellie's home. Her mother reported the trip can take between 40 minutes and two hours each way. Despite the lack of District-provided transportation, Ellie only missed one day of school between her first day at her out-of-district placement and the Filing Date.

**The Department finds that the District did not comply with G.L. c. 71B, §§ 3, 5, 603 CMR 28.05(7)(b), and 34 C.F.R. § 300.34 in the matter of Ellie Doe because it failed to provide her transportation to and from school between September 28, 2022 and October 14, 2022. Based upon the information available to it, the Department is unable to determine whether the District complied with 20 U.S.C. § 1401(9) and 34 C.F.R. § 300.101(a) in the matter of Ellie Doe.**

The District was unable to provide evidence of either general or student-specific training for the transportation personnel working with Ellie once the District began providing her with transportation services and instead explained that the contractors providing transportation services to Ellie were responsible for training drivers and monitors.

**The Department finds that the District did not comply with 603 CMR 28.06(8)(b) and (c) in the matter of Ellie Doe because, even though the District outsourced certain transportation services, the responsibility remained on the District to ensure that Ellie’s transportation providers had appropriate training and received clear, written information on the nature of any need or problem that may cause difficulties for her.**

The Complainants alleged that the District failed to comply with notification requirements relating to lack of transportation services for Ellie. Specifically, they alleged that on September 27, 2022, the day before Ellie started at her out-of-district placement, BPS informed Ellie’s family that there still was no transportation for Ellie and that they could seek reimbursement if they chose to transport Ellie. The District was unable to produce any evidence of letters, emails, automated phone calls, or text indicating when or how it notified the family about the lack of transportation services and what information may have been included in those communications.

**The Department finds that the District did not comply with 603 CMR 28.06(2)(d)(2) in the matter of Ellie Doe because upon learning that there was no transportation in place for Ellie’s first day at her out-of-district placement, it failed to immediately inform her parents in writing of any delayed services, reasons for delay, actions it was taking to address the lack of space or personnel, and offer alternative methods to meet the goals on the accepted IEP.**

The District and Complainants submitted a copy of the reimbursement form completed by Ellie’s mother and submitted to the District on December 22, 2022. It was for \$550 to cover 12 days of transportation between Ellie’s home and her out-of-district placement. On February 8, 2023, the District informed the Department that it paid the invoice on January 13, 2023.

**The District complied with G.L. c. 71B, § 5 and partially complied with 603 CMR 28.07(6) in the matter of Ellie Doe because the District has reimbursed Ms. Doe. However, the District’s failure to provide Ellie with transportation to and from her out-of-district placement resulted in her parent having to transport her to and from school, contrary to 603 CMR 28.07(6), which states, “No parent shall be obligated to provide such transportation.”**

### **C. Student Julia Doe**

Julia Doe is a student in the District. According to her IEP, Julia qualifies for special education services under the disability categories of intellectual, neurological, communication, and physical impairments. Her IEP also indicates that Julia uses a wheelchair and suffers from frequent seizures. As a result, her IEP Team determined that she requires the following transportation services and accommodations: door-to-door transportation in a wheelchair accessible vehicle with a female, seizure-trained, 1:1 monitor.

The Complainants alleged that Julia did not consistently receive her transportation services between the start of the 2022-2023 school year and October 31, 2022. The Complainants alleged that Julia's mother was notified on the first day of school, September 8, 2022, that Julia's bus had a general monitor assigned to it but no 1:1 monitor was on either the morning or afternoon routes. According to the Complainants, a 1:1 monitor was assigned to Julia for the morning routes the following Monday, September 12, 2022, but they alleged that the presence of a 1:1 monitor on the afternoon route was inconsistent. The Complainants alleged that due to the inconsistency, Julia's mother had to check daily whether there is a 1:1 monitor available and, if not, pick Julia up from school at her own expense.

The District provided GPS data showing that the assigned bus stopped at Julia's stop every morning and afternoon except for two afternoons between the start of the 2022-2023 school year and the Filing Date. However, the District was unable to locate and provide data indicating whether a 1:1 monitor (and, therefore, Julia) was on the bus. The District stated, "BPS is not able to fully verify whether the student's required bus monitor was on the bus each day during the time range for which data was provided. However, based on available information, to the best of our knowledge there was a bus monitor onboard for each day the student's stop was serviced."

The Department notes that this conflicts with Ms. Doe's statements about September 8 and September 9, 2022 specifically and her more general statements that afternoon transportation services were inconsistent. Other portions of the District's Local Report also suggest that a monitor was not on board each day Julia's stop was serviced. Specifically, the District submitted email correspondence between the Director of Instruction for Julia's school and the Transportation Department regarding a lack of designated monitor for Julia. The email stated: "This has been an on-going issue since the start of the school year." Further, the District's Local Report narrative stated that: "For the afternoon, [monitor] was re-assigned as [Julia's] 1:1 monitor, beginning the week of 10/31, to ensure afternoon monitor coverage."

**Based on the available information, the Department finds that the District did not comply with G.L. c. 71B, §§ 3, 5, 603 CMR 28.05(7)(b), and 34 C.F.R. § 300.34 in the matter of Julia Doe because it failed to provide reliable transportation services between the start of the 2022-2023 school year and at least October 31, 2022. Based upon the information available to it, the Department is unable to determine whether the District complied with 20 U.S.C. § 1401(9) and 34 C.F.R. § 300.101(a) in the matter of Julia Doe.**

The Complainants alleged that the District failed to adequately train the monitors assigned as Julia's 1:1. The Complainants indicated that Julia's mother was concerned that the monitors were not trained in her health and safety needs. She reported that, at times, Julia's monitors did not speak English and as a result, were unable to communicate with her or Julia.

When the District approached individual schools to investigate whether and how they train monitors related to student-specific needs and provide them with student-specific written information, Julia's school was unable to provide the District with any information or documentation that they met this obligation for any of its students.

**The Department finds that the District did not comply with 603 CMR 28.06(8)(b) and (c) in the matter of Julia Doe because it has submitted no information that indicates that Julia’s monitors were provided with written information or training as required by the applicable regulation.**

The Complainants alleged that, other than the first day of school, Ms. Doe had to call the school to determine whether Julia would have transportation home from school. Ms. Doe alleged that she received no notification at the outset of the school year that there was no monitor designated for Julia and, therefore, a bus would only have a monitor if a stand-by monitor was available.

Upon learning that there would be no designated monitor for Julia, the District was required under 603 CMR 28.06(2)(d)(2) to “immediately inform the parent in writing of any delayed services, reasons for delay, actions that the school district is taking to address the lack of space or personnel and shall offer alternative methods to meet the goals on the accepted IEP.”

The District acknowledged in its Local Report that it is not their practice to send notice to families upon learning that there is no designated monitor for a student or route. Instead, the District reported that its practice is to wait to see if a route would be covered by a stand-by monitor on a day-by-day basis once routes are set each morning and each afternoon and then notify families for whom no stand-by monitor is available via automated phone calls or text. The Department’s review of the information in those automated phone calls and texts indicated that they lacked information required by 603 CMR 28.06(2)(d)(2).

**The Department finds that the District did not comply with 603 CMR 28.06(2)(d)(2) in the matter of Julia Doe because upon learning that there was no designated monitor for Julia, it failed to immediately inform her mother in writing of any delayed services, reasons for delay, actions it was taking to address the lack of personnel, and offer alternative methods to meet the goals on the accepted IEP.**

#### **D. Student Joshua Doe**

Joshua Doe is a student who qualifies for special education services with a primary disability of autism. According to his IEP, Joshua’s transportation needs include door-to-door transportation with a child safety restraint system and a general monitor.

