

**BEFORE THE UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF CIVIL RIGHTS**

A, and Parent of A; B, and Parent of B; C, and Parent of C; D, and Parent of D; E, and Parent of E; F, and Parent of F; G, and Parent of G; H, and Parent of H; I, and Parent of I; J, and Parent of J; K, and Parent of K; L, and Parent of L; M, and Parent of M; N, and Parent of N; O, and Parent of O; P, and Parent of P; Q, and Parent of Q; The Citywide Council on Special Education; Parents to Improve School Transportation New York City; Timon Family Services; and The Education Council Consortium,

Complainants,

-against-

New York City Department of Education,

Respondent.

COMPLAINT

The undersigned not-for-profit legal organizations, along with individual complainants; the Citywide Council on Special Education; Parents to Improve School Transportation New York City; Timon Family Services; and the Education Council Consortium, bring this disability civil rights complaint against the New York City Department of Education (“DOE”).¹

1. INTRODUCTION

The complainants allege that the New York City DOE² has engaged in ongoing systemic policies and practices that violate Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and the Individuals with Disabilities Education Act (“IDEA”) by, *inter alia*, failing to provide students with mandated services and accommodations, depriving them of access to appropriate educational programs on the basis of disability, and creating harmful policies and practices which disparately impact students with disabilities.

¹ To protect and preserve the confidentiality of the minor children, names of students and parents are replaced by pseudonyms throughout. OCR will be provided with signed consent forms for the individual clients under separate cover.

² It appears that the DOE has recently begun partially renaming itself “New York City Public Schools.” See, e.g., <https://www.schools.nyc.gov/>. However, given that this name change has not been officially announced, this complaint will continue to refer to the “DOE.”

Mobilization for Justice (“MFJ”) represents seven of the individual complainants. MFJ envisions a society in which there is equal justice for all. MFJ prioritizes the needs of people who are low-income, disenfranchised, or have disabilities as they struggle to overcome the effects of social injustice and systemic racism. It provides the highest-quality free, direct civil legal assistance, conducts community education, and builds partnerships, engages in policy advocacy, and brings impact litigation. MFJ also promotes diversity, equity, and inclusion in our workplace, and understands the need to eliminate all racial disparities to achieve justice for all.

New York Legal Assistance Group (NYLAG) represents three of the individual complainants. NYLAG is a free civil legal services organization advocating for adults, children, and families experiencing poverty. NYLAG uses the power of the law to help New Yorkers in crisis combat economic, racial, and social injustice. NYLAG addresses emerging and urgent legal needs with comprehensive, free civil legal services, direct representation, impact litigation, policy advocacy, financial counseling, and community education. The Special Education Unit provides free legal services to ensure that low-income children with disabilities receive the free appropriate public education they are entitled to under law.

Legal Services New York City (LSNYC) represents four of the individual complainants. LSNYC is the largest provider of civil legal services in New York City. With offices in all five boroughs, we are dedicated to seeking racial, social, and economic justice for marginalized and low-income New Yorkers. Over the course of fifty years, LSNYC has challenged systemic injustice and helped clients meet their basic needs for housing, access to high quality education, health care, family stability, and income and economic security. Our education advocates work to improve educational access and outcomes for the students and families we serve. Through our direct services and community collaborations we also identify and address systemic inequities in education, including systemic racism and other discrimination.

The organizational complainants consist of the Citywide Council on Special Education, Parents to Improve School Transportation, Timon Family Services, and the Education Council Consortium:

- The Citywide Council on Special Education (CCSE) is comprised of eleven voting members: nine elected parents of students with IEPs and two Public Advocate Appointees. Additionally, there are two non-voting members of the CCSE: a high school senior with an IEP and a CCSE appointee who sits on the Citywide Council on High Schools. Our council is responsible for advisement, advocacy and parent engagement for all students with IEPs in New York City. The Council is also responsible for submitting an annual report on the state of Special Education in New York City and makes recommendations for improvement. In the 2021-2023 term the CCSE established a Busing and Transportation committee that ran a survey of parents’ busing issues and provided extensive advocacy in the resolution of consistent busing problems experienced by our school families.
- Parents to Improve School Transportation (PIST) NYC is a volunteer group of parents and other caregivers of New York City students who ride yellow school buses. For more

than a decade, the group has been organizing for safer, shorter, sensible, sustainable school bus routes for all children.

- Timon Family Services, Inc., is an organization whose purpose is to help and guide families who immigrate to New York and the Spanish-speaking community on how to navigate the system and what their rights are. The organization helps identify opportunities for education and services for children with special needs and for the community at large.
- The Education Council Consortium (ECC) seeks a New York City public school system that is equitable, inclusive, antiracist and free of all forms of oppression and that provides an appropriate and humane education for all students in New York City. The mission of ECC is to develop and support NYC public school parent leadership through education, networking, and organizing.

Complainants allege that the New York City Department of Education engages in policies and practices which violate students' rights under Section 504, the ADA, and the IDEA, including but not limited to:

- The DOE discriminates against students with disabilities by failing to provide legally required transportation services, such as bus paraprofessionals, bus porter services, and the like;
- The DOE discriminates against students with disabilities by failing to provide IEP-mandated and otherwise necessary transportation accommodations, including but not limited to: limited travel time ("LTT"); nursing; air conditioning; preferential seating; and/or door-to-door (or "curb-to-school") busing; and
- The DOE discriminates against students with disabilities by failing to ensure students with disabilities receive transportation accommodations that permit students to avoid loss of instructional time and to avoid loss of access to educational programs by arriving to school via school bus on time;
- The DOE discriminates against students with disabilities by subjecting them to exceptionally and unreasonably long transit times on school buses, causing emotional and physical distress and other harm to those students and their families, including exacerbating conditions caused by students' underlying disabilities;
- The DOE discriminates against students with disabilities by failing to keep their families reasonably apprised of serious delays in assigning busing routes, extraordinary delays in arrival times at school each day, and other issues;
- The DOE discriminates against students with disabilities by depriving them of an opportunity to participate in DOE-sponsored afterschool activities (athletics, extracurricular clubs, etc.), given policies preventing bus and transportation paraprofessionals from being available for students with disabilities who require these

transportation services and accommodations after school dismissal, and related DOE policy issues;

- The DOE discriminates against students with disabilities by failing to ensure that every bus driver, bus matron, transportation paraprofessional, and other adult tasked with implementing IEP-mandated services and transportation accommodations receive training and resources to refrain from verbal and physical abuse, threats, and other inappropriate conduct and that they act towards students in a professional, safe, and respectful manner, since students with disabilities are disproportionately subjected to, and more adversely impacted by, such illegal, aggressive, and inappropriate conduct.

The complainants submit that these violations have resulted in a denial of educational access and/or services by the DOE to students with disabilities.

2. NEW YORK CITY DEPARTMENT OF EDUCATION TRANSPORTATION MANAGEMENT AND POLICIES HAVE AN ADVERSE, DISPARATE IMPACT ON STUDENTS WITH DISABILITIES

Students with disabilities represent the largest percentage of school bus riders. They receive a disproportionately high percentage of busing services and transportation accommodations. As such, they are disparately harmed by DOE busing policies and issues. Specifically, as discussed below, 65 percent of students who receive busing are students with disabilities, while only 35 percent of students who receive busing are not students with disabilities. As such, nearly twice as many students who receive DOE busing identify as students with disabilities. Furthermore, given that only students with disabilities can receive individual education programs (IEPs), upon information and belief, nearly all students in the DOE who receive transportation accommodations identify as students with disabilities.

