No. __________

In The Supreme Court of the United States

KATRINA PARKER,
Petitioner,

v.

NEW JERSEY MOTOR VEHICLE COMMISSION, *ET AL.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 prohibit discrimination against a qualified individual with a disability. 42 U.S.C. § 12132; 29 U.S.C. § 794(a). A "qualified individual" is one who "meets the essential eligibility requirements" for the program. 42 U.S.C. § 12131(2). The courts of appeals are divided over the following question:

Whether, under Title II of the Americans with Disabilities Act or Section 504 of the Rehabilitation Act, a defendant bears any burden to demonstrate that an eligibility requirement is essential.

PARTIES TO THE PROCEEDINGS

The parties are petitioner (plaintiff-appellant below) Katrina Parker and respondents New Jersey Motor Vehicle Commission and Rosalie Johnson, in her official capacity as Acting Chief Administrator of the New Jersey Motor Vehicle Commission. Parker refers to the respondents collectively as "New Jersey" for ease of exposition.

In the district court and on appeal, Parker pursued claims under Title II of the ADA, Section 504 of the Rehabilitation Act, the Fourteenth Amendment of the U.S. Constitution, and New Jersey state law. Only the ADA and Rehabilitation Act claims are at issue in this Court.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Katrina Parker v. B. Sue Fulton, in her Capacity as Chief Administrator of the New Jersey Motor Vehicle Commission, et al.*, No. 19-8926, 2023 WL 2535328 (ZNQ) (DEA) (D.N.J. Mar. 16, 2023).

- *Katrina Parker v. New Jersey Motor Vehicle Commission; B. Sue Fulton, in her official capacity as the Chief Administrator of the New Jersey Motor Vehicle Commission*, No. 23-1520, 158 F.4th 470 (3d Cir. 2025).

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The opinion of the United States Court of Appeals for the Third Circuit, Pet. App. 1a, is reported at 158 F.4th 470. The opinion of the United States District Court for the District of New Jersey denying petitioner's motion for summary judgment and granting respondents' motion for summary judgment, Pet. App. 29a, is unreported but available at 2023 WL 2535328.

JURISDICTION

The Third Circuit issued its opinion on October 24, 2025. Pet. App. 1a. The Third Circuit denied rehearing on November 24, 2025. Pet. App. 49a. On February 13, 2026, Justice Alito extended the time within which to file a petition for a writ of certiorari until March 24, 2026. On March 12, 2026, Justice Alito further extended the time within which to file a petition for a writ of certiorari until April 23, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

42 U.S.C. § 12132 provides:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12131(2) provides:

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

29 U.S.C. § 794(a) provides in pertinent part:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his 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 . . .

28 C.F.R. § 35.130(b)(8) provides:

A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

INTRODUCTION

This case asks whether a State may defeat a Title II or Section 504 claim by invoking a licensing rule that "screens out" applicants with disabilities, *see* 28 C.F.R. § 35.130(b)(8), while offering no proof that the rule is necessary. Both statutes protect a "qualified individual with a disability" — one who, with or without reasonable modifications, "meets the essential eligibility requirements" of the program at issue. 42 U.S.C. § 12131(2); 29 U.S.C. § 794(a). The question is who must come forward with evidence of essentiality — an issue over which the courts are divided.

Petitioner Katrina Parker is deaf. She holds a federal hearing exemption and safely operated a Rutgers University shuttle bus, without incident, for eight months. Pet. App. 8a. New Jersey nonetheless rescinded her passenger and school-bus endorsements under a categorical hearing requirement, without producing any evidence that hearing is essential to safe operation. The Third Circuit affirmed summary judgment against her — not because New Jersey had carried any burden, but because Parker had not disproved essentiality.

That holding conflicts with decisions from the Vermont Supreme Court, the Second Circuit, and the Eighth Circuit, each of which requires the public entity to come forward with evidence that an exclusionary criterion is necessary before a court may treat it as an "essential eligibility requirement." *See Howard v. Dep't of Soc. Welfare*, 655 A.2d 1102 (Vt. 1994); *Mary Jo C. v. N.Y. State & Local Ret. Sys.*, 707 F.3d 144 (2d Cir. 2013); *Pottgen v. Mo. State High Sch. Activities Ass'n*, 40 F.3d 926 (8th Cir. 1994). The decision below aligns with a Fourth Circuit line that places the full burden on the plaintiff. *See Halpern v. Wake Forest Univ. Health*

Scis., 669 F.3d 454 (4th Cir. 2012); *Wood v. Md. DOT*, 732 F. App'x 177 (4th Cir. 2018).

The question is important, recurring, and cleanly presented. Eligibility criteria that screen out people with disabilities appear across public-licensing regimes, educational admissions, professional certification, and benefits determinations. The allocation question determines whether Title II and Section 504 challenges to such criteria can survive summary judgment at all. This Court's Rule 10 expressly reaches conflicts involving a state court of last resort, and the record squarely presents the legal question without factual complications.

STATEMENT OF THE CASE

I. Legal Background.

A. The Rehabilitation Act and Title II of the ADA Prohibit Discrimination Against Qualified Individuals with Disabilities.

Title II of the ADA and the Rehabilitation Act "aim to root out disability-based discrimination, enabling each covered person . . . to participate equally to all others." *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 170 (2017). Section 504 prohibits such discrimination in federally funded programs; Title II extends this mandate to state and local governmental entities. 29 U.S.C. § 794(a); 42 U.S.C. §§ 12131(1)-(2), 12132. The two Acts impose identical requirements. *Rodriguez v. City of New York*, 197 F.3d 611, 618 (2d Cir. 1999).

The Acts make it unlawful to discriminate against disabled people who are "qualified." 42

U.S.C. § 12132; 29 U.S.C. § 794(a). "The term 'qualified individual with a disability' means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2) (emphasis added); *see* 45 C.F.R. § 84.10 (defining "qualified individual with a disability" as one who "meets the essential eligibility requirements for the receipt of services") (formerly § 84.3(l)(4), redesignated 89 Fed. Reg. 40,180 (May 9, 2024)).

Although covered entities may impose physical qualification standards and other eligibility requirements that tend to exclude people with disabilities, those that do must demonstrate that the eligibility criteria are necessary. 28 C.F.R. § 35.130(b)(8) (screening-out criteria must be "shown to be necessary for the provision of the service, program, or activity being offered"); *see also* 45 C.F.R. § 84.68(b)(8) (Rehabilitation Act counterpart, redesignated 89 Fed. Reg. 40,180 (May 9, 2024)).

B. New Jersey Prohibits Deaf Drivers from Obtaining a Passenger or School Bus Endorsement.

New Jersey law prohibits deaf people from driving buses within the state.

To drive a bus or other commercial passenger vehicle, one must first obtain a commercial driver's license ("CDL"). A CDL authorizes the holder to operate a commercial motor vehicle. 49 C.F.R. § 383.5 (defining "Commercial driver's license"). CDLs are governed by a combination of state and federal law. The federal government establishes safety regulations governing the operation of commercial motor vehicles in interstate commerce, but states retain the authority to regulate the intrastate operation of commercial motor vehicles and state agencies are charged with issuing CDLs and administering both state and federal regulations. *See* 49 U.S.C. § 31136(a) (directing the Secretary to prescribe regulations on commercial motor vehicle safety); *id.* § 31311(a) (requiring States to comply with federal CDL standards); 49 C.F.R. Part 384 (state compliance with CDL program).