The Complainants alleged that Joshua experienced repeated issues of uncovered bus routes, unavailable bus monitors, delayed notifications regarding transportation, and delayed buses. This included during the first week of the 2022 Extended School Year program and the first day of the 2022-2023 school year. The Complainants alleged that, after the first day of school, Joshua received transportation in the morning but unreliable transportation in the afternoon. The Complainants alleged that this resulted in Ms. Doe needing to provide or arrange for last-minute alternative means to get Joshua home.

The District provided GPS data showing that the assigned bus stopped at Joshua’s stop every morning and afternoon except for two afternoons between the start of the 2022-2023 school year and the Filing Date. However, the District was unable to locate and provide data indicating whether a monitor (and, therefore, Joshua) was on the bus. The District stated, “BPS is not able

to fully verify whether the student's required bus monitor was on the bus each day during the time range for which data was provided. However, based on available information, to the best of our knowledge there was a bus monitor onboard for each day the student's stop was serviced."

The District's Local Report included some conflicting narrative. It stated that Joshua had an assigned monitor in the mornings throughout the 2022-23 school year and a consistent stand-by monitor in the afternoons. The same narrative also stated that the family received a letter with directions about reimbursement, implying that the parent had reported needing to transport Joshua.

The Complainants alleged that, other than September 8, 2022 when she received no communication, Ms. Doe consistently received last-minute communication about a lack of monitor. Without definitive data from the District as to whether a monitor was on the bus each time the bus serviced Joshua's stop, it is not possible to determine how often his family should have received notification of a delay or lapse in transportation services.

The Department requested Joshua's attendance records for the 2022 ESY program and the 2022-2023 school year through the Filing Date. The District provided information indicating no absences.

**The Department is unable to determine whether the District complied with G.L. c. 71B, §§ 3, 5, 603 CMR 28.05(7)(b), 20 U.S.C. § 1401(9), and 34 C.F.R. § 300.101(a), or 34 C.F.R. § 300.34 in the matter of Joshua Doe because the District was only able to provide definitive data indicating that Joshua's stop was serviced on a given day and not whether a monitor (and, therefore, Joshua) was on the bus.**

Even though the District's Local Report included some conflicting narrative as to whether there was actually a monitor on the bus every day, the District did state that there was an assigned monitor in the morning and a consistent stand-by monitor in the afternoon.

Upon learning that there would be no designated monitor for Joshua's route in the afternoons, the District was required under 603 CMR 28.06(2)(d)(2) to *"immediately inform the parent in writing of any delayed services, reasons for delay, actions that the school district is taking to address the lack of space or personnel and shall offer alternative methods to meet the goals on the accepted IEP."*

The District acknowledged in its Local Report that it is not their practice to send notice to families upon learning that there is no designated monitor for a student or route. Instead, the District reported that its practice is to wait to see if a route would be covered by a stand-by monitor on a day-by-day basis once routes are set each morning and each afternoon and then notify families for whom no stand-by monitor is available via automated phone calls or text. Even if the District is correct that a stand-by monitor consistently covered Joshua's afternoon route, that does not relieve the District of its responsibility at the time they should have made the notification.

**The Department finds that the District did not comply with 603 CMR 28.06(2)(d)(2) in the matter of Joshua Doe because upon learning that there was no designated afternoon monitor for Joshua, it failed to immediately inform his mother in writing of any delayed services, reasons for delay, actions it was taking to address the lack of space or personnel, and offer alternative methods to meet the goals on the accepted IEP.**

#### **E. Student Daniel Doe**

Daniel Doe is a student who moved to Boston in the summer of 2022. He is identified as a student with a disability who was found eligible for special education in his prior home state under the disability categories of Intellectual Disability, Other Health Impairment, and Language Impairment. According to Daniel's IEP from his prior home state, Daniel requires transportation to and from the "closest and safest stop" while wearing a seatbelt. His mother registered him for Boston Public Schools on August 16, 2022, at which time she provided a copy of his IEP. The first day of school in Boston was September 8, 2022. The District did not assign Daniel to a high school until September 20, 2022.

The Complainants alleged that when Daniel's mother was notified on September 20, 2022 that he had a school placement, she did not receive any notice about transportation. The Complainants alleged that Daniel's mother was notified by District counsel on September 21, 2022 that transportation services would not begin until the following week because "[t]he Transportation Department has to conduct rerouting to provide transportation which usually takes about a week." The Complainants alleged that the District did not provide Daniel with morning transportation until September 28, 2022 and afternoon transportation until September 29, 2022. The transportation log provided as part of the District's Local Report confirms that information.

**The Department finds that the District did not comply with G.L. c. 71B, § 3, 603 CMR 28.05(7)(b), 34 C.F.R. § 300.34, and 34 C.F.R. § 300.323(f), in the matter of Daniel Doe because it failed to provide morning or afternoon transportation services to Daniel between September 20, 2022 and September 27, 2022 and failed to provide afternoon transportation to Daniel on September 28, 2022 and October 5, 2022.**

The District and Complainants provided conflicting information as to whether Daniel actually attended school between September 20, 2022 and September 27, 2022 when the District did not provide morning transportation. The Complainants alleged that Daniel did not attend school on September 20 and September 21, 2022 due to lack of District-provided transportation. Daniel's attendance records do not reflect absences on those days. The Complainants further alleged that Daniel's mother transported him to and from school between September 22, 2022 and September 27, 2022 and picked him up on September 28, 2022 via Lyft services. However, Daniel's attendance record from the District reflects excused absences on September 22-23 and September 26-27.<sup>4</sup>

The District's Local Report included a signed Compensatory Services Agreement dated November 7, 2022. The Compensatory Services Agreement specified that it was "to remedy

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<sup>4</sup> September 24 and 25, 2022 were not school days.



services missed during the 2022-2023 school year.” The Compensatory Services Agreement stated that the agreed-upon services “represent the full compensatory services owed up until the date of execution of this Agreement.” The Compensatory Services Agreement is binding on the District. However, as of January 11, 2023, when the Complainants submitted their response to the District’s Local Report, compensatory services for Daniel had not yet begun.

The Complainants alleged that Daniel’s mother was notified on September 20, 2022 that he had a school placement, but she was not notified of the transportation arrangements. Ms. Doe received notification on September 21, 2022 that transportation services would begin on September 28, 2022 after the District conducted its rerouting procedures. The Complainants further alleged that when Daniel’s counsel contacted the District on September 23, 2022, she was told that BPS was unable to provide any alternatives when families do not have access to a personal vehicle and cannot afford out-of-pocket expenses for hired transportation.

**The Department finds that the District did not comply with 603 CMR 28.06(2)(d)(2) in the matter of Daniel Doe because it did not notify Ms. Doe on September 20, 2022 that the student would not have transportation, and when it notified Ms. Doe on September 21, 2022 of the delay in transportation services, the notifications did not include information related to actions it was taking to address the lack of transportation services or provide alternative methods to meet the goals on the accepted IEPs.**

Ms. Doe requested reimbursement for out-of-pocket expenses she incurred while transporting Daniel between September 22, 2022 and September 28, 2022. The District provided reimbursement on October 7, 2022.

**The Department finds that the District complied with G.L. c. 71B, § 5 and 603 CMR 28.07(6) in the matter of Daniel Doe. However, the District’s failure to provide Daniel with transportation resulted in his parent having to transport him to and from school, contrary to 603 CMR 28.07(6), which states “No parent shall be obligated to provide such transportation.”**

#### **IV. Findings of Facts and Conclusions Relating to Systemic Concerns**

As described in the [U.S. Department of Education’s July 23, 2012 memorandum relating to dispute resolution procedures under Part B of IDEA](#), in addition to resolving allegations relating to individual students with disabilities, the State Educational Agency’s state complaint system must also resolve allegations of systemic noncompliance. The Complainants alleged that the District has systematically failed to provide transportation services to Transportation-eligible Students. Specifically, the Complainants alleged that the District has failed to provide 1:1 bus monitors to students, failed to ensure that those monitors who are assigned to support students are properly trained, failed to provide transportation services to some students entirely, failed to provide timely transportation, failed to notify or provided delayed notice to families related to transportation issues, and failed to provide required modifications, special equipment, assistance and other transportation services specified in the students’ IEPs. The Complainants further alleged that the District’s systemic failure to provide these transportation services has denied students their right to FAPE. They alleged that the District often fails to notify families of a lack

of transportation promptly and accurately, if at all. Complainants reported that on occasions when the District did not provide transportation services, students' families are required to do so, causing financial and other burdens.