The New York City Department of Education (DOE) is the nation’s largest school district. It currently operates 1,867 schools with a total enrollment of 1,047,895 students.³ Of these students, 20.9 percent—or roughly 219,010 students—have been identified as students with disabilities.⁴ As of November 2022, 150,000 DOE students ride school buses each day.⁵ Approximately 65 percent of these 150,000 DOE students who rely on school buses—or roughly 97,500 DOE students—have disabilities.⁶

The DOE’s Office of Pupil Transportation (OPT) oversees all aspects of DOE busing. OPT contracts with 41 separate private companies for transportation of K-12 DOE students.⁷ OPT

³ New York City Department of Education (DOE), “DOE Data at a Glance,” <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance>. Note that the New York State Education Department reports the DOE’s enrollment as slightly lower, at 957,438 students. <https://data.nysed.gov/profile.php?instid=7889678368>

⁴ *Id.*

⁵ WABC-TV (ABC-7-NY), “New York City Council holds hearing on issues with school bus transportation” (Nov. 21, 2022), <https://abc7ny.com/nyc-bus-transportation-issues/12478329/>.

⁶ *Id.*

⁷ New York City Department of Education (DOE), “Bus Companies for School-Age Children,” <https://www.schools.nyc.gov/school-life/transportation/bus-companies-for-school-age-children>.

also contracts with 17 companies (some of whom also provide K-12 transportation) for transportation of pre-K and Early Intervention students.⁸ Given the multiplicity of actors in the DOE’s busing scheme—OPT, the private companies, a child’s school, and the DOE’s 10 Committees on Special Education (CSEs) overseeing all special education issues for the DOE’s 30 geographical districts—parents of students with disabilities are at a loss regarding who to contact when something goes wrong. Parents of students with disabilities have reported being forced into an endless loop of redirection: after calling OPT to learn what route their child is on, for instance, they may be told to call the school, and vice versa; other times, OPT may instruct parents of students with disabilities to speak with the private bus company, the school, or others.

The ways the DOE has offered to resolve the ongoing busing issues remain woefully insufficient for the vast majority of families of students with disabilities. For instance, rather than fixing the constant busing issues, the DOE has instead offered to pay families’ fares for rideshare services provided by companies such as Uber or Lyft in some instances.⁹ However, these options require parents of young children with disabilities to take time off from work to accompany their child. They also may require a parent of a student with a disability to travel all the way to a child’s school at pickup time, just to accompany them on a rideshare back home. Parents of students with disabilities have become so desperate that at least one private company, Special Needs Logistics, was created specifically due to busing delays for students with disabilities.¹⁰ However, in order for families to access the services of Special Needs Logistics, they have historically had to seek funding through the impartial hearing process, which can be lengthy, time consuming, and expensive in and of itself if the family does not have access to pro bono legal assistance.

Students with disabilities who attend state-approved non-public schools (NPSes) or independent private specialized schools for students with disabilities, which may be located anywhere in New York State, face even more horrific busing delays. One student who attends the Lexington School for the Deaf, spent six hours *on one morning trip* (i.e., not round-trip) on a school bus in October 2022.¹¹ While he usually arrived at school late at 10:30 a.m. (“only” two and a half hours late), he did not arrive that day until 1:40 pm, near the end of the day. Countless other parents of students with disabilities have reported similar busing “horror stories.”

Students with disabilities are entitled to transportation services and accommodations consistent with their needs. These transportation options are added to a student’s Individualized Educational Program (IEP). An IEP is a legally required document pursuant to the IDEA for every student with a disability which enumerates, *inter alia*, the special education program

⁸ New York City Department of Education (DOE), “Pre-K and Early Intervention Bus Companies,” <https://www.schools.nyc.gov/school-life/transportation/pre-k-and-early-intervention-bus-companies>.

⁹ Amanda Geduld, “How NYC’s school bus delays help drive chronic absenteeism and missed learning for students with disabilities” (March 15, 2023), <https://ny.chalkbeat.org/2023/3/15/23630378/nyc-schools-students-with-disabilities-bus-delays-chronic-absenteeism>.

¹⁰ Special Needs Logistics, <https://specialneedslogistics.com/>: “We Wait to be Paid, So Parents No Longer Have To.”

¹¹ Geduld, <https://ny.chalkbeat.org/2023/3/15/23630378/nyc-schools-students-with-disabilities-bus-delays-chronic-absenteeism>.

and services the student must receive in order to obtain an appropriate education.¹²

The undersigned attorneys and complainants wish to emphasize that the accommodations which a student with a disability is entitled to receive depend on the unique, individualized needs of the child. No list of transportation accommodations can fully capture the complete spectrum of possible needs of a student with a disability. However, for the sake of clarity, the undersigned attorneys and complainants include below a list of many common transportation services and accommodations that the DOE lists internally as possible options:

- (1) Curb-to-school (also known as “curb-to-curb”) busing. Students with curb-to-school busing are picked up by a yellow school bus at the safest sidewalk curb nearest to their home. They are dropped off at school. During afternoons, these students are dropped off at the same curb where pickup took place.
- (2) Transportation paraprofessionals. A transportation paraprofessional provides full-time, individualized support to a single student with a disability. This paraprofessional is crucial for ensuring the student does not experience a medical emergency, behavioral dysregulation, or other incidents which might jeopardize their safe travel to and from school.
- (3) Limited travel time. Students who travel for more than a reasonable amount of time on a school bus may be entitled to a limited travel time (“LTT”) accommodation. LTT busing generally means that the DOE must modify the student’s busing route in order to ensure that the student can travel to school within this required time threshold.
- (4) Medical/nursing services. Students with acute medical needs (for example, cystic fibrosis) who require additional health interventions may require a nurse to travel with them on the school bus.
- (5) Specialized transportation assistant services (“porter services”). Students who have a mobility impairment and reside in a building that is not accessible may require the assistance of a school porter. This adult ensures that a child can safely travel from the home to the school bus and back.
- (6) Air conditioning. Students with certain health needs, such as asthma, require air conditioning on all buses and transportation services.

Unfortunately, serious issues have plagued the DOE’s provision of these transportation services to students with disabilities for years. As far back as 2011, transportation advocates have decried the DOE’s decisions to consolidate bus routes, leading to longer times in transit; to require additional documentation for many accommodations, making it more difficult for parents of students with disabilities to access them; to group students from multiple schools into one single route for financial reasons, rather than putting the needs of students with disabilities first; and other DOE decisions regarding busing.¹³

¹² An IEP is not technically required for a transportation accommodation to take place. However, the DOE does not routinely use Section 504 plans or have a legally compliant system in place to provide or monitor accommodations without use of an IEP. Section 504 requires the DOE to provide whatever reasonable accommodation is required for a student with disabilities to meaningfully access his education. The only limitation is that the accommodation must be reasonable.

¹³ Mellen O’Keefe, *InsideSchools*, “DOE answers parents’ busing questions” (Aug. 10, 2011), <https://insideschools.org/news-&-views/doe-answers-parents-busing-questions>: “Students from multiple schools

These transportation issues have only become more severe in the past decade. Staffing issues have compounded the problems and delays that students with disabilities experience. For example, in 2013, according to the advocacy group Parents to Improve Student Transportation (PIST) NYC, busing companies terminated roughly 2,000 “experienced matrons and drivers.” Only 300 or so were ultimately re-hired.¹⁴ Five years later, in 2018, the New York City Council’s education committee convened a hearing regarding the issues DOE students experienced with respect to busing.¹⁵ At the hearing, parents delivered harrowing accounts of transportation delays, late arrivals to school and home, and other failures, highlighting the devastating and disproportionate impacts on students with disabilities. City officials vowed to institute reforms.¹⁶

Yet by 2022, delays continued to compound. In October 2022, for instance, a City Council analysis of data from bus companies found that nearly 14,500 bus delays (in which a bus failed to pick up or drop off the students it transported on time) took place. The average length of the delay was 41 minutes. This average delay length had increased by 4 minutes (from an average delay of 37 minutes) since October 2021.¹⁷ As Rita Joseph, chair of the City Council’s education committee stated in late 2022, “The only thing that seems to have changed [since the 2018 meeting] is that the problem has gotten worse.”¹⁸

Additionally, legislative efforts to improve the transportation issues for students with disabilities have failed. In 2019, the New York City Council passed a number of local laws (26, 27, 30, 31, 32, 33, and 34) designed to address DOE busing problems.¹⁹ These laws are designed to improve reporting on delays and address related ancillary issues. Specifically, Local Law 26 requires New York City to create public reports on bus delays twice a year; Local Law 27 requires the City to create and distribute a guide to school bus ridership, including eligibility criteria for students receiving general education, students receiving special education students, and students in temporary housing and shelters; Local Law 30 requires the City to ensure the bus ridership guide includes information on procedures the DOE will follow when it receives a report of misconduct by a bus company employee and procedures the DOE will follow for busing when

now share the same bus, bus routes were consolidated and lengthened, students with special needs were required to provide medical documentation to qualify for a seat in a “mini-wagon” and bus service was stopped altogether for 7th and 8th-graders who previously got it in the outer reaches of Staten Island and the Rockaways.”

