



CITY OF FRAMINGHAM  
MASSACHUSETTS  
Office of the City Solicitor

Christopher J. Petrini  
City Solicitor

Petrini & Associates, P.C.  
372 Union Avenue • Framingham, MA 01702  
(508) 665-4310 • Facsimile (508) 665-4313  
[www.petrinilaw.com](http://www.petrinilaw.com)

December 18, 2019

**BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
AND REGULAR MAIL**

Alejandro Castro, Chief Financial Officer  
Durham School Services, L.P.  
4300 Weaver Parkway  
Warrenville, IL 60555

**RE: Notice of Breach of Contract – City of Framingham  
Agreement for Transportation Services**

Dear Mr. Castro:

Pursuant to the Short Form of Agreement for School Transportation Services between Durham School Services, L.P. (“Durham”) and the City of Framingham (“City”) dated August 1, 2016 (“Agreement”), the City hereby gives notice that it considers Durham in default of the Agreement, and the requirements of the Invitation for Bids (which were incorporated by reference into the Agreement) for its failure to provide adequate labor to provide the service required under the Agreement. The City is providing this notice and demands that Durham cure the breach by January 31, 2020.

During the current school year, Durham has been short at least one driver for 48 of the first 63 days of school (76% of all school days). Durham’s failure to adequately staff for the Agreement with the City has caused patterns of numerous delays of 45 minutes or more, stressful situations, children waiting outside in below freezing temperatures, and missed time on learning at school. On average, there have been approximately 150 children transported by Durham that are arriving late for school each day. Based on an average per pupil cost of \$17,000 per year, this results in approximately \$2,400 in lost instructional time each day.

While the City acknowledges that traffic, weather and behavioral issues can occasionally cause a bus not to arrive on time to school, the primary reason students transported by Durham are arriving significantly late to school is Durham’s shortage of bus drivers. This is Durham’s sole and express responsibility under the Agreement. Durham expressly agreed in Article 2 to provide the necessary labor to carry out the Agreement. Although the District has tried to work

December 18, 2019

Page 2

with Durham over several months, Durham continues to fail to meet its obligations under the Agreement.

The Invitation for Bids expressly provides the City with the option of recovering damages for Durham's continuing breach of the Agreement:

If at any time the Contractor fails, in the opinion of the Town, to furnish the vehicles required by the contract or to furnish them in accordance with the terms and specifications hereof; the Town may (a) terminate this contract five (5) days after mailing a notice of its intention to do so to the Contractor at the address set forth in the contract; (b) serve notice on the Contractor to furnish the required materials; or (c) the town may procure the required vehicles. Thereafter the Town may deduct from any sums remaining payable to the Contractor under this contract, or under any other contract between the same parties, an amount sufficient to defray any expense, losses, or damage incurred by the Town as a result of the Contractor's failure to meet its obligations hereunder, including any costs incidental to replacing any vehicles; or if losses and damages, the Town may charge the amount of the excess to the Contractor. Recourse to any of these remedies, however, shall not impair or affect the right of the Town for recovery in breach of Contract against the Contractor.

See Invitation for Bids, Specific Instructions, pg. 13.

Please be advised that Durham has until January 31, 2020 to cure its breach of contract by providing an adequate number of bus drivers to staff all the City's School Transportation needs (currently 76 routes as of the date of this letter) going forward. Should Durham fail to cure its breach, the City reserves the right to recoup damages for the breach, including a \$16 back charge per student (based on the \$17,000 per pupil costs to the District noted above) for any bus route that is completed late due to a driver shortage from Durham's monthly invoices to the City. The City also reserves the right to issue an invitation for bids for school bus transportation services starting in the 2020-21 school year or sooner if possible and to terminate the Agreement if the breach continues beyond January 31, 2020. Needless to say, the City reserves all rights under the Agreement and Durham's performance bond to seek compensation for all of the late bus arrivals to date due to the driver shortage and for additional costs incurred by the City if it is necessary to terminate Durham and proceed with an alternative school transportation services provider for the balance of the Agreement term.

Thank you for your prompt attention in this regard.

Very truly yours,



Christopher L. Brown  
Assistant City Solicitor

December 18, 2019

Page 3

cc: (all via email only)  
Framingham School Committee  
Yvonne M. Spicer, Mayor  
Jennifer Pratt, Chief Procurement Officer  
Christopher J. Petrini, City Solicitor  
RJ Castagno, Regional Manager, Durham School Services  
Stephen Schmuck, Senior Vice President, Durham School Services

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED AND REGULAR MAIL**

Travelers Casualty and Surety Company of America

RE: Performance Bond No. 106477341

One Tower Square

Hartford, CT 06183

2019.12.18 Notice of Breach to Durham (612-00)