Federal law establishes the physical qualifications necessary for a CDL. 49 C.F.R. § 391.41. Although passing a hearing exam is typically one of these requirements, *id.* § 391.41(b)(11), applicants may request an exemption from the hearing requirement. *See* 49 U.S.C. §§ 31315(a)-(b), 31136(e). Because available studies show no relationship between deafness and crash risk among commercial motor vehicle drivers, it is now routine for deaf drivers to receive these exemptions. *See* Federal Motor Carrier Safety Administration, Evidence Report: Hearing, Vestibular Function, and Commercial Motor Vehicle Driver Safety (Expedited Review) 3 (Aug. 26, 2008) (finding no studies showing a relationship between deafness and crash risk among CMV drivers); Qualification of Drivers; Application for Exemptions; National Association of the Deaf, 78

Fed. Reg. 7,479 (Feb. 1, 2013) (granting first 40 hearing exemptions based on agency study finding no increased crash risk).

The standard federal hearing exemption prohibits the operation of a bus with passengers in interstate commerce. *See* Pet. App. 6a; *see also* 49 U.S.C. § 31315(b) (authorizing exemptions subject to conditions). But federal law expressly permits states to adopt their own variance programs from the federal government's physical-qualification standards for intrastate operations. 49 C.F.R. § 350.305(f)-(g). Many states have done that. Having determined that deaf people can safely operate commercial passenger vehicles, several states permit such people to drive buses intrastate. *See, e.g.,* 14-018 Code Vt. R. 14-050-018-X, Rule a, § (2)(J) (permitting deaf drivers to obtain school bus endorsements with operational restrictions); Minn. Stat. § 221.0314, subdiv. 3a (authorizing the commissioner to grant intrastate waivers from 49 C.F.R. § 391.41(b)(11)'s hearing standard, applicable to intrastate transportation without vehicle-type restriction). New Jersey is not one of those states.

To drive a bus in New Jersey, after receiving a CDL, one must apply for and obtain a P (commercial passenger) endorsement and an S (school bus) endorsement. *See* N.J. Stat. § 39:3-10.11; N.J. Admin. Code § 13:21-23.6(b); Pet. App. 7a. Applicants must pass certain knowledge and skills tests to receive the endorsements. *See* N.J. Stat. § 39:3-10.1. And key here, applicants must also satisfy the federal physical-fitness standards for a CDL, including the federal hearing requirement. *See*

N.J. Admin. Code § 13:21-14.5(c)(11). Federal exemptions do not apply to this state-imposed hearing requirement for intrastate driving. *See* N.J. Admin. Code § 13:21-23.28(a). And unlike the federal government, New Jersey does not offer individual exceptions to its hearing requirement. New Jersey law authorizes the New Jersey Motor Vehicle Commission ("NJMVC") to waive the hearing requirement only on a class-wide basis, N.J. Stat. § 39:3-10.29; to date the Commission has not extended such a waiver to deaf drivers.

To summarize: (1) driving a bus in New Jersey requires P and S endorsements; (2) New Jersey grants the endorsements only to those who can meet the state's hearing requirement; (3) because deaf drivers cannot do that, New Jersey will not grant them the endorsements, prohibiting them from becoming bus drivers.

II. Factual Background.

Petitioner Katrina Parker has been deaf since a childhood illness. Pet. App. 3a. Despite her impairment, she is capable of safely driving cars and commercial motor vehicles, including buses. *See* Pet. App. 6a, 8a.

Parker sought to drive commercial vehicles in New Jersey in 2016. Pet. App. 3a. Because she is deaf, she applied for a federal exemption from the hearing requirement for a CDL. Pet. App. 5a–6a. She received that exemption in September 2016. Pet. App. 6a. The exemption authorized her to drive commercial motor vehicles in interstate commerce but prohibited her from operating a bus with passengers in interstate commerce. Pet. App. 6a.

With the exemption in hand, Parker applied to the NJMVC for a CDL. The NJMVC issued Parker a CDL in June 2017. Pet. App. 6a. Taking the federal exemption at its word, that it prohibited her from driving passengers only in interstate, not intrastate, commerce, Parker also applied for and received P and S endorsements from the NJMVC in October 2017. Pet. App. 8a.

Parker began driving a campus shuttle bus for students and faculty at Rutgers University, operating solely within New Jersey, in January 2018. Pet. App. 8a. She drove the shuttle without incident for eight months. Pet. App. 8a.

The NJMVC reviewed Parker's eligibility for the P and S endorsements in July 2018. Pet. App. 8a. After determining that her federal exemption did not excuse her from New Jersey's hearing requirements for passenger endorsements, the NJMVC rescinded Parker's P and S endorsements in August 2018. Pet. App. 8a–9a. Without the endorsements, Parker lost her job operating the shuttle bus at Rutgers. Pet. App. 9a.

III. Proceedings Below.

Parker filed suit in the United States District Court for the District of New Jersey, asserting claims under Title II of the ADA, Section 504 of the Rehabilitation Act, and the New Jersey Law Against Discrimination for disability discrimination, and under 42 U.S.C. § 1983 for violations of the

Fourteenth Amendment of the U.S. Constitution. Pet. App. 10a.

After discovery, the parties cross-moved for summary judgment. The district court concluded that Parker did not qualify for the P and S endorsements and granted New Jersey summary judgment on each of Parker's claims. Pet. App. 11a–13a.

The Third Circuit affirmed. As in the district court, the central question on appeal was whether Parker was qualified under the ADA and the Rehabilitation Act. Pet. App. 12a–18a. That turned on whether she could "meet the essential eligibility requirements" for the P and S endorsements. Pet. App. 13a; 42 U.S.C. § 12131(2). The panel correctly observed that "one eligibility requirement for a P or S endorsement in New Jersey is that the CDL license holder meet the minimum federal hearing standards." Pet. App. 14a. Parker did not dispute that she could not satisfy that requirement because she is deaf. Pet. App. 14a. The question, then, was whether New Jersey's hearing requirement was essential or non-essential.

Parker's position on this issue has been consistent throughout the litigation: it is not essential. Several other states permit deaf people to drive buses, and Parker herself drove a shuttle bus for eight months without incident. These facts prove the point. *See supra* at 7 (citing Vermont and Minnesota variance programs); Pet. App. 8a (Parker drove shuttle bus without incident for eight months).

But the panel resolved the issue in New Jersey's favor. In the panel's view, Parker did "not contend that there is a difference between essential eligibility requirements and all eligibility requirements, much less that if there were such a difference, that a minimum ability to hear would not be an essential eligibility requirement for a P or an S endorsement." Pet. App. 15a. Because Parker had not demonstrated that the hearing requirement is *not* essential, and because it is undisputed that she cannot meet that requirement, the panel concluded that she had "not made the showing that she is a qualified individual with a disability." Pet. App. 16a. New Jersey never contended, and the court of appeals did not hold, that New Jersey's categorical hearing requirement is necessary or essential to the safe intrastate operation of passenger or school buses.

The panel's ruling rested on two errors. First, it ignored the evidence and arguments Parker presented showing that New Jersey's hearing requirement was not necessary. Second, it presumed the requirement was essential without requiring New Jersey to justify it or to produce any evidence in its defense. *See* Pet. App. 12a–18a. New Jersey never attempted such a showing during the litigation.

The Third Circuit subsequently denied Parker's request for panel and en banc rehearing. Pet. App. 49a.

REASONS FOR GRANTING THE PETITION

This Court should grant review. The case presents an important question over which federal and state courts of appeals are divided. Only this Court can resolve the conflict, and this case presents an ideal opportunity to do so.

I. Courts Are Divided Over Whether the Defendant Bears Any Burden of Identifying and Establishing the Program's Essential Eligibility Requirements.

Lower courts have divided over whether Title II and § 504 require a public entity to justify an eligibility criterion before a court may treat it as "essential." The Vermont Supreme Court, the Second Circuit, and the Eighth Circuit require the public entity to come forward with evidence that a challenged criterion is necessary. The Fourth Circuit holds the plaintiff bears the entire burden of showing that a criterion is not essential. The Third Circuit adopted the latter rule in the decision below.