The Complainants also asserted that systems in place to assist families when problems arise are faulty. They alleged BPS's reimbursement system is slow and sometimes inaccessible. They further alleged that the telephone hotline and internet portal through which families can report problems are ineffective and lead to inadequate resolution.

As described in Sections I and II above, the District is required to provide transportation services to students with disabilities whose IEP Teams have determined that they need transportation as a related service. *See e.g.*, 20 U.S.C. § 1401(26)(a); 34 C.F.R. § 300.34(c)(16); G.L. c. 71B, § 3; 603 CMR 28.05(5)(b). The Complainants alleged that the District failed to comply with these requirements on a widespread basis, which deprived many students of their education due to ongoing absences and late arrivals resulting from lack of or delayed transportation.

The District explained in its Local Report and in a conversation with the Department that the vast majority of students receiving transportation to Boston Public Schools are transported on vehicles that include both general education students and students with disabilities. Despite the Department's request in its Request for Local Report and subsequent communications for specific information as to transportation data for students with disabilities, the District was unable to disaggregate most of its data to indicate the precise impact of late buses and uncovered routes on students with disabilities as compared to students without disabilities.

In response to this aspect of the complaint, the District provided evidence of routes that did not run on a particular day, OTP data for Vendor-operated routes, and data from two, seven-day periods during the 2021-2022 school year showing the number of students attending Boston's public schools each day whose bus routes did not run and the percentage of those students who ultimately arrived at school.

The District reported that approximately 2% of scheduled routes district-wide – for students with and without disabilities – were uncovered during the 2021-2022 school year. Broken down by month, the percentage of uncovered routes ranged from a low of 0.7% in November 2021 to a high of 4.6% in January 2022. This number dropped in the 2022-2023 school year, with the District reporting 1.3%, 0.5%, and 0.1% uncovered routes in August, September, and October, respectively.<sup>5</sup>

The District also reported that, in the 2021-2022 school year, only between 87% and 92% of Vendor-operated routes – for students with and without disabilities – arrived at school on-time. This figure measured the percentage of routes that actually ran and arrived on time; routes that did not run at all were not counted in this data. For the 2022-2023 school year, the District began including uncovered routes in its OTP data by marking them as not on-time. As may be expected, this lowered the percentage of vehicles marked as on-time in the fall of 2022 compared

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<sup>5</sup> The Department notes that the Orange Line of the MBTA was closed between the start of the 2022-2023 school year and September 19, 2022. Increased need for buses and increased traffic during this time may have impacted uncovered routes and OTP.

to the 2021-2022 school year. As such, the District reported an on-time arrival rate of 69%, 76.4%, and 83.6% in August, September, and October 2022 for Vendor-operated buses.

Due to the difference in calculation methods, a year-to-year comparison is not possible. However, the 2022-2023 data demonstrate that – even though on-time arrival has improved since August – as of the Filing Date, an average of 16.4% of buses were dropping off students late or not at all. That number reduced to 7.1% and 5.8% when accounting for buses that arrived within 15 minutes and 30 minutes of scheduled times.

The Department reviewed an export of “tickets” that record issues reported to the District’s Transportation Department via its portal and hotline. There were a total of 6,536 tickets between October 17, 2021 and October 17, 2022. The Department’s review of the tickets found that: 3,469 were coded as “Missed Stop,” 775 were coded as “Late Bus,” 736 were coded as “Stranded Student,” 721 were coded as “Bus Monitor,” 597 were marked as “Other,” and 236 were labeled “Blown Route” or “Uncovered Route.”

The tickets reflect significant challenges that some families in the District experience obtaining transportation services for their children. Many of the tickets noted the ongoing nature of the problems and the impact of the transportation failures on the students and their families. For example, tickets mentioned caregivers being late to work, caregivers needing to leave work early, and students and caregivers missing after-school appointments due to transportation issues. One parent reported that her child sometimes misses breakfast at school due to late bus arrivals, and another parent reported that her child was late for a statewide assessment due to transportation issues.

The District compiled data from two seven-day periods that show the number of students affected by uncovered routes that did not transport any students to school. The District also reported the percentage of those students who arrived at school despite a lack of District-provided transportation, presumably by parent-provided or parent-arranged transport. Data showed that in the span of seven days in November 2021, between nine and 435 students attending Boston Public Schools were affected by uncovered routes. During that time period, between 20% and 32% of those students never arrived at school.<sup>6</sup> Data for seven days in January 2022 indicated that between 761 and 1,380 students attending Boston’s public schools were affected by uncovered routes. and between 23% and 33% of those students never arrived at school.

The Complainants alleged that the District’s failure to provide reliable transportation to all Boston Public Schools students has a disproportionate impact on students with disabilities and, especially, Transportation-eligible Students. Specifically, the Complainants alleged that Transportation-eligible Students disproportionately experience late buses, uncovered bus routes, and inconsistent or absent bus monitors.

The Department examined other types of data to assess the impact on students with disabilities specifically. For example, the Department analyzed one year of attendance data for all 1,334 students with disabilities at the Sampled Schools who require transportation services according

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<sup>6</sup> This eliminates two outliers on days on which there were fewer than 40 students on which to base the calculation.

to their IEPs. In that 1,334-student sample, 3.8% of all absences and late arrivals between October 17, 2021 and October 17, 2022 were coded in the student management database as being due to transportation. Most were specifically coded as “Bus/Transportation” in the “Reason” field, with additional absences or late arrivals coded as “Other” with narrative comments describing specific transportation issues. Attendance data showed 108 of the 1,334, or 8.3% of those Transportation-eligible Students were absent or tardy five or more times between October 17, 2021 and October 17, 2022 due to problems with District-provided transportation. Eighteen students were absent or tardy at least 15 times due to transportation issues during that period. Specific reports related to buses not stopping included both instances in which families received notification that day that there was no monitor and instances in which the bus drove by without stopping and without notifying the family.

The information reviewed by the Department shows that when the District fails to provide some Transportation-Eligible Students with transportation services to which they are entitled, the students’ families sometimes provide or arrange for transportation of the students. The Department’s regulations indicate that “no parent shall be obligated to provide such transportation” but due to the District’s failure to provide reliable transportation, families face a choice between not sending their students to school or providing or arranging for transportation themselves.

The Department notes that the attendance data provided by the District might underestimate the impact of transportation issues on Transportation-eligible Students because the data is dependent on whether an individual school records the reasons for absence with fidelity and whether, on a given day, the person recording attendance is aware of the transportation issues experienced by a particular student.

According to the list of 1,334 Transportation-eligible students across the District from which the Department randomly chose the Sampled Students, 43% of those Transportation-eligible Students require modifications or additional staff (e.g., 1:1 monitor) as part of their transportation services. This means that in addition to providing a vehicle that arrives at school on-time, the District must also ensure the vehicle has the proper specifications and the required personnel.

During this investigation, the Department identified that a key deficiency that affects Transportation-eligible Students in the District is a lack of bus monitors, some of whom require specialized training. The District reported that approximately 35-40% of monitor-required routes have not had a designated monitor assigned to the route during the 2022-2023 school year. The District also stated that it employs approximately 511 monitors and that it would need approximately 900 monitors to provide full coverage for all students who require monitors according to their IEPs.