¹⁴ Parents to Improve School Transportation (PIST) NYC, <https://www.pistnyc.org/history>: “June: 2000 experienced matrons and drivers on the affected routes were permanently terminated from their companies. (As of today some 300 have been rehired. The majority of the rest are now retired and/or collecting unemployment.”)

¹⁵ Alex Zimmerman, “NYC school bus delays reach highest level in five years, City Council analysis shows,” <https://ny.chalkbeat.org/2022/11/21/23472253/nyc-school-bus-delay>.

¹⁶ Ben Chapman, *New York Daily News*, “This boy’s school bus didn’t come for two days; when it did, the ride lasted 4 hours and his ordeal was one of thousands during schools’ opening days” (Sept. 8, 2018), <https://www.nydailynews.com/2018/09/08/this-boys-school-bus-didnt-come-for-two-days-when-it-did-the-ride-lasted-4-hours-and-his-ordeal-was-one-of-thousands-during-schools-opening-days/>; see also Cayla Bamberger, *New York Post*, “Brooklyn kids with disabilities miss classes as school buses show up late – or not at all” (April 28, 2022), <https://nypost.com/2022/04/28/brooklyn-kids-with-disabilities-miss-classes-as-school-buses-show-up-at-late-or-not-at-all/>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ New York City Council Legislation, Local Laws of 2019, <https://intro.nyc/local-laws/2019>.

an inclement weather emergency occurs; Local Law 31 requires the City to create public reports twice a year regarding the number of calls from “authorized parents and guardians” received by the DOE regarding bus transportation, the number of complaints received, and the number of investigations of school bus employees regarding possible misconduct; Local Law 32 requires all buses to maintain an operational two-way radio or other method of communication, as well as a GPS tracking device; Local Law 33 requires the City to create public reports twice a year regarding the criteria used to design bus routes, the time goals for each route, and additional information, and it also requires the City to provide complete busing route information to all parents and guardians of DOE students who receive busing at least 15 days before the first day of school; Local Law 34 requires the City to create public reports twice a year on additional information regarding busing companies, the total number of bus routes, the total number of students receiving busing services in different categories, the number of delays in busing, the number of times a bus failed to arrive at a destination, and similar information.²⁰ While reporting on these delays may have improved, the underlying delays themselves have not.

The DOE currently lacks a functioning system for complying with and implementing Section 504 mandates, including providing adequate notice of rights, implementing Child Find obligations, offering to conduct and conducting appropriate evaluations, planning meetings, and providing a FAPE to these students. As such, these DOE failures also severely curtail the ability of students with disabilities to receive federally protected busing and transportation accommodations. On a routine and systemic basis, families of disabled students who already need and have mandates to receive services transportation services through their IEPs and need these services to get access to federally funded educational programs are deprived of services and accommodations. Those families of students with disabilities who do reach out seeking implementation of these services for their children or trying to get accommodations are unlawfully rebuffed, fed misinformation or ignored. The overall conduct, lack of training, limited interpretation of what services and accommodations are available, and general lack of understanding of the rights of students with disabilities and the approach toward transportation for students with disabilities is inconsistent with civil rights laws including Section 504 and the ADA.

3. THE EXPERIENCES OF THE COMPLAINANTS

The individual complainants’ experiences with the New York City Department of Education exemplify the unlawful policies and practices which are the subject of this complaint.

a. A, and Parent of A

A is a 9-year-old boy in 5th grade. A identifies as African American. He is classified as having a Speech or Language Impairment. He has also been diagnosed with attention deficit hyperactivity disorder (ADHD) and specific learning disorders in reading, written expression, and mathematics. A and his family live in Queens. A currently attends the Tiegerman School, a state-approved non-public school.

²⁰ *Id.*

A and his family have experienced busing problems nearly daily during the current 2023-2024 school year. Prior to the first day of school at Tiegerman, which was September 5, 2023, no one from OPT reached out to provide any information to the family regarding his bus route, which had previously been standard. As a result, A awoke at 5:45 a.m. and waited with his family outside hoping that the bus would arrive. The bus did not arrive until after 7:00 a.m. Despite the fact that his family lives less than a 30-minute car ride away from the Tiegerman Middle School campus (also in Queens), A's bus ride to school took approximately two hours. He did not arrive until roughly 9:00 a.m. As a result, given that school starts at 8:30 a.m., he was half an hour late.

These problems have continued and indeed worsened. The next day, on September 6, A's bus failed to appear in the morning at all. As a result, A's father—who had worked the entire night on the overnight shift as an emergency medical technician (EMT)—was forced to forego sleep and to drive A to school instead. Whenever A's mother has tried to reach A's bus company, All American, she has almost never been able to reach anyone to discuss the situation. The first time she was finally able to speak with someone at the bus company was on September 20.

A's bus has broken down twice on the way home from school so far. On September 14, the bus broke down. A reports that there was smoke coming out of the back of the bus, posing an urgent safety hazard to all children on the bus. A and his classmates had to wait for another bus to arrive; they waited on the side of the road during this time. The school bus also broke down on another recent occasion as well.

On September 19, A was unable to attend school at all because the school bus did not show up. A's mother reports that, upon information and belief, none of the children on A's bus route were picked up on that day.

In the afternoons, A's mother reports that she never has any idea when the bus will drop him off at home. She says these drop-off times have ranged from 4:00 pm to 8:15 pm, with no notice from the bus company or OPT.

A has already filed two complaints with OPT. She has also asked Tiegerman to write a formal letter to OPT decrying the situation. So far, none of these efforts have been successful.

A's mother recently had a hip replacement. She has many ongoing medical appointments and cannot easily transport her child to school every day. She feels extremely concerned that no one from OPT will take care of her son.

b. B, and Parent of B

B is a 13-year-old girl in 9th grade. She identifies as Hispanic/Latina. She is classified as having a Speech or Language Impairment. She has also been diagnosed with autism, mild intellectual disability, and specific learning disorders in reading, written expression, and mathematics. In addition, B has demonstrated anxiety around school and schoolwork. B and her family reside in the Bronx. Since the fall of 2022, B has attended the IDEAL School of Manhattan, a private school for students with disabilities. Although her IEP does not call for her

to receive special transportation services, she still relies on yellow school bus service for travel to school. B's parents both speak primarily Spanish.

Throughout the 2022-2023 school year, including as late as May and June 2023, B experienced chronic busing delays in both arriving to school and returning home. B's father estimates that she was 20-30 minutes late for school roughly two times per week. On these days, B would often miss the entirety of her first class.

B's delays coming home from school were even more severe. Roughly two days per week, it took B as long as two hours to return from school on the school bus. Given B's struggles with anxiety, the hours she spent on the school bus each day caused her to become very upset. B's father reports that she did not want to attend the IDEAL School anymore because of the inordinate amount of time she spent on the bus.

B's father called the DOE's OPT—which oversees transportation to private schools for New York City students with disabilities—roughly 12 or 13 times. He said that he finally stopped calling OPT because he felt the office did nothing to assist.