A. The Vermont Supreme Court, the Second Circuit, and the Eighth Circuit Require the Defendant to Provide Evidence that a Challenged Eligibility Requirement is Essential.

Three courts, including one state court of last resort interpreting federal law, require defendants to shoulder at least some burden in showing that an eligibility requirement is essential under the ADA and the Rehabilitation Act.

The Vermont Supreme Court holds that defendants bear not just the burden of production but also the burden of *persuading* the court that an eligibility requirement is essential when that requirement excludes people from participating in a public program because of their disability. *See Howard v. Dep't of Soc. Welfare*, 655 A.2d 1102, 1106–09 (Vt. 1994). The plaintiffs in *Howard* brought Rehabilitation Act and ADA Title II challenges to Vermont's decision to terminate aid benefits for disabled children who would not graduate from high school by age nineteen. *Id.* at 1103–04. The court "examine[d] whether the graduation requirement [wa]s an essential eligibility requirement." *Id.* at 1106. Because children with learning disabilities may be required to repeat a year or more of school because of their disabilities (and thus not graduate by age nineteen), the court concluded that the graduation requirement "tends to exclude those students who have or have had learning disabilities." *Id.* at 1107.

That conclusion carried consequences. The court observed that the ADA's regulations prohibit public entities from "impos[ing] or apply[ing] eligibility criteria that screen out or tend to screen out" disabled people from a program or service "unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered." *Id.* (quoting 28 C.F.R. § 35.130(b)(8)). Because the graduation requirement "tends to exclude persons with disabilities from qualifying for the [aid] benefits," the court placed the burden of persuasion on Vermont "to show that the graduation requirement is necessary for the provision of the

[aid] program and, consequently, [that] plaintiffs' children do not meet an essential eligibility criterion." *Id.* Vermont failed to make that showing. *Id.* at 1108 ("[Vermont] has not shown that the graduation requirement is necessary for the provision of the . . . program. This criterion is therefore not an essential eligibility requirement.").

The Eighth Circuit likewise requires the defendant to demonstrate that a challenged eligibility criterion is essential. *See Pottgen v. Mo. State High Sch. Activities Ass'n*, 40 F.3d 926, 929–31 (8th Cir. 1994). *Pottgen*, like *Howard*, involved a Rehabilitation Act and ADA Title II challenge to an age-related eligibility requirement that tended to exclude disabled children. *Id.* at 927–28. Like the Vermont Supreme Court in *Howard*, the Eighth Circuit held that public entities may "impose eligibility criteria that tend to screen out an individual with a disability . . . if 'such criteria can be shown to be necessary for the provision of the activity being offered.'" *See Pottgen*, 40 F.3d at 931 n.6 (quoting 28 C.F.R. § 35.130(b)(8) (cleaned up)). And like the Vermont Supreme Court, the Eighth Circuit concluded that it was the *defendant's* burden to make this showing. *See id.* at 929–31. In the Eighth Circuit's view, the defendant satisfied that burden in *Pottgen* because it "demonstrated that the age limit is an essential eligibility requirement." *Id.* at 931; *id.* at 929 (describing defendant's evidence and explaining why it showed that the age limit was essential).

The Second Circuit also refuses to treat formal legal eligibility requirements as automatically essential, requiring instead an independent analysis of essentiality. *See Mary Jo C. v. N.Y. State & Local Ret. Sys.*, 707 F.3d 144 (2d Cir. 2013). The district court in *Mary Jo C.* ruled that the plaintiff was not qualified under Title II of the ADA because she had missed a filing deadline for applying for disability retirement benefits and that the deadline was an essential eligibility requirement for receiving the benefits. *Id.* at 149, 151. The Second Circuit reversed. The district court's error lay in concluding that any "mandatory eligibility requirement . . . set by a state statute," in this case, the filing deadline, is necessarily "an 'essential eligibility requirement.'" *Id.* at 154; *id.* at 161 ("[T]he district court's view that the ADA's reference to 'essential eligibility requirements' necessarily refers to each and every formal legal eligibility requirement imposed for participation in a public program or benefit is mistaken.").

Anchoring its analysis to the text of the ADA, the Second Circuit observed that the statute "distinguishes between two categories of requirements: (1) rules, policies, or practices, which are subject to the requirement of reasonable modification, and (2) essential eligibility requirements, which are not." *Id.* at 155–56 (discussing component parts of 42 U.S.C. § 12131(2)). Those textual clues indicate that "the term 'essential eligibility requirements' does not refer to all formal legal eligibility requirements." *Id.* at 156–57. Some "eligibility requirements, even if set by statute, will not be deemed essential" because they may be modified or waived. *Id.* at 158. Courts therefore may not "defer automatically to whatever 'formal legal eligibility requirements' may exist." *Id.* at 159. They must instead undertake "an independent analysis" to determine whether an eligibility requirement is essential. *Id.* That analysis showed that the defendants had not established that the filing deadline was essential. *See id.* at 160.

B. The Third and Fourth Circuits Require the Plaintiff to Bear the Entire Burden of Showing that a Challenged Eligibility Criterion is *Not* Essential.

The Third and Fourth Circuits hold that plaintiffs must show that a challenged eligibility requirement is not essential. *Contra* the decisions from the Vermont Supreme Court and the Second and Eighth Circuits, these two courts assume that a legal requirement that expressly excludes people based on their disability is essential without any proof that it is from the defendant.

The Fourth Circuit holds that "a plaintiff asserting a violation of the ADA or Rehabilitation Act bears the burden to establish that he is qualified." *Halpern v. Wake Forest Univ. Health Scis.*, 669 F.3d 454, 462 (4th Cir. 2012). The court's application of that rule in *Wood v. Md. DOT*, 732 F. App'x 177 (4th Cir. 2018), is illustrative. Although *Wood* is nonprecedential, it confirms that *Halpern*'s published allocation extends to the public-entity eligibility-criterion context at issue here. Unable to meet a Maryland field-of-vision requirement because of an eye impairment, the plaintiff challenged Maryland's decision to deny his application to renew his driver's license. *Id.* at 179. He argued that the state had the burden to show that the requirement was essential. *Id.* at 182. The court disagreed, holding that "the burden rest[ed] on him" to show that he met "the essential eligibility requirements to obtain a license." *Id.* In concluding that the plaintiff failed to satisfy that burden, the court assumed without analysis and without proof from the state that Maryland's field-of-vision requirement was essential. *See id.* at 182–85. The court instead determined that the plaintiff had not shown the requirement to be "unreasonable." *Id.* at 184. Because he could not meet that requirement, the plaintiff was not qualified. *Id.* at 185.

The Third Circuit's decision here follows the same pattern. The panel held that Parker's claim failed because she had not argued or shown that New Jersey's hearing requirement was not essential. Pet. App. 14a–16a. At no point did the panel examine the record bearing on essentiality or assess whether New Jersey had produced evidence, much less persuasive evidence, that the requirement was necessary. It treated the hearing requirement as essential by default.

There is no basis for believing that the Third Circuit will reconsider its position. Parker requested panel and en banc rehearing; the court denied that request without recorded dissent. Pet. App. 49a. The split will not resolve itself.

II. The Third Circuit's Decision is Wrong.

The Third Circuit's decision effectively presumes that each eligibility requirement is essential and places the burden to prove that it is not exclusively on the plaintiff. The defendant need not make any showing that a challenged eligibility criterion is essential, not even when, as here, the criterion in question facially discriminates against disabled people. That analysis is at odds with the text, structure, history, and purpose of the ADA and the Rehabilitation Act.