The District reported that it did not begin tracking when a particular route or student did not have a monitor until November 2022. Therefore, it is unable to determine exactly which students were impacted by a lack of a monitor and to what extent. This highlights how the lack of a tracking system prevents the District from promptly identifying and remedying noncompliance. Julia Doe and Joshua Doe are prime examples of this. The District provided the Department with narratives

based on “to the best of our knowledge,” even while providing some contradictory information in other parts of their Local Report and supporting documents.

In its original Request for Local Report, the Department requested that the District provide a variety of detailed data for each of the 40 Sampled Students. Had the District’s data collection methods allowed, the Department would have been able to analyze one year’s worth of data related to transportation accommodations and services. Once the Department learned of the extent of the data collection limitations, specifically that the District would need to compile data from multiple sources for each student, the Department revised its request limiting it to four weeks of data for twelve of the Sampled Students to determine whether their bus routes included the required 1:1 or general monitors. The District provided the data, which showed that eight out of the twelve students had monitor coverage every day in both the mornings and afternoons. One student was without a monitor every morning and one afternoon during that four-week period. The remaining three students were missing coverage three, four, and five times, respectively.

The Department analyzed these facts along with monitor coverage for the five Named Students whose IEPs require that they be provided monitors.<sup>7</sup> Data for those students spanned approximately six weeks. As described in more detail in the allegations related to each Named Student, they all experienced disruptions in service due to a lack of appropriate bus monitor. Combining those two groups, data revealed that nine out of 17 students sampled were at times denied transportation services due to the District not providing a monitor.

Further, as previously indicated, out of the total 6,536 tickets provided by the District to the Department for a one-year period, 721 related in some way to a monitor issue. Issues included but were not limited to: buses not stopping due to a lack of monitor, buses picking up students who require a monitor despite no monitor being on-board, and families receiving inaccurate information when inquiring whether a monitor would be on the child’s bus.

Although still not precisely quantifiable due to data collection methods used by the District through October 2022, this combination of data illuminates a failure to adequately provide monitors – and, therefore, transportation services – to many students whose IEPs require them.

In response to the complaint, the District stated it is facing an ongoing and significant shortage of transportation personnel. In its Local Report, the District described its efforts to address this shortage. For example, the District reported that it is partnering with the Vendor on a significant recruitment, hiring, and training campaign. Similar to its efforts to alleviate and mitigate the shortage of drivers, according to the District, it is implementing daily efforts to increase its pool of bus monitors. According to the District, it is continually working to hire monitors through advertising with flyers and on social media, holding hiring fairs, and working with schools to recruit school staff who can ride the bus as a paid bus monitor.

The District reported additional measures the Transportation Department takes on a daily basis to mitigate the impact of the transportation staffing shortages. For example, each day there are stand-by drivers who are assigned a “radio bus” instead of being part of the pool of stand-by drivers who bid for open routes. Those radio buses, including monitors, are dispatched upon

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<sup>7</sup> One of the six Named Students does not require a monitor.

request to transport as many students as possible who would otherwise be unable to ride a bus. According to the District, the use of this system allows the District, at times, to transport students who may attend different schools but who may live in a similar area and whose schools may not be far apart.

As the above data show, these efforts have been insufficient, and students with disabilities are at times missing entire school days or parts of school days due to lack of appropriate transportation services to which they are legally entitled.

The Department finds that the District did not provide reliable, on-time transportation to students with disabilities. An OTP of 83% for its highest month sampled in the 2022-2023 school year, uncovered routes affecting up to 1,380 students daily, 6,536 complaints through the Transportation Department's portal and telephone system over the course of a year for all students – including Transportation-eligible Students – demonstrate a widespread problem in these areas.

The Department also finds that, in addition to these deficiencies affecting all students, Transportation-eligible Students are affected by other breakdowns in the District's transportation system. Specifically, the Department finds that the lack of monitors had a significant impact on Transportation-eligible Students who required them. The District's 35%-45% shortage of monitors resulted in interruptions in transportation services, including the 33% of students sampled over a one-month period in October 2022 whose routes lacked a monitor and the 8.3% of the Transportation-eligible Students at the Sampled Schools whose attendance records show they were either absent or tardy at least five times between October 17, 2021 and October 27, 2022 due to transportation issues. Similarly, as was detailed in Section II, Ali and Ahmed Doe experienced extended gaps in transportation due to a lack of monitors.

**The Department finds that the District failed to comply with G.L. c. 71B, §§ 3, 5, 603 CMR 28.05(7)(b), 603 CMR 28.07(6), and 34 CFR § 300.34 on a system-wide basis.<sup>8</sup>**

The Complainants allege that the District's failure to provide reliable transportation services to special education students who are entitled to it resulted in a denial of FAPE to those students who were affected. As described in Section I, FAPE "means special education and related services that—(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title." 20 U.S.C. §1401(9). The term "related services" includes "transportation, and such developmental, corrective, and other supportive services... as may be required to assist a child with a disability to benefit from special education." 20 U.S.C. § 1401(26)(a); 34 C.F.R. § 300.34.

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<sup>8</sup> The Department notes that the District fails to track whether it provides other transportation related accommodations such as wheelchair accessible vehicles, child restraint systems, temperature control, and monitors who are nurses, as may be required by some students' IEPs. This is another example of how the lack of a tracking system prevents the District from promptly identifying and remedying noncompliance.

When examining whether the District denied FAPE, the Department examined all of the data and information provided by the District in connection with this investigation. For example, the Department reviewed the data for two 7-day periods that showed the number of students affected by uncovered routes each of those days and the percentage of students who arrived at school despite those routes being uncovered.<sup>9</sup> Although the District does not generally track this data for particular subgroups, for purposes of responding to the Department's Request for Local Report, the District drew information from various sources to disaggregate the data by disability status. Due to the burdensome nature of that task, the District was only able to provide data for 14 days.

This data demonstrated that in the span of seven days in November 2021, between 42% and 75% of the students attending Boston public schools who were affected by uncovered routes were students with disabilities.<sup>10</sup> Data for seven days in January 2022 indicated that between 26% and 42% of the students attending Boston public schools who were affected by uncovered routes were students with disabilities. Data from that sample also showed that between 58% and 78% of those students ultimately arrived at school despite a lack of district-provided transportation, presumably by parent-provided or parent-arranged transport. The Department notes that these data are based on routes that did not run for any students – with and without disabilities – on the route and would not account for students whose route ran but did not transport a particular Transportation-eligible student if accommodations (e.g., a monitor) were unavailable.

Furthermore, the attendance data from the Sampled Schools examined by the Department showed that 8.3% of the 1,334 Transportation-eligible Students were either absent or tardy five or more times due to transportation issues, including 18 students who were absent or tardy 15 days or more, between October 17, 2021 and October 17, 2022. These students not only missed their transportation services, but also missed other special education and related services. When including attendance data for all Transportation-eligible Students at those schools, absences and late arrivals due to transportation issues accounted for 3.8% of all absences and late arrivals for those 1,334 students during that one-year period.

**The Department finds that the District did not comply with 20 U.S.C. § 1401(9) and 34 C.F.R. § 300.101(a) as to at least some Transportation-eligible Students who did not receive their required IEP transportation services between October 17, 2021 and October 17, 2022. As described in Section VI below, the District must implement specific corrective actions to remedy any such failure for individual students and facilitate the appropriate future provision of transportation services for all Transportation-eligible Students.**

As described above, the Complainants alleged that the District fails to adequately train and provide relevant information to its transportation providers in violation of 603 CMR 28.06(8)(b) and (c), which specify that:

*(b) The school district shall give transportation providers clear, written information on the nature of any need or problem that may cause difficulties for a*

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<sup>9</sup> This data may not capture students who did not have District-provided transportation that day if they were unable to ride a bus due to a lack of monitor but the bus route ran anyway.

<sup>10</sup> This excludes one day on which there were only nine students total affected, which appears to have skewed the results mathematically.