In addition, B experienced other issues with respect to busing. On June 16, 2023, B's father received an email from B's school stating that B's bus driver had been looking at pornography while waiting to drop off students at the school. This email stated that the school “recommend[s] that you find other transportation for the route home or confirm with the bus company that there will be a new driver on the afternoon bus.” This issue and the school's recommendation that the family find alternative transportation imposed yet another serious burden—to say nothing of the abhorrent behavior B was exposed to on the school bus by the driver—on B and her family.

c. C, and Parent of C

C is a 10-year-old boy in 5th grade. He identifies as South Asian. C is classified as having Autism. He has also been diagnosed with attention deficit hyperactivity disorder; developmental coordination disorder; and specific learning disorder in reading and math. C's parents speak primarily Bengali. C and his family reside in Queens. Despite an IEP mandate directing the DOE to provide C with limited travel time and specialized door-to-door busing, C has been deprived of his right to appropriate specialized busing.

During 2022-2023, C attended Brooklyn Blue Feather Elementary School, a state-approved non-public school for students with autism and other disabilities. (The DOE's Committees on Special Education oversee busing for students attending these non-public schools, which are listed on students' IEPs.) However, C was subjected to excruciating busing delays throughout the year. C was picked up for school every morning at 6:30 a.m. for a school day that began at 8:45 a.m. In other words, every morning, C had to take the bus for two and a quarter hours.

C's afternoon rides home were even worse. C's school day at Blue Feather ended at 2:30 pm. However, the ride home took roughly three hours; he would not get home until 5:30 pm. C's father reports that these 3-hour bus rides home took place every single school day, 5 days a week.

C was on the bus for so long each day that he would frequently urinate on himself, due to the length of the ride. He also would often become sick and would vomit on himself. C's father attempted to resolve the busing issues numerous times but did not receive assistance. C's father reports that he informed the school 2-3 times per week, every single week, about the busing issues, but the school was unable to assist. C's father also called C's bus company several times. However, C's father reports that the bus company was "very rude" with him. The bus company would simply report that they did not have additional drivers available and could not assist. No one from the DOE, Blue Feather, or the bus company advised C's father to call OPT.

In March 2023, after repeated submissions of documents from C's pediatrician, C was approved for limited travel time (LTT) busing. (Even though C's family had previously submitted his pediatrician's approval for his LTT busing in December 2021, on January 20, 2023, the DOE informed C that they would have to submit new paperwork in order for LTT to continue.)

However, despite the inclusion of LTT busing on his March 2023 IEP, these delays still continued. C and undersigned counsel asked the DOE's Committee on Special Education for Region 6 numerous times what the status of the LTT bus was for C. However, even after escalating this issue to the DOE's chief of special education, Christina Foti, LTT busing was still not in place for C. Although transportation has improved somewhat during the 2023-2024 school year to date, C's family remains extraordinarily frustrated with the loss of learning time, exhaustion, and emotional and physical distress C has experienced.

d. D, and Parent of D.

D is an 8-year-old boy in 3rd grade. He identifies as Hispanic/Latino. D is classified as having Autism. D was recently accepted to the DOE's new ASD Horizon program. ASD Horizon is a special program designed for students with autism. He received a coveted placement in the ASD Horizon program at P.S. 28 Mt. Hope in the Bronx. The family lives in upper Manhattan. Despite an IEP mandate directing the DOE to provide D with specialized curb-to-school busing—which, as his January 2023 IEP notes, is "due to emotional needs"—D has been deprived of his right to appropriate specialized busing.

In late August 2023, D's mother participated in an early enrollment day at P.S. 28. At the early enrollment registration session, she was told that busing was in place for D. However, when school began in early September 2023, busing was in fact not in place for D. When D's mother informed the school of this issue, P.S. 28 staff directed her to contact the DOE's Office of Pupil Transportation (OPT). However, when D's mother spoke with OPT, a representative from OPT directed her to contact the school, and to tell the school that *they* would be required to speak with OPT, not the family. D's mother was informed by OPT that due to the school's delays in setting up busing for him, it would take 1-2 weeks for busing to be in place.

Without busing, D's mother was forced to stop working, in order to make time to bring D to school each day. She was also forced to spend money day after day on taxis and other alternative forms of transportation. On or about September 11, 2023, she spent roughly \$40 on cab fare in order to transport D to and from school. The family (as with nearly all families

included in this OCR complaint) identifies as a low-income family, meaning the \$40 represents a significant financial burden. These issues have persisted for weeks.

D's mother also struggled to receive any information regarding the status of the busing. OPT does not give out information regarding individual students' busing routes over the phone. As a result, on or about September 7, 2023, she attempted to log into the New York City Schools Account (NYCSA) at <https://www.schoolsaccount.nyc/> in order to learn more about the delay. However, D's mother had never received the "account creation code" required to set up an account. Individual DOE schools have these codes, rather than parents. D's mother repeatedly requested the account creation code from P.S. 28, but she never received it.

On September 19, 2023, D's mother spoke with the busing company responsible for D's busing. The bus company simply directed D's mother to speak again with D's school. D's mother did so, but she still did not receive substantive new information. She was also informed that D would not receive a MetroCard, as MetroCards had already been assigned to other individual students and could not be transferred to D. D's mother was also told that the school could offer to pay for an Uber ride, but only one way—the school would not pay for an Uber ride back from the school to home.

D and D's mother have both experienced severe emotional and physical distress due to these issues. D's mother currently has an open housing court case due to issues with rental payment, and these busing issues have further depleted D's financial resources. She also is preparing to undergo a surgical procedure. The stress associated with the ongoing bus issues has negatively impacted D's family's well-being.

e. E, and Parent of E

E is a 12-year-old boy in 7th grade. E identifies as African American/Black. He is classified as having autism. E and his family live in Brooklyn. E currently attends the Mt. Pleasant Cottage School, a state-approved non-public school. Despite an IEP mandate directing the DOE to provide N with specialized door-to-door busing, E has been deprived of his right to appropriate specialized busing.

E was deprived of this right to door-to-door busing when OPT incorrectly changed the family's home address in OPT's internal system. Specifically, E's mother discovered that OPT had changed his *home* address to the street address of the *school* that E had attended prior to enrolling at Mt. Pleasant. E's mother, who made this discovery roughly five days before the first day of classes, was informed by OPT that that the issue would be addressed within 48 hours. However, E did not receive busing on the first day of school (Tuesday, Sept. 5). He continued not to receive busing during the entire first week of school.

When E's mother called OPT to inform them of this issue, the OPT representative said that they could only forward the issue to another unit within the DOE. She was then informed that E's address had been corrected, but that it would still take another week for bus service to begin. E's mother contacted many individuals in the DOE and in city government, including a leader of OPT and the mayor's office. The OPT leader did not respond to E's mother despite numerous

requests. Only after an attorney at one of the undersigned organizations repeatedly reached out to OPT did busing finally commence. By the time busing began for E on September 14, he had already missed seven full days of school.

f. F, and Parent of F

F is a 17-year-old boy in 12th grade. F identifies as Hispanic. He attends a District 75 school within the DOE. He is classified as having autism. F and his family live in Brooklyn. F is a nonspeaking/nonverbal student. He has also been diagnosed with epilepsy, ADHD, asthma, a bleeding disorder, and other conditions. F relies on diapers for toileting. He has also suffered episodes of seizures since at least June 2019.

F has received no busing to date for the entire 2023-2024 school year. F's IEP states that he is entitled to receive a number of busing accommodations. Specifically, F is entitled to receive: limited travel time; a "mini-wagon;" air conditioning; a bus paraprofessional. However, he has not received these accommodations or indeed any busing at all.