A. The Statutory Text Requires an Essentiality Inquiry.

Title II of the ADA conditions relief on a plaintiff's ability to meet the "essential eligibility requirements" for a program, not all eligibility requirements. 42 U.S.C. § 12131(2). The modifier "essential" must do independent statutory work; if every eligibility requirement were automatically essential, the word would be surplusage. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Under the Third Circuit's framework, any eligibility requirement a public entity imposes becomes essential by default, absent plaintiff disproof. That reading converts "essential" into a category containing every requirement and excluding none, precisely the surplusage TRW forbids.

The Second Circuit's decision in *Mary Jo C.* is the leading application of this principle. There, the court held that not every eligibility requirement, including those set by statute, is necessarily essential. *See* 707 F.3d at 156–58. That's because the term "essential eligibility requirements" denotes a subset of a program's requirements: those whose importance to the program makes them indispensable to its nature and purpose. *Id.* at 154–61.

The statutory provision's internal structure confirms this interpretation. Section 12131(2) defines a "qualified individual" as one who "with or without reasonable modifications to rules, policies, or practices . . . meets the essential eligibility requirements" for the program. 42 U.S.C. § 12131(2). The reasonable-modifications clause and the "essential" modifier work in tandem: Congress contemplated that some non-essential requirements might be modified, and it specified that only the essential ones must be met even after modification. *See Mary Jo C.*, 707 F.3d at 158. But if every eligibility requirement were essential, the reasonable-modifications clause would have no application to a program's eligibility requirements; there would be nothing to modify. The word "essential" gives the modification clause its scope by identifying which requirements define the program's core and which may be adjusted without altering the program's nature. Congress's choice to phrase the modification clause in terms of "rules, policies, or practices" reinforces this reading: an eligibility requirement is itself a rule, and the modification clause's scope necessarily includes those requirements susceptible to modification, namely the non-essential ones. The "essential" category exists because some requirements lie outside the modification power.

B. Two Textual Mechanisms Place the Evidentiary Burden on the Defendant.

The text makes essentiality a defined element of qualified-individual status; it does not on its face say which party must come forward with evidence that a given requirement is essential. Two textual mechanisms answer that question in favor of the defendant. First, the identical-words canon carries Title I's settled burden-of-production allocation into Title II through the shared statutory term "essential." Second, §§ 12134(b) and 12201 textually incorporate into Title II the Rehabilitation Act's Section 504 regulatory regime, which has required covered entities to demonstrate that exclusionary criteria are essential. A long-standing background fairness principle, discussed in Part C below, confirms the textual result. Parker's argument addresses only the burden of *production*; the plaintiff's ultimate burden of *persuasion* on qualified-individual status, recognized in *Cleveland* and *Stanley*, is not at issue.

1. The identical-words canon carries Title I's settled burden-of-production allocation into Title II.

The statutes use the same qualifying language in materially identical form. Title I defines a "qualified individual" as one who "can perform the essential functions of the employment position." 42 U.S.C. § 12111(8). Title II defines a "qualified individual with a disability" as one who "meets the essential eligibility requirements" of the public entity's program. 42 U.S.C. § 12131(2). Both definitions pivot on the same statutory adjective — "essential" — operating on a parallel noun (functions in Title I, eligibility requirements in Title II). When Congress uses the same operative term in successive sections of the same statute, that term is presumed to carry the same meaning and the same consequences. *See IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005).

Title I jurisprudence has long allocated the burden of production on essential functions to the defendant-employer. *See Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 991 (9th Cir. 2007) (en banc) ("the burden of production generally falls on the employer" as to essentiality of a job function, "because an employer has better access to the relevant information"); *Benson v. Nw. Airlines, Inc.*, 62 F.3d 1108, 1113 (8th Cir. 1995) (same). That allocation rests on the same logic that governs Title II: the entity that designed the program, established its requirements, and holds the administrative record is the party best positioned to come forward with evidence about what those requirements are and why they are indispensable. *Cleveland* and *Stanley*, both Title I decisions, preserve the plaintiff's ultimate burden of persuasion on whether she is a qualified individual; neither disturbs this antecedent production burden. *See Cleveland*, 526 U.S. at 806; *Stanley*, 606 U.S. at 52–54.

The identical-words canon carries that allocation across the statutory line. The same "essential" modifier, the same underlying information-access logic, the same burden-of-production rule. *See Berardelli v. Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 117 (3d Cir. 2018) (the Rehabilitation Act and ADA "impose the same substantive liability standard"). Title II is not a separate statute operating under different rules; it is the public-entity sibling of Title I, enacted by the same

Congress, in the same omnibus act, using the same operative terminology.

2. Section 12134 incorporates the Section 504 regulatory regime.

Congress did not legislate Title II on a blank slate. When the ADA was enacted in 1990, the then-existing Section 504 coordination regulations required covered entities to "demonstrate" that exclusionary academic requirements were "essential." *See* 45 C.F.R. § 84.44(a) (1978). Title II then made two textual choices that bound that preexisting regime into Title II's operation.

First, § 12134(b) commands that Title II regulations "shall be consistent with" the coordination regulations under Section 504. 42 U.S.C. § 12134(b). That is not a general rulemaking grant. It is a statutory command that Title II's regulatory scaffolding carry the substantive content of the 1978 Section 504 regime. The implementing regulation, 28 C.F.R. § 35.130(b)(8), therefore reflects Congress's textual incorporation of the Section 504 screen-out requirement, not freestanding agency rulemaking. The parallel Section 504 provision still appears alongside § 35.130(b)(8). *See* 45 C.F.R. § 84.68(b)(8) (redesignated 89 Fed. Reg. 40,180 (May 9, 2024)); *Berardelli*, 900 F.3d at 117 (holding that, "although the statutes may diverge" in scope and remedy, the Rehabilitation Act and ADA "impose the same substantive liability standard").

Second, § 12201(a) bars any construction of Title II that would "apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973." 42 U.S.C. § 12201(a). Title V was administered through the Section 504 coordination regulations at the time of the ADA's enactment. Section 12201(a) thus functions as a textual floor: Title II cannot be read to dilute the Section 504 substantive content Congress directed Title II to carry. *See Berardelli*, 900 F.3d at 117.

The legislative history confirms the design. Section 202, the Senate Report explains, "extends the nondiscrimination policy in section 504 of the Rehabilitation Act . . . to cover all State and local governmental entities." S. Rep. No. 101-116, at 40 (1989). Congress is presumed to have adopted the settled meaning that accompanied the Section 504 terminology it imported. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) ("Congress' repetition of a well-established term carries the implication that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations"). The result: Title II's screen-out requirement, that exclusionary criteria be "shown to be necessary," is statutorily commanded content, not agency invention. 28 C.F.R. § 35.130(b)(8); *see also id.* § 35.130(h) (safety requirements must be "based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities").

C. A Background Fairness Principle Confirms the Textual Allocation.

The two textual mechanisms above establish the statutory allocation. A long-standing background fairness principle — that the party with superior access to the relevant information should come forward with the evidence — independently supports the same result. The public entity designed the program, established the eligibility criteria, and holds the administrative rationale for each. Allocating the burden of justifying essentiality to the defendant reflects "[t]he ordinary rule, based on considerations of fairness, [that] does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary." *United States v. New York, N.H. & H.R. Co.*, 355 U.S. 253, 256 n.5 (1957). Congress may alter that default rule by statute. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005). Here it did so, through the textual commands already described. The phrase "shown to be necessary" in 28 C.F.R. § 35.130(b)(8), like "is shown to be job-related" in 42 U.S.C. § 12112(b)(6), is precisely the kind of language courts read as placing the burden on the party that must make the showing: here, the covered entity.