*student receiving special transportation along with information on appropriate emergency measures that may be necessary.*

*(c) The district shall provide an in-service training program for transportation providers. Such 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.*

The District reported that drivers and monitors of Vendor-operated and third-party vehicles receive written student-specific information via the bus rosters. The District reported that the rosters list the student names and their required transportation services. The District explained that this allows regularly-scheduled and stand-by monitors to access the information at all times.

The District also reported that individual schools are responsible for providing the training regarding individual student needs, and the District does not have a procedure in place to track whether drivers and monitors received the relevant student-specific information. The District also stated that all 1:1 monitors have the opportunity to meet with the school staff regarding specific needs and support strategies. However, the District did not provide information about the frequency of those meetings or whether they are school- or monitor-initiated.

Considering this lack of information in the Local Report, the Department requested that the District contact the in-district schools attended by the five Named Students and five other in-district students whose IEPs were specifically chosen for the purpose of assessing monitor training. The schools were unable to provide documentation or narrative related to training the monitors assigned to those ten students. In two instances, the schools stated that the student's 1:1 paraprofessional during the school day also served as a 1:1 bus monitor and did not require any additional training.

The District reported that most in-service training of transportation staff working on Vendor-operated routes occurs during the summer. The District stated in its Local Report that Vendor provides most of the training for drivers. Additionally, drivers assigned to the Vendor-operated wheelchair buses receive training on the proper, safe use of automated lift systems, as well as the proper methods of securing each type of wheelchair. The District reported that drivers for Vendor-operated routes hired after the summer trainings receive the required training from the Vendor at the time of hire.

In-service training for bus monitors on Vendor-operated routes follows similar procedures but is delivered or arranged for by the District. Trainings are held during the summer and throughout the school year. Summer training topics include: behavior management, de-escalation, sensory integration (through Safety Care); racial equity and leadership; equity trainings required for all District staff, M.I.S.T. (CPR, first-aid certification, use of Epipen, asthma and airway management, responding to seizures); mandated reporter and equity protocols; social-emotional learning trainings on issues such as trauma-informed care, selected topics of student development; and safe and welcoming schools. The District stated that monitors working on Vendor-operated routes who are hired after the summer sessions receive the M.I.S.T. and Safety



Care portions of the training from the District. They are also provided with opportunities to meet with school staff as needed to discuss best practices and behavior management strategies.

The District also described ad hoc training opportunities throughout the school year as needed for personnel working on Vendor-operated routes that serve selected populations. The District provided examples of trainings for which the Transportation Department partners with individual schools with unique sub-populations of students to organize training for monitors and drivers assigned to the school on Vendor-operated routes. The Local Report cited one recent example from the 2022-2023 school year in which drivers and monitors on Vendor-operated routes assigned to the Horace Mann School for the Deaf and Hard of Hearing received training at the school on protocols and communication strategies for working with deaf students in emergency situations.

The District reported that neither the Transportation Department nor the Vendor trains the personnel provided by other contractors. The District reported those third-party contractors provide the monitors and vehicles and only accept the contracts if they can assure that the monitor and vehicles meet the requirements of the students' IEPs.

In its Local Report and subsequent exchanges with the Department, the District acknowledged the gaps in training bus monitors. The District reported that the Transportation Department and the Office of Special Education are in search of two program directors who will address this need. According to the job description provided by the District, these program directors will “train our SPED Cab monitors to effectively support students with disabilities, with a focus on disability awareness, positive behavior supports and strategies, use of sensory tools and resources, and how to identify and work through student behavioral challenges. They will also provide ongoing professional development in the area of positive behavior support to monitors and Monitor Unit Staff. The Program Director for Transportation will also offer techniques and modeling of behavior intervention support to promote a safe environment on buses.”

**The Department finds that the District did not fully comply with 603 CMR 28.06(8)(b) on a system-wide basis because the written information it provided to transportation personnel did not include information on the nature of any need or problem that may cause difficulties for a student receiving special transportation and information on appropriate emergency measures that may be necessary. The District also did not provide any documentation that personnel on non-Vendor-operated routes received the information required by 603 CMR 28.06(8)(b).**

**The Department also finds that the District did not fully comply with 603 CMR 28.06(8)(c) on a system-wide basis because it offered general in-service trainings during the summer and upon hire of new personnel who provide transportation services on Vendor-operated routes, but it did not provide training related to student-specific needs. The District also did not provide any documentation that personnel on non-Vendor-operated routes received the training required by 603 CMR 28.06(8)(c).**

As described above, the Complainants alleged that the District does not always notify parents when it is unable to provide transportation to students. In instances in which the District is

unable to fully implement a student’s IEP, under 603 CMR 28.06(2)(d)(2), it must: “*provide as many of the services on the accepted IEP as possible and shall immediately inform the parent in writing of any delayed services, reasons for delay, actions that the school district is taking to address the lack of space or personnel and shall offer alternative methods to meet the goals on the accepted IEP...*”

As this regulation relates to monitors, the District becomes subject to this obligation once it becomes aware that a student will not have a designated monitor on one or both of their daily routes. According to the District’s Local Report, it is not the District’s practice to do this. Instead, the District reported that its practice is to wait to see if a route would be covered by a stand-by monitor on a day-by-day basis once routes are set each morning and each afternoon and then notify families for whom no stand-by monitor is available on a particular day. The District reported that it has adopted this process because, on any given day, a student or route without a designated monitor might be covered by a stand-by monitor, thus making a notification of a gap in service unnecessary.

The District provides these daily notifications using the same School Messenger platform it uses for all students – with and without disabilities – when there is an interruption in transportation services for reasons such as uncovered bus routes, heavy traffic, inclement weather, and other operational issues. School Messenger operates via automated phone calls and text using the contact information and language preferences in Aspen.

The Department reviewed the scripts for the automated phone calls and text messages related to routes impacted by a driver or monitor vacancy. These transmissions alert families to the lack of available personnel, state that the District is working on resolving the problem, and provide contact information if families have questions. If the District subsequently locates personnel, it notifies families via a second automated phone call or text message stating that personnel has been located, advising that the bus may be delayed, and providing a link and phone number by which the families can track the bus. This notification process does not appear to include a communication for situations in which the District has already notified the family that they are seeking to fill a personnel gap for that particular day but are then unable to fill it. Additionally, the messages lack information about actions the District is taking to address the lack of personnel, and offer alternative methods to meet the goals on the accepted IEP.

**The Department finds that the District did not comply with the notification requirements in 603 CMR 28.06(2)(d)(2) on a system-wide basis because it did not consistently immediately inform parents in writing of any delayed services, reasons for the delay, and actions the District is taking to address the lack of transportation services and alternative methods to meet the goals on the accepted IEPs.**

Based upon the information reviewed during this investigation, it is evident to the Department that families of Transportation-eligible Students in the District are at times left with the burden of transporting or arranging for transportation of their children if they want them to attend school. When students are entitled to transportation services under their IEPs, it is the responsibility of the school district (and not the families) to provide such transportation services. Indeed, the Department’s regulations specify that “no parent shall be obligated to provide such

transportation.” 603 CMR 28.07(6). If a parent provides “transportation to an eligible student requiring special transportation consistent with the requirements of 603 CMR 28.05(5)(b), the school district shall reimburse such parent the prevailing rate per mile for state employees.” 603 CMR 28.07(6).

The District’s process for parents to seek reimbursement for transportation is described on its website, which contains links to instructions and reimbursement forms in 11 languages. A family must create a new City of Boston vendor account or log into an existing account from a previous transportation reimbursement. If a family is unable to register through this online process, the District reported that it will accept a W-9 form. For each reimbursement request, the family must complete a form and attach backup documentation, such as Uber/Lyft receipts. The family must then email the documents to the District’s website.