F's mother repeatedly submitted the medical paperwork that the DOE's Office of Student Health (OSH) requires for these accommodations. She reports having submitted this paperwork at least 4-6 times. In June 2023, F's school approved the paperwork. However, in September 2023, F's school then reported that the paperwork was not correct. After repeated inquiries and the assistance of one of the undersigned organizations, F's mother learned that the paperwork *was* correct, but that F's school had failed to submit the forms properly and blamed the family instead.

With no other feasible options, F's mother has been taking F to school every day via public transportation. This means that F and his mother must both ride a New York City Transit bus for at least an hour and 20 minutes in one direction in order to reach school. (All told, F's mother spends more than five hours per day on the New York City Transit bus system due to the lack of DOE busing.) F's mother has been diagnosed with two forms of cancer and she has been exhausted daily by the hours she must spend on the New York City Transit bus each day with him.

g. G, and Parent of G

G is a 16-year-old boy in 9th grade. G identifies as Latino. He attends a District 75 school within the DOE. He is classified as having a Learning Disability. G has also been diagnosed with ADHD, depression, a mixed expressive/receptive language disorder, cognitive impairment, and mild intellectual disability. G and his family live in the Bronx.

Despite an IEP mandate directing the DOE to provide G with specialized door-to-door busing—which, as his June 2023 IEP states, is required “[d]ue to safety and meeting his developmental and social needs”—G has been deprived of his right to appropriate specialized busing.

G was assigned to attend a different District 75 school this year. This change in schooling meant a change in his busing route. However, G has received no busing for the entire 2023-2024

school year. As a result, G's mother was forced to keep G home for all of September, meaning G missed an entire month of schooling. In late September, the family was provided with a busing route, #X987. The family was informed that busing would commence on September 26, 2023. However, on September 22, 2023, the school's pupil accounting secretary stated that the DOE was unable to provide a bus driver or matron. The DOE directed the family to use the "Limosys" alternative transportation plan, but without any support from the school, the family has been unable to do so. G's mother does not use email, making it challenging to use this system.

Finally, out of desperation, G's mother began purchasing her son MetroCards out of pocket. To date, G's mother has not been reimbursed for these expenses (although the school informed her they would provide G with a MetroCard for the ride home on October 3, 2023).

h. H, and Parent of H

H is a 5-year-old girl in 1st grade. H identifies as Black/African American. She attends a District 75 school within the DOE. She is classified as having autism. H is also a nonspeaking student. She communicates primarily through gestures and touch. H also has pica, a mental health condition causing individuals to compulsively eat non-food objects, and has strong sensory needs. Without constant 1:1 supervision, H remains at risk of constant injury. H and her family live in Manhattan. Despite an IEP mandate directing the DOE to provide H with specialized, supervised door-to-door busing, H has been deprived of her right to appropriate specialized busing.

H has received no DOE school busing since March 2023. Because the DOE was unable to provide her with a transportation paraprofessional, the DOE provided her with no busing at all. H's IEP requires her to attend school year-round. For her summer school placement, the DOE required her to attend a school more than four miles away. Without busing, H was not able to attend summer school, and she regressed.

Due to these constant issues, H's mother publicly testified about her daughter's experiences. She was also forced to reach out to a DOE superintendent. At this point, for the fall 2023 semester, the DOE provided her with a school closer to home. However, the DOE still has not provided any busing or a transportation para. As a result, H's father is forced to take time off from work each day to drive her to and from school. H's mother has multiple sclerosis, further adding challenges to H's efforts to get to school each day.

i. I, and Parent of I

I is a 6-year-old girl in 1st grade. I identifies as South Asian. She attends a District 75 school within the DOE. She is classified as having autism. I is also a nonspeaking student. I and her family live in Queens.

I has an IEP which requires her to receive limited travel time (LTT). However, she has not received LTT busing at all this year. I's morning bus ride is over an hour long, and possibly sometimes one and a half hours long. She is forced to get on the school bus around 6:45 am.

Often, the bus arrives at the school 20 minutes early or more, but I and other students are forced to wait on the bus until the school opens at 8:20 a.m. I's mother has called her school many times. The school has merely directed her to call the DOE's OPT. I's mother called OPT every single day for two weeks straight, but these efforts did not result in improvement in I's services.

I has also experienced injuries on the bus. Over the summer, I arrived at school with bruises on her arm and bite marks on her face. I's mother had requested a transportation paraprofessional to assist her numerous times, but the DOE continually denied her request. As a 6-year-old child, I struggles with the extraordinary length of the bus ride. DOE staff have reported to I's mother that I was screaming on the bus, upset at the length of the ride.

Due to concern regarding these injuries and challenges, for two weeks, I's mother paid out of pocket for a taxi every day. I's mother spent a total of \$300 on taxi cabs in order for her daughter to attend school. To date, the DOE has not reimbursed I for these expenses. The DOE has also not provided I's family with a free MetroCard, although I's family feels this MetroCard would also be insufficient as it would require too much time to get to school. For now, I's father has been forced to drive her to school every day.

j. J, and Parent of J

J is an 8-year-old boy. He attends Gersh Academy, a private school for students with disabilities. He is classified as having autism. J and his family live in Manhattan.

J received no busing for nearly all of September 2023. As a result, J's mother was forced to hire a babysitter out of pocket at a total cost of \$800 for four weeks without busing. During this time, J remained very upset about being unable to go to school. J would pack his bookbag every day, put on his shoes, and say, "I want to go to school, Mommy." However, because of the lack of busing (which did not commence until Tuesday, September 26), he could not attend.

J's mother attempted to resolve the busing issue by calling the school. However, the school directed her to contact the DOE's OPT. OPT asked J's mother for J's bus route number, but she did not know this information, and so OPT did nothing to resolve the issue.

k. K, and Parent of K

K is an 11-year-old boy. K identifies as Hispanic/Latino. He attends a DOE school in the Bronx. K recently began attending this school, as it is one of just a handful offering a bilingual program for native speakers of Spanish combined with special education classes. He is classified as having a learning disability. K's mother speaks little to no English, speaking primarily Spanish. Despite an IEP mandate directing the DOE to provide K with specialized curb-to-school busing—with K's June 2023 IEP specifically noting that "[K's] expressive and receptive difficulties may affect his ability to understand and safely respond to situations and interactions that may arise while traveling"—K has been deprived of his right to appropriate specialized busing.

For roughly one full month, K received *no* busing of any type this year. He transferred to a school in the Bronx at the start of the school year specifically because of its combined special education/bilingual program. K's family also moved from one part of the Bronx to another part. Because K had been previously attending a different DOE school, K's family did not realize that she needed to inform the new school about the move; no one from the school assisted her with this process. However, even weeks after K's mother formally informed the DOE on September 18, 2023, regarding the family's move, busing was not put in place for four weeks, and only after extended advocacy.

K's mother received little to no information from the school regarding the busing. She called the school on the morning of October 3, 2023, after hearing nothing from the school regarding busing for roughly a week and a half. The school did not advise her to call the DOE's OPT. Instead, the school directed K's mother—who does not speak English—to find the phone number for K's bus company on her own and to call them. She was not provided with the phone number. The school only informed K's mother that they are still waiting to hear if K's "application" for busing has been "accepted" by the bus company.

In the meantime, K was forced to take an elaborate route to get to school each morning. Despite being just 11 years old, K woke up at 6 a.m. every morning and walked alone for five minutes to a bus stop. He then spent 30 minutes on a bus which takes him to a subway station. Finally, he rode the subway for approximately 15 minutes, before arriving at school. All told, the journey took him roughly 45 to 50 minutes for a one-way trip. Sometimes he would arrive late due to traffic during the rush hour commute. K's mother could not accompany him because she must work. K did not receive a MetroCard for this travel until either September 27, 2023, or September 28, 2023. Prior to that time, given the family's extremely limited income, K was forced to travel on the bus and subway without paying the fare.

