

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

FIRST STUDENT, INC.,

Respondent.

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

SETTLEMENT AGREEMENT

I. INTRODUCTION

1 The staff (Staff) of the Washington Utilities and Transportation Commission (Commission), and First Student, Inc., (First Student or Company), through their authorized representatives, enter into the following Settlement Agreement (Settlement) to resolve all issues in consolidated Dockets TE-210904 and TE-190152.

2 This Settlement is a “full multiparty settlement” as the Commission defines that term in WAC 480-07-730(3)(a) because it resolves all issues raised in this docket among Staff and the Company (the Parties). It is subject to review and disposition by the Commission to determine whether it complies with the applicable legal requirements and whether approval of the Settlement is consistent with the public interest.¹

II. BACKGROUND

3 In March 2021, Staff initiated a compliance review of First Student consistent with the Commission’s Order 01 in Docket TE-190152.² Between April and November 2021, Staff reviewed First Student’s compliance with the requirements of WAC 480-30-221,

¹ WAC 480-07-740 and 750.

² *In re Penalty Assessment Against First Student, Inc.*, Docket TE-190152, Order 01 (May 7, 2019).

which adopts, among other provisions, Title 49 of the Code of Federal Regulations (C.F.R.), Parts 382, 390, 391, 393, and 395 either in part or in whole.

4 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 the outcome of its administrative review, Staff's Amended Investigation Report, and the proposed conditional safety rating on December 9, 2021.

5 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, 2022.

6 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.³ The complaint also sought to impose penalties that were suspended subject to conditions in Docket TE-190152 Order 01.

7 After the complaint was filed, Staff continued to work with the Company to review its CAP. On March 2, 2022, the Company submitted a request to upgrade its proposed conditional safety rating to satisfactory based on its revised CAP. On March 3, the Parties held a settlement conference, which resulted in this Settlement.⁴

III. TERMS OF AGREEMENT

8 The Parties have reached an agreement on all issues raised in consolidated Dockets TE-210904 and TE-190152, and present this Settlement for the Commission's consideration and approval. The Parties therefore adopt the following Settlement, which they enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding:

- 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.⁵ The

³ 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.

⁴ 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.

⁵ 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.

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.⁶ 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 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,⁷ 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

⁶ 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).

⁷ Any modifications to the Company's CAP must be approved by Motor Carrier Safety Staff in writing.

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 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.⁸ 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

⁸ 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).

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.

IV. GENERAL PROVISIONS

9 Public interest: The Parties submit that this Settlement promotes the public interest, and that it is appropriate for the Commission's acceptance without conditions under WAC 480-07-750(2)(a).

10 Effective date: This Settlement is effective on the service date of a final Commission order approving this Settlement, or on the date that an initial order approving this Settlement becomes a final order pursuant to WAC 480-07-825(7), whichever occurs first.

11 Advocacy: The Parties agree to cooperate in submitting this Settlement promptly to the Commission for acceptance. The Parties agree to support adoption of this Settlement in proceedings before the Commission. No party to this Settlement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Settlement.

12 Construction: This Settlement shall not be construed against any party solely because that party was a drafter of the Settlement.

13 Other proceedings: This Settlement shall have no precedential or preclusive effect in other proceedings except a proceeding to enforce its terms. In the event this Settlement does not become effective, this Settlement shall be null and void, with no binding effect on the Parties and with no precedential or preclusive effect on the Parties regarding the continued litigation in consolidated Dockets TE-210904 and TE-190152. In the event that the Commission rejects all or any portion of this Settlement, or accepts the Settlement with

conditions, each of the Parties reserves the right to withdraw from this Settlement by written notice to the other Parties and the Commission. Written notice must be served within 10 business days of service of the order rejecting part or all of this Settlement or imposing conditions on its approval. In such event, no party will be bound by the terms of this Settlement, and the Parties agree to cooperate in developing a procedural schedule.

14 Settlement discussions: The Parties have entered into this Settlement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Settlement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Settlement or any Commission order fully adopting those terms. By executing this Agreement, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed in arriving at the terms of the Agreement, nor shall any Party be deemed to have agreed that any provision of this Agreement is appropriate for resolving issues in any other proceeding, except to the extent expressly set forth in the Agreement.

15 Final agreement: The Parties have negotiated this Settlement as an integrated document to be effective upon execution. This Settlement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

16 Counterparts: The Parties may execute this Settlement in counterparts and as executed shall constitute one agreement. A signed signature page sent by facsimile or email is as effective as an original document.

Authorized representatives: Each person signing this Settlement warrants that he or she has authority to bind the party that he or she represents.

DATED this 12th day of April, 2022.

FIRST STUDENT, INC.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

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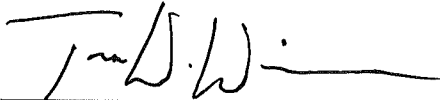
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