Courts apply this principle to charge the party with superior access to the facts with the obligation to demonstrate them. *See Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr.*, 508 U.S. 602, 626 (1993); *see also Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 359 n.45 (1977) (burdens of proof should "conform with a party's superior access to the proof"); Kenneth S. Broun et al., *McCormick on Evidence* § 337, at 510 (5th ed. 1999) ("[W]here the facts with regard to an issue lie peculiarly in the knowledge of a party, that party has the burden of proving the issue."). The information-asymmetry principle is already embedded in the ADA's Title I jurisprudence; it is the reason courts place the essential-functions burden of production on the employer. *See Bates*, 511 F.3d at 991; *Benson*, 62 F.3d at 1113. It applies with equal force to a state's licensing program. The information-asymmetry rationale is no less compelling where the State, not a private employer, holds the administrative record, policy analyses, and validation data that bear on whether a given criterion is necessary. Whether a Title II eligibility requirement is essential depends on "the importance of the requirement to the program in question," *Mary Jo C.*, 707 F.3d at 157, and "will depend on the facts of the particular case." Title II Tech. Assistance Man. II-3.7200. The facts determining that importance "lie[] uniquely with the" public entity that designed and imposed the requirement. *Bates*, 511 F.3d at 991 (quoting *Benson*, 62 F.3d at 1113).

This background principle, like the textual mechanisms that embody it, operates at the level of the burden of *production*, not the burden of *persuasion*. The plaintiff retains the ultimate burden of persuading the factfinder that she is a qualified individual with a disability. *See Cleveland*, 526 U.S. at 806; *Stanley*, 606 U.S. at 52–54. Information asymmetry only identifies which party must come forward with evidence on the antecedent essentiality element. Once the public entity produces evidence that a challenged requirement is essential to the program, the plaintiff must come forward with evidence of her qualification and must ultimately persuade the factfinder of that fact. This allocation does not relieve the plaintiff of any element of her claim; it merely places the burden of producing evidence of essentiality on the party uniquely positioned to provide it.

D. This Court's Precedent and Regulatory History Confirm the Allocation.

This Court's precedent confirms the textual reading. The Rehabilitation Act of 1973, "the first broad federal statute aimed at eradicating discrimination against individuals with disabilities," *Helen L. v. DiDario*, 46 F.3d 325, 330 (3d Cir. 1995), established that "no otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Both the Act's regulations and this Court's cases recognize that § 504 grants covered entities the power to adopt eligibility criteria that exclude disabled people and imposes the correlative responsibility to demonstrate those criteria are necessary. The 1978 regulations in force when Congress enacted the ADA placed that burden squarely on the entity. A recipient "may not make use of any . . . criterion for admission that has a disproportionate, adverse effect on handicapped persons . . . unless . . . the criterion, as used by the recipient, has been validated as a predictor of success." 45 C.F.R. § 84.42(b)(2) (1978). Recipients "shall make such modifications to [their] academic requirements as are necessary to ensure that such requirements do not discriminate" unless "the recipient can demonstrate [that the requirements] are essential to the program of instruction." *Id.* § 84.44(a) (emphasis added); *see also* 45 C.F.R.

pt. 84, App. A, p.405 (1978). In *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), this Court applied that framework, recognizing that § 504 permitted only "legitimate physical requirements" and "necessary physical qualifications." *Id.* at 406–07. The Court then scrutinized whether the physical qualifications a program demanded of a deaf applicant "might not be necessary." *Id.* at 407. It reviewed the evidence, the nature of the clinical program, the school's testimony about patient safety, and the practical demands of the curriculum, before concluding the hearing requirement was necessary. *Id.* at 406–14. *Davis* did not presume essentiality; it evaluated the record in light of the 1978 regulatory framework that required covered entities to demonstrate the essentiality of challenged requirements.

The DOJ's interpretive guidance applies this framework directly to the context of this case: "A public entity may not impose eligibility criteria for participation in its programs, services, or activities that either screen out or tend to screen out persons with disabilities, unless it can show that such requirements are necessary for the provision of the service, program, or activity." Title II Tech. Assistance Man. II-3.5000 (emphasis added); *see also id.* II-3.7200 (in driver's license programs, a "public entity may only adopt 'essential' requirements for safe operation of a motor vehicle") (implementing 42 U.S.C. § 12131(2)). The Third Circuit's framework, which requires the plaintiff to disprove essentiality while demanding no evidence from the defendant, renders these provisions, statutory and regulatory alike, a dead letter.

This Court's recent decision in *A.J.T. v. Osseo Area Schools*, 605 U.S. 335 (2025), shows where the Third Circuit went awry. There, a unanimous Court rejected a lower-court rule that subjected a subset of ADA and § 504 claims to a "distinct, more demanding analysis," explaining that "[n]othing in the text of Title II of the ADA or Section 504 of the Rehabilitation Act suggests that such claims should be subject to a distinct, more demanding analysis." *Id.* at 344–45. *A.J.T.* did not address the burden-allocation question here, but it confirms a governing principle: Title II and § 504 claims should not be subjected to atextual thresholds that depart from the statutes' and regulations' own terms. The Third Circuit's framework is precisely that: a threshold that lets the State prevail without any necessity showing under the screen-out regulation Congress directed the Attorney General to issue and under the § 504 coordination regulations § 12134(b) directs Title II to mirror.

The Third Circuit's decision also undermines the ADA's stated purpose. Congress identified "exclusionary qualification standards and criteria" as a form of disability discrimination to be eliminated. 42 U.S.C. § 12101(a)(5), (b)(1). The Third Circuit's framework undercuts that purpose by presuming exclusionary criteria essential until the plaintiff shows otherwise. The rule petitioner seeks is procedural, not substantive: this allocation does not intrude on state regulatory authority. States remain free to impose any eligibility criteria they deem essential; the ADA requires only that a state, having imposed a categorical exclusion of the disabled, come forward with evidence that the criterion is in fact essential. That is the same standard Congress imposed in Title I and under the Rehabilitation Act.

III. The Third Circuit's Decision Raises a Broadly Important Question, and This Case Is an Optimal Vehicle for the Court to Address It.

A. The Question is Outcome-Determinative Across a Wide Range of Disability-Discrimination Claims.

The practical consequences of the decision below are stark. The decision allows public entities and programs that receive federal funds to exclude individuals with disabilities through eligibility criteria that expressly discriminate on the basis of disability, without demonstrating that those criteria are necessary. The decision reverses the statutory structure Congress adopted. And it invites courts to resolve disability-discrimination claims without the evidentiary inquiry the ADA and Rehabilitation Act require.

The consequences are also wide-ranging. The qualified-individual requirement is an element of every claim under Title II of the ADA and Section 504. 42 U.S.C. § 12132; 29 U.S.C. § 794(a). Whether a disabled person is qualified turns on what a program's eligibility requirements are, whether they are essential, and whether she can meet them. 42 U.S.C. § 12131(2). Eligibility requirements that screen out individuals with disabilities appear across all manner of public programs, including public-licensing regimes, educational-admissions programs, professional-certification systems, and government-benefits determinations. The allocation of the burden to justify such requirements as essential therefore affects a broad range of ADA and Rehabilitation Act litigation.

