

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

FIRST STUDENT, INC.,

Respondent.

DOCKETS TE-210904 &
TE-190152 (*consolidated*)

JOINT NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 This Joint Narrative Supporting Settlement Agreement (Narrative) is filed with the Utilities and Transportation Commission (Commission) pursuant to Washington Administrative Code (WAC) 480-07-740(3)(a) on behalf of First Student, Inc. (First Student or Company), and Commission Staff (Staff) (collectively, “the Parties”). The Parties have signed the Settlement Agreement (Settlement), which is being filed concurrently with this Narrative. This Narrative summarizes the Settlement. It is not intended to modify any terms of the Settlement.

II. PROPOSAL FOR REVIEW PROCEDURE

2 In accordance with WAC 480-07-740, the Parties propose the following settlement consideration procedure for review of the proposed Settlement. The Parties believe that this matter is a less complex matter under WAC 480-07-740(2)(b). Accordingly, the Parties submit that conducting a hearing will not assist the Commission to decide whether to approve and adopt the settlement because of the limited scope of the issues and First Student’s cooperation with Staff. *See* WAC 480-07-740(2)(e).

3 If the Commission conducts a hearing, however, the Parties will present one or more
witnesses to testify in support of the Settlement and to answer questions concerning the
Settlement’s details, costs, and benefits. *See* WAC 480-07-740(3)(b). In addition, counsel for
each party will be available to address any legal matters associated with the Settlement. If the
Commission requires supporting documents beyond the Settlement and Narrative, and the
other documents on file in this docket, the Parties will provide documentation as needed.

III. **APPLICABLE LAW**

4 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040,
81.01.010, RCW 81.04.010, RCW 81.04.160, Chapter 81.70 RCW, and Chapter 480-30
WAC.

5 Charter party and excursion service carriers are common carriers subject to regulation
by the Commission. RCW 81.04.010(11); Chapter 81.70 RCW. All common carriers are
considered public service companies. RCW 81.04.010(16).

6 The Commission may adopt rules and regulations regarding the services provided by
public service companies that are subject to its regulation. RCW 81.04.160. Additionally, the
Commission is authorized to adopt rules pertaining to the safety of equipment, driver
qualifications, and safety of operations regarding charter party and excursion service carriers.
RCW 81.70.270.

7 WAC 480-30-036 defines a “passenger transportation company” as “an auto
transportation company or charter and excursion carrier.” The Commission has adopted
several vehicle and driver safety requirements that apply to passenger transportation
companies. WAC 480-30-221. The Commission has also adopted by reference specific safety
regulations found in Title 49 of the Code of Federal Regulations (C.F.R.) regarding the safety

of motor carrier operations, including 49 C.F.R. Parts 382, 390, 391, 393 and 395, either in part or in whole. WAC 480-30-221; WAC 480-30-999.

8 The general penalty provisions in Chapter 81.04 RCW apply to violations committed by charter party and excursion service carriers unless those provisions conflict with the provisions of Chapter 81.70 RCW. RCW 81.70.310. The Commission has the authority to impose a penalty of up to \$1,000 for each violation of a Commission order or rule by a public service company. RCW 81.04.380.

IV. SCOPE OF THE UNDERLYING DISPUTE

9 In March 2021, Staff initiated a compliance review of First Student consistent with the Commission’s Order 01 in Docket TE-190152.¹ Between April and November 2021, Staff reviewed First Student’s compliance with the requirements of WAC 480-30-221, which adopts, among other provisions, Title 49 C.F.R. Parts 382, 390, 391, 393, and 395 either in part or in whole.

10 In November 2021, Staff completed its investigation. At the conclusion of its investigation, Staff proposed an unsatisfactory safety rating for the Company. On November 4, 2021, Staff notified First Student that the investigation resulted in a proposed unsatisfactory safety rating for the Company and provided the Company with a copy of Staff’s Investigation Report. On November 9, 2021, First Student petitioned Staff to administratively review Staff’s Investigation Report. On December 9, Staff concluded its administrative review of the Investigation Report and issued an Amended Investigation Report based on additional information provided by First Student. Based on the Amended Investigation Report, Staff issued a proposed conditional safety rating to First Student. Staff provided the Company with

¹ *In re Penalty Assessment Against First Student, Inc.*, Docket TE-190152, Order 01 (May 7, 2019).

the outcome of its administrative review, Staff's Amended Investigation Report, and the proposed conditional safety rating on December 9.