On October 6, 2023, counsel from one of the undersigned organizations personally attempted to resolve this issue. Counsel called Consolidated Bus Transportation (CBT), which was the company K's school told K's mother to contact, with respect to bus route X192. Around 3 pm, counsel called 718-346-9600, the phone number listed on CBT's web site for the Bronx.²¹ Counsel was then informed that, contrary to the contents of CBT's web site, this was in fact a phone number for a different borough office for CBT, not the Bronx. The customer service representative then stated the correct Bronx phone number so quickly that counsel could not write it down. However, the customer service representative transferred counsel to the Bronx CBT dispatch office. Someone picked up the phone but did not start speaking. After about 10 or 15 seconds, despite counsel asking if anyone was present, the other party hung up the phone.

Counsel then called 718-346-9600 again. Counsel again requested the correct Bronx phone number for CBT and was provided with the following unlisted phone number (not listed on the CBT web site, or on OPT's web site): 718-828-5336.

After dialing this number, counsel was able to reach someone at the Bronx dispatch office for CBT. However, this individual informed counsel that student K had been "deleted off our route" as of September 11, 2023. When counsel asked the individual why K had been removed, the

²¹ Consolidated Bus Transit, <https://consolidatedbustransit.com/contact/dispatch-office/>.

individual was unable to say. The individual stated that K was now on bus route X788 and was being served by the bus company “PC.” When counsel asked the individual what the actual name of the transportation company identified as “PC” was, the individual could not identify the name of this company.

Unsure of which transportation company “PC” referred to, counsel consulted the OPT web site.²² Counsel observed that three companies appeared to be possible matches for “PC,” based on the name beginning with the letter “P:” Philip Bus Corporation, Pioneer Transportation, and Pride Transportation Services.

Counsel then attempted to contact Philip Bus Corporation. Counsel initially dialed 347-529-6272, the number listed on OPT’s web site. However, this call resulted only in a series of “busy signal” beeps. Counsel repeated a call to this number several times and had the same result each time. Counsel then performed an internet search of “Philip Bus Corp NYC” and found another number referenced on a “Yelp” page:²³ 718-855-2300. Counsel then dialed this number and reached an individual who appeared to work for Philip Bus Corporation. However, this individual stated that this location was not the correct one. The individual also stated that supervisors had probably left for the day. However, this individual provided the correct phone number to reach the correct division of Philip Bus Corporation: 347-529-6722—a number not listed (due to apparent typographical error, involving inversion of digits 8 and 9 of the 10-digit phone number) on OPT’s web site.

Counsel then dialed 347-529-6722. Counsel reached another individual who appeared to work for the Philip Bus Corporation. However, this individual stated that the company does not “have a route” like X788 on their list. When asked if Philip Bus Corporation was the “PC” bus corporation, the individual said it was not.

Counsel next attempted to contact the DOE’s OPT, in order to determine which company was “PC.” Counsel called OPT at (718) 392-8855. This number for OPT was correct. However, after pressing “1” for English, a roughly minute-long message was played stating that OPT does not provide route information over the phone. Counsel then pressed “2” for “information on busing routes.” This led to a repeat of the same message. Counsel then stayed on the line to speak with an OPT representative.

An OPT representative answered the call. The representative asked several questions, such as counsel’s name and counsel’s phone number. When counsel identified themselves as a special education attorney, the OPT representative next asked for the student’s name and date of birth. The representative then placed counsel on hold. After a brief hold, the representative then asked counsel if counsel had spoken with the child’s family about the route. Counsel said yes and stated that the child had not been receiving busing at all this year. Counsel was then placed on hold again. After this second brief hold, the OPT representative stated that would not be able to provide any route information because counsel was not the “verified contact” for the student. Counsel stated that counsel was K’s education attorney, that K had received no busing all year,

²² NYC DOE Office of Pupil Transportation, “Bus Companies for School-Age Children,” <https://www.schools.nyc.gov/school-life/transportation/bus-companies-for-school-age-children>.

²³ “Philip Bus Service,” <https://www.yelp.com/biz/phillip-bus-service-bronx>.

and that K's mother spoke little to no English. The OPT representative refused to provide the information and directed counsel to call K's school.

After several minutes, counsel then called K's school at (718) 892-8600. A brief message played, directing the caller to a phone tree. Counsel pressed "0" to reach the main office. After a moment, the same message played again, directing caller to the same phone tree. At this point, counsel ended the call and concluded that it would not be apparently possible to reach anyone regarding K's bus route at this time.

Although busing finally began for K on October 12, the family experienced enormous hardship for the many weeks when he lacked it. In addition, OPT has provided no clarity to K's family regarding why these weeks of busing failures and communication failures took place.

I. L, and Parent of L

L is a 10-year-old boy. L identifies as African American/Black. He attends Atlas Academy for Autism in Manhattan, a private school for students with disabilities. L is classified as having autism. L has experienced many busing challenges for years. In the past, L's mother was asked numerous times to submit paperwork to document a need for transportation accommodations. His most recent IEP, from December 2022—calls for him to receive the following transportation supports: curb-to-school transportation, a "miniwagon," and air conditioning. L's mother also reports that L was approved for a transportation paraprofessional and individualized busing. L has been deprived of his right to specialized, appropriate busing services.

L continues to experience serious issues with respect to busing. L's bus does not appear to include air conditioning—in direct violation of his IEP mandate. On many hot days, no air conditioning has been present on the bus; it is unclear whether this is because the bus driver refused to turn it on, or because the bus does not include air conditioning at all.

Furthermore, L has experienced issues with both the matron and the driver on the bus. Specifically, both the matron and bus driver have displayed rude and disrespectful behavior toward L—a child who has struggled with emotional regulation and outbursts in the past. L's mother reports that the matron on L's bus "eggs on" issues with him. At other times, the driver and matron ignore L. Transportation issues have been so bad that while L initially shared the bus with another student, this other student's family refused to allow their child to travel on the bus. L's mother also reports that during the time when both L and the other child rode the bus together, both students and a paraprofessional were all jammed onto one seat. As such, the ride to school each day was extremely uncomfortable.

L's bus paraprofessional has documented the many incidents of unprofessional behavior stemming from L's bus driver and bus matron. L's bus paraprofessional reported that the bus driver refuses to speak to either L or him. The paraprofessional also states that the bus matron will intentionally call her supervisor in front of L to report his behavior and ask for L to be removed from her duties, in an effort to humiliate him. On at least two occasions, the matron asked L if he was going to hit her. On another occasion, the windows on the bus were down when it began to rain. L asked the matron and driver multiple times to roll up the windows, but

they refused to do so. Only after five or ten minutes of L asking for the windows to be rolled up did the driver do so. The refusal of the bus driver or matron to assist led L to become so frustrated that he began tapping the back of the matron's seat. This in turn led to the matron escalating the situation—exemplifying the cycle of the paraprofessional's and matron's unprofessional behavior triggering the student, leading to further repeated issues on the bus.

m. M, and Parent of M

M is a fourteen-year-old African American girl diagnosed with (1) high-functioning autism spectrum disorder; (2) attention-deficit/hyperactivity disorder (“ADHD”); (3) generalized anxiety disorder; (4) developmental coordination disorder; (5) motion sickness; (6) oppositional defiant disorder; (7) avoidant or restrictive food intake disorder; (8) asthma; and (9) scoliosis. M's mother has struggled to obtain the necessary transportation accommodations for M for years. Both M's general pediatrician and developmental pediatrician have consistently recommended door-to-door transportation on an air-conditioned bus due to M's skin sensitivity and motion sickness with limited travel time (LTT). Further, M's doctors recommended that she is on the shortest bus route, with a total ride time of less than 60 minutes, because she can get easily agitated on long trips due to her anxiety which can exacerbate her asthma and behavior. Furthermore, M suffers from low tone coordination and fatigues very easily, which can become a problem on a long bus ride.