Burden allocation is not a marginal procedural question; it is frequently outcome-determinative. When the burden is placed on plaintiffs to disprove that an eligibility requirement is essential, without demanding any evidence from defendants, claims are typically dismissed at summary judgment or on the pleadings. *See, e.g., Wood*, 732 F. App'x at 182–85; *Briggs v. Walker*, 88 F. Supp. 2d 1196, 1202–03 & n.2 (D. Kan. 2000). But when courts require the defendant to produce evidence demonstrating that a requirement is essential or to prove that it is in fact essential, claims often survive to be resolved on the merits or are even decided in the plaintiff's favor. *See, e.g., Howard*, 655 A.2d at 1108–09 (finding defendant failed to show graduation requirement was necessary and rejecting defendant's argument that the underlying federal benefits statute exempted it from ADA compliance); *Pottgen*, 40 F.3d at 929–31 (evaluating defendant's evidence of essentiality); *Coleman v. Zatechka*, 824 F. Supp. 1360, 1368–72 (D. Neb. 1993) (ruling for plaintiff after trial because defendant could not show eligibility requirements essential); *Mary Jo C.*, 707 F.3d at 160 (vacating dismissal where essentiality could not be decided as a matter of law).

The outcomes diverge because the public entity designed its program and possesses the administrative record, policy rationale, and internal analyses supporting each eligibility requirement. Requiring the plaintiff to disprove essentiality forces her to prove a negative about a program she did not design. That is not a burden Congress envisioned.

B. This Case is an Ideal Vehicle.

This case presents the burden-allocation question cleanly and without complicating factors.. The Third Circuit affirmed summary judgment against Parker on the sole ground that she had not disproved New Jersey's hearing requirement's essentiality, without requiring the State to produce any evidence that it was essential. The burden-allocation rule is the only rule of decision under review. The panel reached no alternative ground of affirmance.

Parker is not asking the Court to decide whether an ability to hear is essential for bus safety; she is not asking the Court to require New Jersey to create a variance program; and she is not asking for a rule that deaf drivers must receive passenger endorsements. She is asking only whether a court may deem a disability-screening licensing criterion "essential" without a necessity showing by the public entity.

The question is purely legal. The parties do not dispute the relevant facts. There is no disagreement that Parker is deaf or about New Jersey's hearing requirements for a P or S endorsement. Nor is there any dispute that, despite being deaf, Parker drove a shuttle bus without incident for eight months and that other states permit deaf people to drive school buses and passenger vehicles. *See supra* at 7; Pet.

App. 8a. Nor is there any dispute that the federal government, after individualized review, granted Parker an exemption from the federal hearing requirement and authorized her to operate commercial motor vehicles in interstate commerce, a determination New Jersey declined to credit when applying its own hearing requirement to her intrastate passenger endorsements. Pet. App. 5a–6a.

Reversal would require New Jersey to engage record evidence bearing on essentiality: evidence the Third Circuit's framework spared it from addressing. Several states have concluded that an ability to hear is not a requirement, much less an essential one, for operating a passenger vehicle. *See supra* at 7 (citing Vermont and Minnesota intrastate variance programs). That conforms with Parker's own experience of passing every test necessary to drive a bus in New Jersey and of driving a campus shuttle bus incident-free for eight months. Pet. App. 8a. Whether New Jersey can establish that its hearing requirement is essential in the face of that contrary evidence is a factual question for the lower courts on remand. But it is a question that the Third Circuit's framework prevented from ever being asked.

Federal motor-carrier law presents no obstacle to review. The Third Circuit expressly bypassed the district court's alternative rationale regarding the federal Motor Carrier Safety Assistance Program and resolved Parker's claims solely on the burden-allocation rule under Title II and Section 504. Pet. App. 13a–18a.

Parker preserved the essentiality question at every stage. She pleaded it in her complaint. Compl. ¶¶ 43, 54–55 (Dkt. 1). She briefed it at summary judgment. Parker MSJ Opp. at 6, 15–16 (Dkt. 46). She briefed it on appeal, where she argued that New Jersey had imposed a "blanket policy that excludes all deaf individuals, including Parker, from obtaining their P and S endorsements regardless of their qualifications," Appellant's Br. at 18; invoked 28 C.F.R. § 35.130(b)(8), under which screening-out criteria must be "shown to be necessary for the provision of the service, program, or activity being offered," *id.* at 18 n.6; and argued that "New Jersey presented no such evidence—none" to justify the requirement. *Id.* at 18. And she preserved the question a final time by timely seeking panel rehearing and rehearing en banc on the burden-allocation ground the petition now presents, which the Third Circuit denied without recorded dissent. Pet. App. 49a. The panel's own disposition forecloses any forfeiture argument. The Third Circuit did not dismiss Parker's essentiality challenge as unpreserved; it resolved that challenge on the merits, holding that Parker had not "made the showing" that the hearing requirement "would not be an essential eligibility requirement." Pet. App. 14a–16a. A court cannot decide a question on the merits and simultaneously hold that the question was never raised. The panel's disposition rests on the precise burden-allocation rule that divides the circuits: it required Parker to disprove essentiality without any showing from New Jersey. Pet. App. 13a–16a. Respondents cannot transform the very ruling under review into a vehicle objection.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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April 23, 2026

APPENDIX

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APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1520

KATRINA PARKER,
Appellant

v.

NEW JERSEY MOTOR VEHICLE COMMISSION;
B. SUE FULTON, in her official capacity as the
Chief Administrator of the New Jersey Motor Vehicle
Commission

On Appeal from the United States District
Court for the District of New Jersey
(D.C. No. 3:19-cv-08926)
District Judge: Honorable Zahid N. Quraishi

Argued: January 18, 2024

Before: HARDIMAN, MATEY, and PHIPPS, *Circuit Judges*

(Filed: October 24, 2025)

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OPINION OF THE COURT

PHIPPS, *Circuit Judge.*

A hearing-impaired woman received endorsements for her New Jersey commercial driver's license that permitted her to drive a campus shuttle bus at a state university. But after she did so for about eight months, the state administrative agency that issued the endorsements recognized that she could not pass the requisite hearing tests and revoked the endorsements without a pre-revocation hearing.

Instead of challenging the removal of those endorsements in state court, the woman initiated this lawsuit in the District Court against the state agency and its chief administrator under three anti-discrimination statutes: Title II of the Americans with Disabilities Act, § 504 of the Rehabilitation Act, and New Jersey's Law Against Discrimination. She also brought a civil rights claim under 42 U.S.C. § 1983 for a procedural due process violation because her endorsements were revoked without an individualized assessment of her ability to drive a shuttle bus. At summary judgment, the District Court rejected all of her claims. She now appeals, and on *de novo* review, we will affirm that judgment for the reasons below.

I. BACKGROUND

A. Katrina Parker Obtains a Commercial Driver's License.

Complications from a bout with chicken pox at age three left Katrina Parker with a lifelong hearing impairment. In 2016, when she was 30 years old and living in New Jersey, Parker, who had a basic New Jersey driver's license, wanted to drive commercial motor vehicles.[1] To do that, she needed a commercial driver's license, or 'CDL,' issued by the State of New Jersey.[2] There are additional requirements for a CDL,

[1] *See* N.J. Stat. § 39:3-10.11 (2010) (defining the term 'commercial motor vehicle'); *see also* 49 U.S.C. § 31132(1) (2012) (same).

[2] *See* N.J. Stat. § 39:3-10.18(a)(2) ("[A] person shall not operate a commercial motor vehicle unless the person has been issued and is in possession of a valid commercial driver license and applicable endorsements for the class and type of vehicle being operated."); *see also* 49 U.S.C. § 31311(a)(12)(A) (2012) (providing that, subject to exceptions, a "State may issue a commercial

and New Jersey, as part of its participation in a federal grant program for improving commercial motor vehicle safety,[3] enacted legislation "designed to substantially conform" its laws to the federal standards for driving commercial motor vehicles. N.J. Stat. § 39:3-10.10.4.[4] One of those federal standards that New Jersey adopted through regulation, *see* N.J. Admin. Code § 13:60-2.1(b),[5] was the driver's ability

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driver's license only to an individual who operates or will operate a commercial motor vehicle and is domiciled in the State").