The Complainants alleged that it can take months for a family to receive reimbursement for out-of-pocket transportation expenses. In its Local Report, the District estimated that the typical length of time between a parent request for reimbursement and the receipt of the reimbursement is between three weeks and a month. The Department’s review of a sample of ten requests for reimbursements showed that five out of ten requests were paid within two weeks; one was paid within five weeks; four requests were outstanding, with three of those four still within a three-week window of the request.

One limitation of this reimbursement procedure is that a social security number or tax identification number is required for reimbursement. According to the District, this is due to Internal Revenue Service requirements for how city funds may be used. Also, according to the District, there is a prohibition against using methods such as gift cards as an alternate means of reimbursement.

During this investigation, it was not evident to the Department that all families who end up providing transportation to Transportation-eligible Students due to the District’s failure to do so are informed or aware of the process for obtaining reimbursement. The Department notes that this information is not included in the daily automated phone calls and texts. Moreover, the District’s current process does not account for the fact that some families of Transportation-eligible Students may not be able to pay for the cost of transportation that should have been provided by the District free of charge and wait for reimbursement.

In its Local Report, the District stated that it is seeking alternative methods to address issues relating to reimbursement. Among their reported efforts are ongoing negotiations with a rideshare company that would allow BPS employees to dispatch rideshare vehicles that would not require a family to incur out-of-pocket expenses. In the meantime, the District encourages families who cannot be reimbursed through the existing process to contact the Office of Special Education and/or the Office of the Legal Advisor.

**The District did not comply with 603 CMR 28.07(6) and G.L. c. 71B, § 5.**

## **V. Additional Allegations**

In their response to the District's Local Report, the Complainants alleged that the failures in the District's transportation system have a disproportionate impact on certain groups of Boston Public School students and that such a disproportionate impact violates a variety of laws, including but not limited to Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and Title VI of the Civil Rights Act of 1964. The Department notes that these detailed allegations were not a part of the original complaint, and the Complainants may raise these concerns to the primary enforcement agencies for those laws, such as the U.S. Department of Education, Office for Civil Rights, which has the primary enforcement authority for Section 504.

Similarly, in their response to the District's Local Report, the Complainants for the first time raised allegations relating to certain state requirements. Since those allegations were not included in the original complaint, the Complainants may submit a separate complaint to PRS relating to them so that the District has an opportunity to respond to them.

## **VI. Conclusions**

As described in detail above, the Department has determined that the District has not complied with certain requirements, such as G.L. c. 71B, §§ 3, 5; 603 CMR 28.05(7)(b); 603 CMR 28.06(8); 603 CMR 28.07(6); and 34 C.F.R. § 300.34. The District also failed to comply with 20 U.S.C. § 1401(9) and 34 C.F.R. § 300.101(a) for at least some students with disabilities. The findings in the preceding sections of this letter indicate that the District did comply with some of its obligations under federal and state requirements. Given the extent of the issues involved, the Department has summarized here its findings of noncompliance. In summary, the Department's investigation found that the District:

- At times failed on a system-wide basis to provide transportation or on-time transportation to students with disabilities whose IEPs required the provision of transportation.
- Failed on a system-wide basis to consistently provide accommodations (such as 1:1 monitors) to Transportation-eligible Students whose IEPs required them.
- Failed to provide a Free Appropriate Public Education to at least some students with disabilities whose IEPs required the provision of transportation.
- Failed to provide students Ali and Ahmed Doe with transportation from the start of the 2022-2023 school year until October 31, 2022.
- Failed to provide Ali and Ahmed Doe with a Free Appropriate Public Education from the start of the 2022-2023 school year until October 31, 2022.
- Failed to provide Ellie Doe with transportation services between September 28, 2022 and October 14, 2022.
- Failed to provide Julia Doe with reliable transportation services between the start of the 2022-2023 school year and October 31, 2022.
- Failed to provide Daniel Doe morning and afternoon transportation between September 20, 2022 and September 27, 2022 and afternoon transportation on September 28, 2022 and October 5, 2022.

- Failed on a system-wide basis to provide transportation personnel with written information that includes the nature of the need or problem that may cause difficulties for a student receiving special transportation and information on appropriate emergency measures that may be necessary.
- Failed on a system-wide basis to provide adequate training to transportation personnel regarding individual students' needs.
- Failed to provide Ahmed Doe's 1:1 monitor with information specific to his needs.
- Failed to train or ensure that its third-party contractors trained the transportation personnel working with Ellie Doe.
- Failed to train, or ensure the school trained, the transportation personnel working with Julia Doe regarding her individual needs and failed to ensure the monitor on-board was able to communicate with Julia's mother regarding whether Julia had a seizure while on the bus.
- Upon learning that there were no designated monitors for specific students, failed on a system-wide basis to immediately inform the parents of those students in writing of any delayed services, reasons for delay, actions it was taking to address the lack of space or personnel, and offer alternative methods to meet the goals on the accepted IEP.
- Upon learning that there would be no designated monitor for Ali and Ahmed, failed to immediately inform their parents in writing of any delayed services, reasons for delay, actions it was taking to address the lack of personnel, and offer alternative methods to meet the goals on the accepted IEP. Further, the alternative way the District attempted to meet the notification requirement on a day-to-day basis did not include that information.
- Upon learning that there was no transportation for Ellie Doe, it failed to immediately inform her parents in writing of any delayed services, reasons for delay, actions it was taking to address the lack of personnel and offer alternative methods to meet the goals on the accepted IEP.
- Upon learning that there was no designated monitor for Julia Doe, it failed to immediately inform her mother in writing of any delayed services, reasons for delay, actions it was taking to address the lack of personnel and offer alternative methods to meet the goals on the accepted IEP.
- Upon learning that there was no designated afternoon monitor for Joshua Doe, it failed to immediately inform his mother in writing of any delayed services, reasons for delay, actions it was taking to address the lack of personnel and offer alternative methods to meet the goals on the accepted IEP.
- Failed to notify Daniel Doe's mother that the student would not have transportation on September 20, 2022 and when it notified Ms. Doe on September 21, 2022 of the delay in transportation services, the notifications did not include information related to actions it was taking to address the lack of transportation services or provide alternative methods to meet the goals on his accepted IEP.
- By relying on families to transport their children, failed on a system-wide basis to consistently pay for transportation services necessary for Transportation-eligible Students to benefit from special education.
- Lacked a readily accessible process on a system-wide basis that would allow all families to receive reimbursement of transportation expenses they incurred due to the District's failure to provide IEP-required transportation services.
- Failed on a system-wide basis to reimburse families for out-of-pocket expenses they incurred due to lack of district-provided transportation in a timely manner.

- Failed to reimburse Ali and Ahmed Doe’s family for expenses incurred in transporting their children to and from school due to the District’s failure to provide the required transportation.

## **VII. Corrective Actions That Must Be Implemented by the District**

### **A. District-Wide Corrective Actions**

#### **Implementation of a Manager of Special Education Transportation Compliance**

The District must hire a full-time manager of special education transportation compliance **as soon as practicable but no later than a July 1, 2023 start date**, who will report directly to the Superintendent. That individual will be responsible for assessing and reporting on the District’s compliance with its special education transportation obligations, including the District’s timely compliance with the Corrective Action Plan set forth below, and serving as the primary point of contact. The manager of special education transportation compliance will provide monthly progress reports to the Department detailing the District’s progress on the specific items below in the Corrective Action Plan. Until the manager of special education transportation compliance is hired, the District must designate a staff member who will coordinate the implementation of the Corrective Action Plan and serve as the primary point of contact.

#### **Detailed Proposed Corrective Action Plan to Remedy Identified Non-Compliance**

The District must submit to the Department for its review and approval a two-part, detailed Corrective Action Plan. The plan must outline the steps that the District is proposing to take to remedy its non-compliance in each of the areas identified in this letter. The proposed plan must also identify the specific District personnel responsible, in addition to the manager of special education transportation compliance, for the implementation of each component of the proposed plan and the dates by which the District will complete each component. The District must correct the identified noncompliance as soon as possible.