11 On January 4, 2022, First Student submitted a corrective action plan (CAP) to Staff regarding the violations identified in the Amended Investigation Report. During Staff's review of the Company's CAP, Staff identified violations in the Amended Investigation Report that had been improperly cited. On January 28, Staff issued a Second Amended Investigation Report to First Student, which removed 58 violations and maintained the proposed conditional safety rating. Staff provided the Company with a copy of the Second Amended Investigation Report and the proposed conditional safety rating on January 28.

12 Based on the Second Amended Investigation Report, Staff filed a complaint alleging that the Company had committed 634 violations of Commission rules and requirements, and sought penalties for 396 acute, critical, out-of-service, or repeat violations.² The complaint also sought to impose penalties that were suspended subject to conditions in Docket TE-190152 Order 01.

13 On March 3, 2022, the Parties reached a settlement in principle that resolved all of the issues presented in Staff's complaint.³ Staff contacted the presiding officer on behalf of the Parties to request a suspension of the procedural schedule while the Parties worked to finalize the Settlement.

14 On April 12, 2022, the Parties finalized and signed the Settlement. The Settlement contains the complete terms of the Parties' agreement.

² The complaint in this consolidated docket incorrectly listed two violations of 49 C.F.R. Part 393.91 as repeat violations. These violations resulted in vehicles being placed out-of-service, but were not repeat violations.

³ Based on the Company's revised CAP and the terms of the settlement in principle from the March 3 settlement conference, Staff approved the Company's request to upgrade its conditional safety rating to satisfactory, effective March 4.

V. DESCRIPTION OF SETTLEMENT AGREEMENT

15 The Settlement resolves all of the issues in dispute. The Parties agree to the following terms set forth in the Settlement:

- Admission – For purposes of this settlement, First Student admits that it committed the violations described in Staff’s complaint;
- Penalty – First Student will accept a penalty of \$188,000, with \$68,000 due immediately upon the effective date of the Settlement and \$120,000 suspended. First Student further agrees to pay the \$10,000 penalty that was suspended in Docket TE-190152 immediately upon the effective date of the Settlement, resulting in a total payable penalty of \$78,000 due upon the effective date of the Settlement.⁴ The Commission will waive the \$120,000 suspended penalty after a period of three years from the effective date of the Settlement, provided that the Company does not commit any repeat violations of the acute or critical violations at issue in Staff’s complaint during that three year period.⁵ Staff will conduct a follow-up investigation within three years of the Settlement effective date or as soon thereafter as practicable, with which the Company must fully cooperate. In the event that the Commission determines that the Company has committed a repeat acute or critical violation within three years of the Settlement effective date, the \$120,000 suspended penalty will become immediately due and payable. Furthermore, nothing in this Settlement shall be construed as in any way limiting the Commission’s authority to impose additional penalties for new violations

⁴ The imposition of the suspended penalty is based on the Company’s repeat critical violations of 49 C.F.R. Part 382.301(a) that occurred during the two-year suspension period.

⁵ Specifically, the Company shall not commit a repeat violation of (1) Title 49 C.F.R. Part 390.35, (2) Title 49 C.F.R. Part 382.301(a), (3) Title 49 C.F.R. Part 382.305(b)(2), and (4) Title 49 C.F.R. Part 391.51(b)(2).

discovered during any subsequent investigation, including violations discovered as part of the consent reporting described below;

- Consent Reporting – First Student agrees to provide a quarterly written report to Staff for a period of 18 months following the Settlement effective date regarding its compliance with, or any corrections or updates to,⁶ its CAP. The Company shall provide reports on or before the following deadlines:

- May 1, 2022 (or 10 days after the Settlement is approved, whichever is later)
- Aug. 1, 2022
- Nov. 1, 2022
- Feb. 1, 2023
- May 1, 2023
- Aug. 1, 2023