[3] *See* 49 U.S.C. § 31102 (2012) (establishing and providing funding for the Motor Carrier Safety Assistance Program).

[4] As a condition on participation in the Motor Carrier Safety Assistance Program, a state must have regulations and standards that are "compatible" with the Federal Motor Carrier Safety Regulations, or 'FMCSRs.' 49 U.S.C. § 31102(a) (2012). In 2016, the term 'compatible' for purposes of the program meant "State laws applicable to intrastate commerce are either identical to, or have the same effect as, the FMCSRs or fall within the established limited variances under § 350.341." 49 C.F.R. § 350.105 (2016). After a revision effective July 24, 2020, *see* Motor Carrier Safety Assistance Program, 85 Fed. Reg. 37,785, 37,785 (June 24, 2020), the definition of the term 'compatible' for purposes of the grant program was changed to mean "State laws, regulations, standards, and orders on [Commercial Motor Vehicle] safety that: (1) As applicable to interstate commerce not involving the movement of hazardous materials: (i) Are identical to or have the same effect as the FMCSRs; or (ii) If in addition to or more stringent than the FMCSRs, have a safety benefit, do not unreasonably frustrate the Federal goal of uniformity, and do not cause an unreasonable burden on interstate commerce when enforced." 49 C.F.R. § 350.105 (2020).

[5] *See generally* N.J. Stat. § 39:3-10.12(a) (authorizing the Chief Administrator to "adopt and administer a classified licensing system and a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards established under the federal

to hear at a certain minimum level, specifically the ability to:

> perceive[] a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951[.]

49 C.F.R. § 391.41(b)(11).

Parker could not satisfy that requirement. Even so, the Federal Motor Carrier Safety Administration, or 'FMCSA,' is authorized to issue variances for the federal physical and medical standards. *See* 49 U.S.C. § 31315(a)(1) (allowing for a waiver for periods of time not to exceed three months), (b)(2) (allowing for an exemption for periods of time not to exceed five years). Parker applied for a variance with the FMCSA,[6] and, after a thirty-day period for public notice and comment on her application,[7] the FMCSA granted her

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'Commercial Motor Vehicle Safety Act of 1986' . . . and the regulations promulgated pursuant to that law"); N.J. Admin. Code § 13:60-1.3(g) (using the federal standards for both interstate and intrastate CDLs).

[6] *See* Qualification of Drivers; Application for Exemptions; Hearing, 81 Fed. Reg. 50594, 50595 (Aug. 1, 2016).

[7] *See* Qualification of Drivers; Application for Exemptions; Hearing, 81 Fed. Reg. at 50594; *see also* 49 U.S.C. § 31315(b)(6)

a two-year exemption from the hearing requirement to begin on September 6, 2016.[8]

That exemption was also subject to limitations. It was “valid for operation of a [commercial motor vehicle] only within the United States for the purpose of interstate commerce.” Exemption No. H00471 (JA127). And it “prohibited” Parker “from operating a motorcoach or bus with passengers in interstate commerce.” *Id.*

With that exemption and her satisfaction of the other requirements for a CDL, the New Jersey Motor Vehicle Commission, or ‘NJMVC,’ issued Parker an interstate CDL on June 6, 2017. Parker later began driving commercial motor vehicles for FedEx.

B. Parker Receives Endorsements for Driving Commercial Motor Vehicles with Passengers and Does So for Eight Months.

Parker was also interested in driving commercial motor vehicles with passengers. But to do so, New Jersey requires not only a CDL but also at least one

(setting the notice and comment procedures for exemption requests).

[8] *See* Qualification of Drivers; Exemption Applications; Hearing, 83 Fed. Reg. 6702, 6703–04 (Feb. 14, 2018).

endorsement[9] – a P endorsement.[10] An S endorsement is also needed to drive school buses.[11] There are supplemental qualifications and requirements that CDL holders have to meet to obtain those endorsements.[12] For instance, there are additional knowledge and skills tests for both endorsements.[13] And, under New Jersey law, an applicant for those endorsements must satisfy the federal medical and physical-fitness standards for a CDL – regardless of whether the applicant has received a variance from the FMCSA.[14] Unlike federal law, New Jersey does

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[9] *See generally* N.J. Stat. § 39:3-10.11 (defining 'endorsement' to mean "an authorization to a commercial driver license required to permit the holder of the license to operate certain types of commercial motor vehicles"); N.J. Admin. Code § 13:21-23.6(b) (listing five types of vehicles – double/triple trailers, passenger vehicles, tank vehicles, vehicles transporting certain types of hazardous materials, and school buses – that require endorsements to drive).

[10] *See* N.J. Stat. §§ 39:3-10.1, 39.3-10.18.

[11] *See* N.J. Stat. §§ 39:3-10.12, 39:3-10.18(a)(2); *see also id.* § 39:1-1 (defining 'school bus'); N.J. Admin. Code § 13:21-23.15 (2005); *id.* § 13:21-14.3 (2012).

[12] *See also* N.J. Admin. Code § 13:21-14.5(a) (requiring that applicants seeking a P endorsement also be at least 21 years old, have three years driving experience, possess a New Jersey driver's license, be physically fit and of good character, and submit to fingerprinting); *id.* § 13:21-14.3 (requiring a P endorsement for an S endorsement).

[13] *See* N.J. Stat. § 39:3-10.1.

[14] *See* N.J. Stat. § 39:3-10.1 (requiring that applicants have good "physical fitness in the form of a medical examination"); N.J. Admin. Code § 13:21-14.5(c)(11) (requiring that applicants satisfy the physical and medical requirements in 49 C.F.R. § 391.41, as amended and supplemented to receive a P

not allow applicants to seek individual exceptions to those medical or physical requirements. Rather, New Jersey permits waivers only to "a class of persons or class of commercial motor vehicles," but only if "such waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles."[15] New Jersey did not have a waiver that would enable persons with hearing impairments to drive commercial motor vehicles with passengers.[16]

Despite her inability to meet the federal hearing standard, as is required for the New Jersey P and S endorsements, in October 2017, Parker applied for and received both endorsements.

With those endorsements, Parker began working for First Transit of North Brunswick in January 2018 as a shuttle bus driver for students and faculty of Rutgers University. In July 2018, while she was employed with First Transit, the NJMVC received an inquiry about her authorization to drive commercial motor vehicles with passengers. After examining the issue and coordinating with the FMCSA, the NJMVC notified Parker in a letter dated August 9, 2018, that her federal exemption allowed her to have a CDL, but not a P or an S endorsement:

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endorsement); *id.* § 13:21-14.3 (extending that same requirement to drivers of school buses).

[15] N.J. Stat. § 39:3-10.29.

[16] During the pendency of this litigation, the NJMVC promulgated a new regulation specifying the limited applicability of federal medical variances: "A waiver from the physical qualifications of 49 CFR 391.41, granted by the Federal Motor Carrier Safety Administration for interstate commerce pursuant to 49 U.S.C. § 31315, is limited to interstate commerce only." N.J. Admin. Code § 13:21-23.28(a) (2020) (amended 2023).

> The FMCSA variance, which exempts you from the hearing requirements specified in 49 CFR 391.41(b) (11), specifically authorizes you to operate a commercial motor vehicle (CMV) in interstate commerce and prohibits you from operating a motor coach or bus with passengers in interstate commerce. In addition, the FMCSA variance does not apply to the operation of school buses; therefore, you are prohibited from operating any CMV requiring a passenger (P) and school bus (S) endorsement.