Part I of the District’s plan must at a minimum address the following components and must be submitted to the Department for its review and approval **no later than March 15, 2023**:

- i. Parental Notification and Reimbursement Process*
  - a. Description of the process the District will use to identify and reimburse parents who may have had to provide transportation to their students with disabilities any time between October 17, 2021 and October 17, 2022 due to the District’s failure to provide the required IEP transportation services.
  - b. The draft written notification form that the District will send to parents of all students with disabilities who were entitled to transportation as a related service under their IEPs any time between October 17, 2021 and October 17, 2022. The draft written notification must explain that the parents may be eligible for reimbursement if they provided or arranged for the provision of transportation any time between October 17, 2021 and October 17, 2022 due to the District’s failure to provide the transportation services required under

the students' IEPs. The draft written notification must also include how parents who may not have a social security number or a tax identification number will be able to obtain reimbursement.

**ii. *Process for Obtaining Compensatory Services***

- a. Description of the process that the District will use to provide students with disabilities who were not provided IEP-required transportation services any time between October 17, 2021 and October 17, 2022 with compensatory services that the students' IEP Teams may determine are needed, including the proposed guidelines that will be provided by the District to IEP Teams for making such determinations and the timeline by which such determinations will be made by IEP Teams.
- b. The draft written notification form that the District will send to parents regarding potential compensatory services referenced above.

**iii. *Training***

- a. Description of the District's plan for training Coordinators of Special Education and members of the Transportation Department regarding the District's obligations under state and federal laws and regulations to provide transportation services to Transportation-eligible students, the District's processes and expectations for monitoring provision of transportation services, including any required accommodations, for Transportation-eligible students, and promptly addressing any transportation services missed as a result of the District's failure to provide transportation services including the potential need for compensatory services.
- b. Description of the District's plan for providing "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" and "an in-service training program for transportation providers. Such 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."
- c. Description of the District's plan for training building staff who record attendance on the importance and methods of ensuring bus/transportation is entered as a reason for absent and tardy when appropriate.

**iv. *Timely and Adequate Communication***

- a. Description of the process that the District will use to timely comply with the notification requirements in 603 CMR 28.06(2)(d)(2), including the specific methods the District will use to communicate such notification to parents and the timelines it plans to use for all such communications.
- b. The draft written notification form that the District will provide to parents of Transportation-eligible students that meets the requirements in 603 CMR 28.06(2)(d)(2).
- c. The draft written notifications must be in simple and commonly understood words and must be provided to impacted parents in both English and the primary language of the home, if such primary language is other than English.

Part II of the District's plan must at a minimum address the following components and must be submitted to the Department **no later than May 15, 2023**:

**v. *Future Provision of Transportation Services***

- a. The District's step-by-step plan for addressing uncovered routes that impact Transportation-eligible students, which shall go beyond the District's current efforts.
- b. The District's step-by-step plan for addressing the lack of qualified bus monitors that impact Transportation-eligible students, which shall go beyond the District's current efforts.
- c. The District's step-by-step plan for making readily available to parents of Transportation-eligible students backup transportation coverage at no cost when there is a route that is lacking a driver or a required monitor, which shall go beyond the District's current efforts.
- d. The District's plan for making more readily accessible information to parents of Transportation-eligible students about reimbursement, including prominently displaying such information on the transportation section of the District's website.
- e. The District's plan for assisting parents with more quickly obtaining reimbursement in instances where the District fails to provide IEP-required transportation services and the parent provides or arranges for the provision of such services instead, including reimbursement for parents who may not have a social security number or a tax identification number.

**vi. *Transportation Data Tracking and Review***

- a. Description of the process that the District will use to track and review the provision of IEP-required transportation services to all Transportation-eligible students. At a minimum, such a process must include: (1) recording of information in the District's student management database of any instances in which a Transportation-eligible student is absent or tardy



due to the District's lack or delay in provision of transportation services; (2) recording of information relating to all transportation services, including bus monitors, accommodations, and modifications, that each Transportation-eligible student is entitled to under the terms of their IEP; any dates on which such services are not provided; the reasons for lack of provision of such services; and any steps taken to remedy the lack of provision of such services; (3) regular review of transportation data and transportation tickets as needed, but no less than once per month.

- b. Description of the process that the District will use to track and verify its compliance with 603 CMR 28.06(8)(b) and (c), which require that it provides "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" and "an in-service training program for transportation providers. Such 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."
- c. Description of the process that the District will use to track how transportation related issues received by its transportation helpline or portal are addressed.

### **Additional Documentation to be Submitted to the Department**

- i. By **March 15, 2023** the District must submit to the Department a copy of sample written notifications provided to parents of all Transportation-eligible students District-wide relating to reimbursement and compensatory services as mentioned above.
- ii. By **March 15, 2023**, the District must submit to the Department a list of all Transportation-eligible students District-wide whose parents were provided with written notification relating to reimbursement and compensatory services.
- iii. By **May 26, 2023**, the District must submit to the Department a list of all District-wide Transportation-eligible students whose parents claimed reimbursement by April 14, 2023, and whether reimbursement was provided.
- iv. By **June 30, 2023**, the District must submit to the Department a list of Transportation-eligible students whose IEP Teams determined whether compensatory services were warranted and whether the parties executed an agreement. In all instances in which the IEP Team could not reach agreement as to the amount of compensatory services to be provided, the District must include a summary of the District's offer of services and the parent's request.
- v. By **September 15, 2023**, the District must submit to the Department a list of transportation providers for Transportation-eligible students indicating when the transportation provider received the information, training, and professional development required by 603 CMR 28.06(8)(b) and (c). For each transportation

provider identified as having received the required information, training, and professional development, please provide the dates of training, the name of the trainer, topics covered, materials used, and attendance sheets.

- vi. **By March 15, 2023**, the District must submit to the Department evidence that the District provided to transportation personnel information on the nature of any need or problem that may cause difficulties for specific students to whom they provide transportation services including information on appropriate emergency measures that may be necessary. This must include personnel on Vendor-operated routes and personnel providing transportation services pursuant to a contract with a different vendor.
- vii. **By April 14, 2023**, the District must submit to the Department a list of Coordinators of Special Education and members of the Transportation Department indicating whether they received the training required in this letter, the dates of training, the name of the trainer, topics covered, materials used, and attendance sheets.
- viii. **By September 15, 2023**, the District must submit to the Department list of building staff from each school who were trained about recording attendance and the importance of recording if a student is absent or tardy due to transportation related issues, including the dates of training, the name of the trainer, topics covered, materials used, and attendance sheets.

## **B. Student-Specific Corrective Actions**

### *i. Ali and Ahmed Doe*

- The District must arrange for reimbursement at the state rate of round trip transportation for the dates that parent was required to transport Ali and Ahmed Doe to and from school between the start of the 2022-2023 school year and October 17, 2022 due to the District's failure to provide required IEP transportation services. Provide the Department with the list of dates identified and evidence of parent reimbursement by **March 31, 2023**.
- The District must reconvene Ali and Ahmed Doe's IEP Teams to determine whether Ali and Ahmed Doe may need compensatory services due to the District's failure to provide required IEP transportation services between the start of the 2022-2023 school year and October 31, 2022. **By March 15, 2023**, the District must submit to the Department the IEP Team meeting invitation.
- **By March 31, 2023**, the District must submit to the Department the IEP Team attendance sheet and meeting notes, as well as a copy of the signed Compensatory Services Agreement, if any, with a statement of assurance to the Department of the agreement's implementation.
- **By March 31, 2023**, if the IEP Team is unable to agree as to whether compensatory services are due or the amount of compensatory services to be provided to Ali and Ahmed Doe, the District must submit to the Department its proposal for compensatory services, if any, and the basis for its submission. Similarly, Complainant may submit to the Department any relevant information regarding the potential compensatory services **by March 31**,