Due to M's allergies, food sensitivity issues, and eating problems, it is imperative that she is home at a specific time to consume food with supervision as well as to take prescribed supplements. M also uses the bathroom quite frequently; as a result, a long bus ride may cause enuresis and increase agitation, resulting in heightened anxiety, leading in turn to vomiting and skin irritation. M also requires a 1:1 paraprofessional, placed near her at all times on the bus to monitor any adverse symptoms while in transit and to monitor medications that are in her backpack (she carries an EpiPen and Ventolin with a spacer). M's doctors also noted that it is important that M has a window seat, in order to decrease her motion sickness, and the option to have her own seat, in order to prevent agitation from sitting too close to one of her peers. M's doctors, M's mother, and M's mother's attorney have provided these recommendations, in writing, to the DOE on numerous occasions. Nonetheless, the DOE fails to provide M with the necessary accommodations again each and every year.

During the 2021-22 school year, because the DOE failed to provide these accommodations, which are required for M's health and safety, M's mother was forced to pay almost \$10,000.00 out of pocket for a private taxi service to transport M to and from the private specialized school for twice exceptional students with disabilities where M attends, Quad Prep. M's mother has extremely limited financial resources; having to outlay these funds while she awaited a decision from the Impartial Hearing Office placed enormous financial stress on M's family. During 2022-23, while busing issues temporarily improved, M's mother was still forced to rely on rideshare services on occasion.

However, despite eventually receiving a favorable hearing decision regarding Quad Prep and transportation, the DOE again failed to provide M with any of the necessary accommodations this school year (2023-24). But this year, M's mother has been forced to send her on the bus

anyhow because she cannot afford to outlay any more money for taxis. M's health has deteriorated as a result of long, uncomfortable bus rides. Again, M's mother, M's doctors, and M's mother's attorney have reached out to the DOE over and over again seeking to have these accommodations provided to M for the 2023-24 school year. Their efforts have been unsuccessful.

n. N, and Parent of N

N is a nonverbal, Southeast Asian child identified as a student with a disability under the IDEA. N has a diagnosis of autism, level III, severe. His disability impacts his behavior, ability to communicate, social skills, learning, and other major life activities. Given the nature of his disability, N can engage in disruptive, self-injurious and other maladaptive behavior and requires constant supervision and attention. N needs specialized transportation accommodations to safely travel to and from his home and school.

N attended New York City public school programs which could not meet his needs before he was eventually placed in his current private school placement and provided with the support and services he needs. Despite IEP mandates and numerous impartial hearing orders directing the DOE to provide N with specialized door-to-door busing, a transportation paraprofessional, limited travel time, and other specialized features and accommodations, N has been deprived of his right to appropriate specialized busing time and time again.

Over the last three school years, N has experienced, *inter alia*, stoppages in his specialized busing due to the DOE's failure to provide his mandated transportation paraprofessional. Throughout portions of the 2021-22 and 2022-23 school years and during portions of this 2023-24 school year, N and his mother have been left stranded. This has occurred when the DOE-mandated bus failed to show up or refused to pick N up because the DOE failed to make a transportation paraprofessional available, when the bus arrived late, or when the DOE otherwise failed to ensure compliance with IEP transportation mandates and accommodations and/or hearing orders.

The student has also periodically been subjected to very long bus rides despite medical directives that he receive limited travel time accommodations, causing him to arrive late to school or late to his home. This in turn has resulted in missed learning and services during portions of the school day and the loss of important services provided outside of the school day. As a result of these violations of the student's right to transportation accommodations, N experienced disruption to his daily routine, heightened maladaptive behavior and risk of injury, missed school time, and other learning loss. He also frequently spent hours on the bus going to and from school, and his parent also incurred added expenses for out-of-pocket carfare and or indebtedness for transportation funding that the family could not front or afford, causing them further harm.

o. O, and Parent of O

O is an 11-year-old boy with an IEP classification of autism. O has diagnoses of autism, asthma, and a seizure disorder. He also has a history of attention-deficit/hyperactivity disorder (ADHD), speech delays, other communication issues, social issues, mobility issues, and maladaptive

behaviors. O has a history of possible elopement, biting, head banging, and low muscle tone and sensory issues. When confined on a bus for too long he can get very anxious, can bite himself, and engage in other maladaptive behaviors. Despite transportation accommodations requests from his parent and providers, mandates on his IEP that he be provided with door-to-door transportation with limited travel times, and other assurances that his bus route would accommodate his disability, C frequently gets subjected to long rides. He requires specific school programming and outside services. He also requires transportation accommodations which include, *inter alia*, a small vehicle with air conditioning and limited time travel to meet his needs and keep him safe.

During this school year and last school year, O has experienced and continues to experience disruptions to his transportation services such that he has not always received the appropriate specialized transportation services and accommodations needed to accommodate his disability. At times this school year and in past school years, O and his parent were left stranded and had to front scarce resources to get the child to school. This resulted in absences, late arrivals, and other disruptions and learning loss for the student. This year and in past years the parent has reached out to OPT, the school, the CSE and other about these problems. Moreover, O had to switch bus routes a few times due to noncompliance with his bus mandates and failure to accommodate his disability.

For a number of weeks last school year on one of the O's assigned bus routes, the individuals staffing the transportation vehicle subjected O and other students with disabilities to harsh, harmful and inappropriate conduct in violation of O's disability rights and program mandates. Staff members with no apparent training in dealing with students with special needs berated, threatened, pulled, grabbed, and/or inappropriately restrained O and/or other students, and on at least one occasion even handed the minor child over to emergency medical services staff and police officials prior to reaching the students home. This mistreatment of O occurred despite the complete lack of medical necessity, and without the permission of his parent. The situation occurred after the student had suffered through a particularly long ride in contravention of his disability, rights, and accommodation needs. This inappropriate and discriminatory conduct caused the student distress. He sometimes cries and calls out in fear when hearing ambulance sirens, or seeing police. It also caused the parent—who herself suffers from physical and other health conditions which impact her mobility, breathing, and other life functions— economic and other harm and distress. Though officials apologized and eventually changed the student's bus route, the current system, lack of regulation, inappropriate policies and practices, promote inappropriate and discriminatory conduct against students with disabilities and present ongoing safety issues and potential harm to students with disabilities.

Problems with non-compliance with transportation mandates and the students' needs persist, causing further and ongoing harm.

p. P, and Parent of P

P is a 15-year-old student with an IEP classification of deafness. Diagnosed with bilateral, profound sensorial hearing loss, and ADHD, P attends a specialized learning program at Lexington School for the Deaf, a New York State-approved nonpublic school in Queens. P's

IEP also mandates speech and language therapy, counseling services, FM Unit, ASL sign-supported instruction for the deaf or hard of hearing, and specialized transportation services. P's disabilities impact her hearing, speech and other communication skills, behavior regulation, learning and other major life activities.

P began high school during the 2022-23 school year. During a significant portion of that year, P's specialized bus would arrive around 10:00 a.m. each day, getting her to school by 11:30 a.m. or later. Given that her school begins at 8:00 a.m., P would miss all morning curriculum and services and arrive around lunch time. As a result of DOE's conduct, P and her mother suffered. P lost out on educational opportunity when she missed core classes, counseling and other services, and her mother missed time from work and incurred expenses for car service to get her child to school. For a portion of the school year, P's afternoon bus picked her up from school at 5:00 or 5:30, hours after school had ended. P was forced either to wait at the school, without access to an afterschool program, food services, or disability accommodations for hours or to get home via alternative means at the family's expense.

This school year the failure to provide P with transportation accommodations persists. During the first few weeks of September 2023, P was assigned to a bus route which picked her up from her home at around 8:15 a.m. and dropped her off at school around 9:30 or 9:45 a.m. Given that P's school begins at 8:00 each morning, she has been forced to miss critical school programming including but not limited to Math classes, Social Studies classes and Counseling services and/or she and her mother have had to scramble to make arrangements for car service which the parent has had to pay out of pocket. Recently the bus schedule changed such that P should receive an earlier pickup time, but she still arrives late to school each day.