The Company's reports shall include, but are not limited to:

- Submission of the most recently completed quarterly random drug and alcohol testing results (or acceptable quarterly summaries of such test results) for Company drivers in Washington;
- As part of the May 1, 2022 report, confirmation that the Company has implemented the Driver Management Online system as described in the CAP (with a final completion date for Washington of February 28, 2022);
- As part of the August 1, 2022 report, confirmation that site audits identified in the Company's CAP regarding the violation of 49 C.F.R. Part 390.35 (Violation 1), with a target completion date of April 6, 2022, have been performed and the results of those audits; and
- As part of the February 1, 2023 report, a report listing all Washington new hire drivers, including the hiring date, the pre-employment testing date, the results of

⁶ Any modifications to the Company's CAP must be approved by Motor Carrier Safety Staff in writing.

the test, and the first date driving as an employee of the Company for the period between Mar. 1, 2022 to Dec. 31, 2022.

The reports shall be provided to the Motor Carrier Safety Supervisor or the Assistant Director of Transportation Safety.⁷ The Commission's election to not exercise any right or remedy under this Settlement shall not be construed as a waiver of any right or remedy, does not affect the validity of this Settlement or any part thereof, and does not preclude the Commission's exercise of any right or remedy hereunder or otherwise available at law. The Company may not modify or alter any consent reporting deadline or obligation created by this Settlement without written approval of either the Motor Carrier Safety Supervisor or the Assistant Director of Transportation Safety.

VI. STATEMENT OF IMPACT ON THE PUBLIC INTEREST

16 The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the public interest that this dispute conclude without the further expenditure of public resources or litigation expenses.

17 In accordance with WAC 480-07-740-750, the Parties believe the Settlement is in the public interest and appropriate for the Commission's acceptance without conditions under WAC 480-07-750(2)(a) for three reasons. First, the consent reporting provides an additional mechanism to validate that the Company fully and timely implements the changes described in CAP and ensure that the Company complies with applicable Commission rules and regulations. Second, the suspended penalty component will create an incentive for the Company to avoid repeat critical and acute violations during the suspension period. Third, the

⁷ If the reports are the subject to a public records request under Chapter 42.56 RCW, the reports will be reviewed by the Commission, under its standard records review procedure, for potentially exempt information, including information exempt under RCW 42.56.230 (Personal Information).

overall penalty is appropriate and reasonable given the Company’s cooperation with Staff in resolving the issues identified in the Commission’s complaint.

18 The Commission has formally expressed its support for negotiated resolutions of enforcement actions. The rule states, “The commission supports parties’ informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest” WAC 480-07-700. For the reasons stated above, the Parties contend that their Settlement is lawful and consistent with the public interest.

VII. CONCLUSION

19 The Settlement resolves all of the issues in this docket and the Parties submit that their resolution complies with applicable legal requirements and is consistent with the public interest. The Parties respectfully request that the Commission issue an order approving the Settlement in its entirety.

DATED this 12th day of April, 2022.

FIRST STUDENT, INC.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON
Attorney General

TIMOTHY W. WISEMAN
Scopelitis, Garvin, Light, Hanson &
Feary, P.C.
10 West Market Street, Suite 1400
Indianapolis, IN 46204
(317) 492-9221
twiseman@scopelitis.com

Attorney for First Student, Inc.

/s/ Harry Fukano
HARRY FUKANO, WSBA No. 52458
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504
(360) 664-1225
harry.fukano@utc.wa.gov

Attorney for Commission Staff

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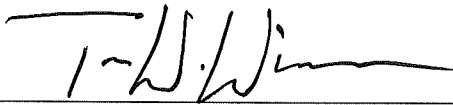
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ROBERT W. FERGUSON
Attorney General



TIMOTHY W. WISEMAN
Scopelitis, Garvin, Light, Hanson &
Feary, P.C.
10 West Market Street, Suite 1400
Indianapolis, IN 46204
(317) 492-9221
twiseman@scopelitis.com

Attorney for First Student, Inc.

HARRY FUKANO, WSBA No. 52458
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504
(360) 664-1225
harry.fukano@utc.wa.gov

Attorney for Commission Staff