**2023**, including the basis for Complainant's compensatory services proposal. The Department will review the information submitted and specify if any compensatory services are due and the amount of compensatory services to be provided by the District. **Please submit the proposals to PRSCAP@doe.mass.edu.**

*ii. Ellie Doe*

- The District must reconvene Ellie's IEP Team to determine whether Ellie may need compensatory services due to the District's failure to provide required IEP transportation services. **By March 15, 2023**, the District must submit to the Department the IEP Team meeting invitation.
- **By March 31, 2023**, the District must submit to the Department the IEP Team meeting invitation, attendance sheet, and meeting notes, as well as a copy of the signed Compensatory Services Agreement, if any, with a statement of assurance to the Department of the agreement's implementation.
- **By March 31, 2023**, if the IEP Team is unable to agree as to whether compensatory services are due or the amount of compensatory services to be provided to Ellie, the District must submit to the Department its proposal for compensatory services, if any, and the basis for its submission. Similarly, Complainant may submit to the Department any relevant information regarding the potential compensatory services **by March 31, 2023**, including the basis for Complainant's compensatory services proposal. The Department will review the information submitted and specify if any compensatory services are due and the amount of compensatory services to be provided by the District. **Please submit the proposals to PRSCAP@doe.mass.edu.**
- **By March 15, 2023**, the District must submit to the Department evidence that the District provided information to the contracted transportation vendor on the nature of any need or problem that may cause difficulties for Ellie and on appropriate emergency measures that may be necessary.
- **By April 14, 2023**, the District will provide the Department with copies of written documentation reflecting an agreement between District and their contracted transportation provider confirming Ellie Doe's driver and monitor have or will receive the necessary general and student-specific training required as part of Ellie Doe's transportation services.
  - **By May 26, 2023**, the District will provide the Department with a copy of the training documentation including the materials used, name and credentials of the person/agency facilitating the training, and the signed attendance sheet from the training.

*iii. Julia Doe*

- **By March 15, 2023**, the District must identify the dates that Julia Doe did not receive her IEP-required transportation services between the start of the 2022-2023 school year and October 17, 2022. The District must arrange for reimbursement, at the state rate, of round trips for the dates that parent was

required to transport Julia Doe to school. Provide the Department with the list of dates identified **March 15, 2023**.

- The District must reconvene Julia’s IEP Team to determine whether Julia may need compensatory services due to the District’s failure to provide required IEP transportation services. **By March 15, 2023**, the District must submit to the Department the IEP Team meeting invitation.
- **By March 31, 2023**, the District must submit to the Department the IEP Team meeting attendance sheet and meeting notes, as well as a copy of the signed Compensatory Services Agreement, if any, with a statement of assurance to the Department of the agreement’s implementation.
- **By March 31, 2023**, if the IEP Team is unable to agree as to whether compensatory services are due or the amount of compensatory services to be provided to Julia, the District must submit to the Department its proposal for compensatory services, if any, and the basis for its submission. Similarly, Complainant may submit to the Department any relevant information regarding the potential compensatory services **by March 31, 2023**, including the basis for Complainant’s compensatory services proposal. The Department will review the information submitted and specify if any compensatory services are due and the amount of compensatory services to be provided by the District. **Please submit the proposals to PRSCAP@doe.mass.edu.**
- **By March 15, 2023**, the District must submit to the Department evidence that the District provided information to Julia’s transportation providers on the nature of any need or problem that may cause difficulties for her and on appropriate emergency measures that may be necessary.

*iv. Joshua Doe*

- **By March 15, 2023**, the District must identify the dates that Joshua Doe did not receive his IEP-required transportation services between the Summer 2022 ESY program and October 17, 2022. The District must arrange for reimbursement, at the state rate, of round trips for the dates that parent transported Joshua to and from school. Provide the Department with the list of dates identified and evidence of parent reimbursement by **April 14, 2023**.
- The District must reconvene Joshua’s IEP Team to determine whether Joshua may need compensatory services due to the District’s failure to provide required IEP transportation services. **By March 15, 2023**, the District must submit to the Department the IEP Team meeting invitation.
- **By March 31, 2023**, the District must submit to the Department the IEP Team meeting attendance sheet and meeting notes, as well as a copy of the signed Compensatory Services Agreement, if any, with a statement of assurance to the Department of the agreement’s implementation.
- **By March 31, 2023**, if the IEP Team is unable to agree as to whether compensatory services are due or the amount of compensatory services to be provided to Joshua, the District must submit to the Department its proposal for compensatory services, if any, and the basis for its submission. Similarly, Complainant may submit to the Department any relevant information

regarding the potential compensatory services **by March 31, 2023**, including the basis for Complainant's compensatory services proposal. The Department will review the information submitted and specify if any compensatory services are due and the amount of compensatory services to be provided by the District. **Please submit the proposals to PRSCAP@doe.mass.edu.**

- **By March 15, 2023**, the District must submit to the Department evidence that the District provided information to Joshua Doe's transportation providers on the nature of any need or problem that may cause difficulties for Joshua and on appropriate emergency measures that may be necessary.

*v. Daniel Doe*

- **By March 15, 2023**, the District must provide the Department with documentation showing that it has provided the compensatory services already agreed-to by the District or describing the plan for the provision of such compensatory services. The documentation must show a schedule of when the services were or will be provided, as well as a start and end date for provision of the compensatory services.

Please provide the Department with the required Corrective Action Report pursuant to these findings **no later than the dates specified above**. Please provide the Corrective Action Report to [PRSCAP@mass.gov](mailto:PRSCAP@mass.gov). A standard response form is enclosed for your use in responding to this request. **A copy of your Report must also be sent to the persons who registered this complaint, but do not disclose personally identifiable information concerning other students in your report to the Complainants.**

The determinations in this letter represent the Department's interpretation of the relevant legal requirements in the context of the facts presented. The conclusions reached in this letter do not establish a policy, rule, or precedent that would apply in all circumstances. Also note that for matters related to special education the parties may seek mediation and/or a hearing through the Bureau of Special Education Appeals (BSEA) on the same issues addressed in this letter. Such a hearing, however, is a new proceeding and is not for the purposes of reviewing the Department's decision in this matter. Any order or decision issued by the BSEA on the issues raised in this complaint would be binding.

I would be pleased to provide further clarification of all information and requirements noted above if you find it necessary. Please email [rachel.e.rosen@mass.gov](mailto:rachel.e.rosen@mass.gov) or call (781) 338-3760.

Sincerely,

*Rachel Rosen*

Rachel Rosen, PRS Specialist  
Problem Resolution System Office

*Stacey Hayes*

Stacey M. Hayes, PRS Supervisor  
Problem Resolution System Office

CC:

Lauren Viviani – Director of Special Education  
Andreina Ferreira – BPS Coordinator  
Greater Boston Legal Services – Complainant  
Massachusetts Advocates for Children – Complainant

Enclosure:  
Response Form

**MASSACHUSETTS DEPARTMENT OF  
ELEMENTARY AND SECONDARY EDUCATION  
Problem Resolution System**

**School District: Boston Public Schools**

**CORRECTIVE ACTION REPORT  
In Response to Intake PRS 7993**

District-Wide Complaint: Special Education Transportation

Response Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

The Corrective Action Report **must include a statement of assurance of the steps taken, or to be taken, to remedy the identified noncompliance issues**, any plan of compensatory services offered, together with completion date(s), persons responsible and copies of information documenting implementation of the Corrective Action.

**A copy of this Corrective Action Report must be sent to the person registering this complaint, but do not disclose personally identifiable information concerning students in your report to the Complainants.**

**This District's Corrective Action Report was sent to the complainant on (date) \_\_\_\_\_**  
Page \_\_\_\_ of \_\_\_\_