Over the years, including this school year and last year, P's parent raised concerns with school and DOE staff, OPT, CSE, City officials and others, but the underlying systemic specialized transportation problems continue for P and other students with disabilities. Appropriate specialized transportation services are necessary for P to access her education. This year, like last year, P's educational loss has caused her to fall behind in school, struggle more academically and socially, and become increasingly more anxious and distracted. She has also experienced heightened behavioral dysregulation, making her significantly more sensitive and volatile at home and at school. P's mother has lost time from work and has also incurred expenses for car service as a result of DOE's failures, further harming this vulnerable child.

q. Q, and Parent of Q

Q is an African American 13-year-old boy in 8th grade. He has an IEP classification of learning disability. He also has been diagnosed with ADHD, dysgraphia, and dyslexia. Q and his family live in Manhattan. Q attends the Aaron School, a private school for students with disabilities. He also is supposed to receive daily busing between home and the Aaron School.

However, Q has experienced more than three distinct challenges with related to busing. First, Q has experienced problems with constantly late busing. At the end of the 2022-2023 school year, including in April, May, and June, Q's bus arrived to school roughly twenty minutes late almost every single morning. Q's mother believes that the busing problems were so significant that this

issue caused Aaron to delay its start time until 9 a.m. for the 2023-2024 school year. With the bus arriving late every morning, Q constantly lost out on instructional learning time.

Second, Q has experienced problems this school year with the DOE failing to provide busing for weeks at a time. Q and his family reside in New York City Housing Authority (NYCHA) public housing. Due to the age of the building, Q and his family were forced by NYCHA to relocate to a different part of Manhattan in summer 2023. In June 2023, Q's mother informed the Aaron School that the family would be moving. She signed a lease on August 31, 2023 and moved on September 8, 2023. However, Q received *no busing* at all until September 21, 2023. Q's mother called OPT at least three or four times during September 2023. However, OPT was unable to assist. OPT simply advised her to speak to the Aaron School about the issue. When the Aaron School suggested she could have Q attend via Uber, she did not feel comfortable waiting for the DOE to reimburse her or having him ride alone with a stranger.

During the weeks when busing was not in place, Q's mother was forced to hire a caretaker to watch over him. She spent \$100 per week to hire a friend to watch Q while she worked.

Third, even now that busing is finally in place, Q continues to experience another problem: he has been physically attacked twice on the bus. One student—a student who Q's mother reports is nonverbal and has autism—became emotionally dysregulated on the bus. According to Q's mother, this student may not receive adequate support for his disability on the bus. This student became upset and hit and kicked Q in the head. More recently, last week, another student bit Q twice on the hand on the bus. While the bites did not break the skin, Q now has bitemarks on his hand. Q's mother reports that bus matrons and other staff have not received training to safely support students with disabilities on the bus. She says that one student has an episode of emotional dysregulation—including refusing to sit down, attempting to open windows, etc.—nearly every day. Sometimes, Q's mother reports, the bus driver must pull over to intervene in an effort to deescalate the situation. Q's mother told OPT that she would like her son's route changed, and they said they could not do so. Instead, OPT simply directed Q's mother to speak with her child's school—but in fact, the Aaron School's nurse was the one who had already informed her of this issue. These issues have resulted in emotional distress and physical harm for Q and his family. Q's mother kept him home from school on Friday, October 20, 2023, out of concern of him experiencing further physical and emotional harm on the bus. Q's mother feels that the busing is a safety issue and is extremely upset about her son being attacked on his bus ride to school multiple times.

4. THE NEW YORK CITY DEPARTMENT OF EDUCATION VIOLATES SECTION 504, THE ADA, AND THE IDEA

Section 504 of the Rehabilitation Act of 1973 (“Section 504”) prohibits discrimination against individuals on the basis of disability or presumed disability. 29 U.S.C.A. §794, *et seq.*; 34 C.F.R. §104, *et seq.* The law provides that “no otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C.A. §794. The statute protects any student who “(i) has physical and mental impairment which substantially limits one or more of

such person’s major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment.” 34 C.F.R. §104.3(j). Public schools, such as those within the New York City Department of Education, that receive federal funding are required to comply with these mandates and inform parents of their rights under the law. *Id.*

The Americans with Disabilities Act (ADA) also prohibits discrimination against individuals based on disability. 42 U.S.C.A. §12101(a)(5) discusses how “individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers ...” This situation perfectly encapsulates the experiences of countless DOE families of students with disabilities, who face outright failure to receive transportation services or necessary accommodations to access their education, even when services are legally mandated. Current transportation policies also adversely and disparately impact students with disabilities.

The experiences of the students named in this complaint exemplify systemic discriminatory failure to comply with the law. For all the reasons set forth, the DOE violates Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA). The complainants and undersigned legal organizations ask that the federal DOE investigate and monitor delivery of transportation services and accommodations to students with disabilities, ensure transportation is legally sufficient, and take further action including federal monitoring if necessary.

5. REQUEST FOR REMEDIES

Based on the foregoing, the complainants ask the Office of Civil Rights to:

- (1) Accept jurisdiction and fully investigate their claims;
- (2) Find that the DOE’s current transportation policies and practices discriminate against students with disabilities;
- (3) Require that the New York City Department of Education (“DOE”) comply with Section 504, the ADA, and the IDEA;
- (4) Require that the DOE fully implement all students’ IEP-mandated transportation accommodations, including but not limited to curb-to-school or door-to-door busing, transportation paraprofessionals, limited travel time, medical/nursing services, and specialized transportation assistant services (“porter services”);
- (5) Require that the DOE ensure all students with disabilities are provided with consistent, daily, timely transportation to school allowing them to avoid loss of instructional time;
- (6) Require that the DOE ensure all students with disabilities are provided with consistent, daily, timely transportation from school allowing them to avoid emotional and physical distress;

(7) Require the DOE to create an independent office to ensure that parents/guardians authorized or entitled to receive reimbursement for transportation accommodation such as carfare receive this within no more than 30 days of submission and that parents entitled to or authorized to receive direct funding for carfare receive same immediately;

(8) Require that the DOE ensure students with disabilities are guaranteed busing and transportation accommodations (such as busing paraprofessionals) for all afterschool activities, such as sports, extracurricular clubs, etc.;

(9) Require that the DOE conduct an evaluation every year to determine where programs for students with disabilities need to be expanded, to reduce reliance on lengthy bus rides to appropriate programs outside of students' home districts;

(10) Require that the DOE ensure students with disabilities living in New York City attending private schools and/or state-approved non-public schools receive the same level of access to busing and transportation services as students attending DOE schools;

(11) Require that the DOE ensure parents/guardians of students with disabilities living in New York City attending private schools and/or state-approved non-public schools receive the same level of access to information regarding their child's bus and route information;

(12) Require that the DOE provide consistent, clear communication to families of students with disabilities regarding any and all delays in assignment of busing routes, delays in arrival times at school, and any other related busing issues;

(13) Require that all DOE staff treat students with disabilities and their families in a professional, respectful manner, at all times, as demonstrated through a mutually developed Code of Conduct to be followed by all busing staff and DOE staff relevant to busing, and through creation of a formal grievance process that can be followed and tracked by families and schools when a violation of the Code of Conduct occurs;

(14) Require the DOE to equip all vehicles transporting students with an operational telephone;

(15) Monitor the DOE recordkeeping practices relating to transportation, or appoint an independent monitor to do so;

(16) Order the DOE to provide relief for individual complainants, including remediation and all other appropriate remedies;

(17) Order the appointment of an independent monitor or ombudsperson to provide further oversight and monitoring of DOE transportation policies and practices and to assistance to parents with ongoing issues; and

(18) Provide any other remedies that may be appropriate.

Respectfully Submitted,

___/s/ Andrew Gerst _____

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