Letter from Gina M. Sine, Manager, Driver Review Bureau, to Katrina Parker (Aug. 9, 2018) (JA136). The NJMVC sent Parker a follow-up letter dated August 17, 2018, that repeated that same message. In addition, the follow-up letter informed Parker that her endorsements would be removed effective August 28, 2018, and it directed her to "visit a Motor Vehicle Agency after August 28, 2018[,] and obtain a duplicate . . . commercial driver license (CDL) without a P and S endorsement." Letter from Gina M. Sine, Manager, Driver Review Bureau, to Katrina Parker (Aug. 17, 2018) (JA158). Neither letter offered Parker an evidentiary hearing or other opportunity to be heard before the revocation of the P and S endorsements. Without the endorsements, First Transit ended Parker's employment later that month.

C. Parker Sues in the District Court.

Under New Jersey law, Parker had 45 days to challenge the revocation of her endorsements in

Superior Court.[17] But she did not do so. Instead, about seven months later, on March 25, 2019, she initiated this suit in the District Court against the NJMVC and B. Sue Fulton in her official capacity as its Chief Administrator for monetary damages as well as for declaratory and injunctive relief.[18] Parker claimed disability discrimination based on her deafness under three statutes: Title II of the Americans with Disabilities Act, § 504 of the Rehabilitation Act, and New Jersey's Law Against Discrimination, or 'LAD.' She also brought civil rights claims under the Fourteenth Amendment and 42 U.S.C. § 1983 for violations of procedural due process on the ground that she did not have a meaningful opportunity to be heard before the NJMVC revoked her endorsements. The District Court exercised federal question and civil rights jurisdiction over Parker's federal claims, *see* 28 U.S.C. §§ 1331, 1343(a), and supplemental jurisdiction over her LAD claim, *see id.* § 1367(a).

The NJMVC and the Chief Administrator filed a motion to dismiss that challenged the sufficiency of Parker's allegations for each of her claims and asserted Eleventh Amendment immunity for every

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[17] *See* N.J. R. App. Prac. 2:4-1(b). *See generally* N.J. Admin. Code § 13:19-1.2 (describing the process to request an administrative hearing after the issuance of a notice of proposed action against a driver's license).

[18] In July 2022, while this case was pending in the District Court, Latrecia Littles-Floyd became the Acting Chief Administrator of the NJMVC. *Cf.* Fed. R. Civ. P. 25(d) (providing for automatic substitution of successor officeholders for official-capacity claims); Fed. R. App. P. 43(c)(2) (same); *Vanderklok v. United States*, 868 F.3d 189, 205 n.16 (3d Cir. 2017) (explaining that this Court may take judicial notice of "information [that] is publicly available on government websites").

claim except the § 504 claim.[19] The District Court granted that motion in part by merging her freestanding Fourteenth Amendment claim into her § 1983 claim;[20] by eliminating her claim for monetary relief under§ 1983 on Eleventh Amendment immunity grounds;[21] and by not permitting injunctive relief with respect to any claim against the NJMVC.[22] *See Parker v. Fulton*, 2020 WL 5096990, at *2 (D.N.J. Aug. 28, 2020). But the District Court otherwise denied the motion to dismiss. *See id.*

After the NJMVC and the Chief Administrator unsuccessfully moved for reconsideration, *see id.* at *1, and discovery was completed, the parties cross-moved for summary judgment. In resolving those motions, the District Court entered summary

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[19] *See* 42 U.S.C. § 2000d-7(a)(1) (abrogating Eleventh Amendment immunity for claims under § 504 of the Rehabilitation Act); *cf. United States v. Georgia*, 546 U.S. 151, 159 (2006) (setting forth a three-part test for evaluating whether Title II abrogates Eleventh Amendment immunity); *Geness v. Admin. Off. of Pa. Cts.*, 974 F.3d 263, 270 (3d Cir. 2020) (applying the United States v. Georgia three-part test); *Bowers v. Nat'l Coll. Athl. Ass'n*, 475 F.3d 524, 553–56 (3d Cir. 2007) (same).

[20] *See Capogrosso v. Sup. Ct. of N.J.*, 588 F.3d 180, 185 (3d Cir. 2009) ("Inasmuch as § 1983 affords a remedy for infringement of one's constitutional rights, identical claims raised under the Fourteenth Amendment are redundant, rendering the outcome of the § 1983 claims dispositive of the independent constitutional claims.").

[21] *See Hans v. Louisiana*, 134 U.S. 1, 10–11 (1890) (extending Eleventh Amendment immunity principles to nondiverse parties).

[22] At the motion-to-dismiss stage, the District Court construed Parker's Fourteenth Amendment claim as also including an equal protection component that was merged into Parker's § 1983 claim.

judgment against all of Parker's claims. *See Parker v. Fulton*, 2023 WL 2535328, at *8 (D.N.J. Mar. 16, 2023).[23]

Through a timely notice of appeal, Parker invoked this Court's appellate jurisdiction over that final decision. *See* 28 U.S.C. § 1291; Fed. R. App. P. 4(a)(1)(A). She now contests the entry of summary judgment against her disability discrimination claims under Title II, § 504, and the LAD, and against her § 1983 procedural due process claim.[24]

II. DISCUSSION

A. Parker's Claims for Disability Discrimination

Under the *Celotex* approach to summary judgment, if challenged by the moving party at summary

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[23] At summary judgment, the District Court determined that Parker did not actually allege an equal protection claim. *Parker*, 2023 WL 2535328, at *7 n.3.

[24] Parker also argues that the District Court erred at summary judgment by rejecting an equal protection component to her § 1983 claim. But that was not an error – at least not one affecting Parker's substantial rights, *see* Fed. R. Civ. P. 61 – because her complaint did not mention equal protection.

The District Court's Eleventh Amendment rulings, however, were not challenged on appeal. *Cf. Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 389 (1998) ("[T]he Eleventh Amendment grants the State a legal power to assert a sovereign immunity defense should it choose to do so. The State can waive the defense. Nor need a court raise the defect on its own. Unless the State raises the matter, a court can ignore it." (citations omitted)); *Christy v. Penn. Tpk. Comm'n*, 54 F.3d 1140, 1144 (3d Cir. 1995) (explaining that despite its "jurisdictional attributes" the Eleventh Amendment "should be treated as an affirmative defense" (quoting *ITSI TV Prods., Inc. v. Agric. Ass'ns*, 3 F.3d 1289, 1291 (9th Cir. 1993))).

judgment, the nonmoving party must make "a showing sufficient to establish the existence of an element essential to that party's case . . . *on which that party will bear the burden of proof at trial*." *Mall Chevrolet, Inc. v. Gen. Motors LLC*, 99 F.4th 622, 630 (3d Cir. 2024) (alteration in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)). Here, in applying that standard, the District Court entered summary judgment against each of Parker's disability discrimination claims because it determined that she could not provide the proof required for one element of those claims: that she was qualified for the P or S endorsements. *Parker*, 2023 WL 2535328, at *4–5. *See generally A. J. T. ex rel. A. T. v. Osseo Area Schs.*, 605 U.S. 335, 345 (2025) ("The substantive provisions of both Title II and Section 504, by their plain terms, apply to 'qualified individual[s]' with disabilities." (alternation in original) (citing 29 U.S.C. § 794(a); 42 U.S.C. § 12132)); *Wojtkowiak v. N.J. Motor Vehicle Comm'n*, 106 A.3d 519, 527 (N.J. Super. Ct. App. Div. 2015) (internal quotation marks and citation omitted) (explaining that "otherwise qualified to participate in the activity or program at issue" is an element required to state a *prima facie* case of discrimination under the LAD for the denial of the benefits of a program). Parker now contests those rulings.

1. The Title II Claim

A Title II claim is predicated upon a plaintiff being a "qualified individual with a disability." 42 U.S.C. § 12132; *see also Geness v. Admin. Off. of Pa. Cts.*, 974 F.3d 263, 273 (3d Cir. 2020); *Haberle v. Troxell*, 885 F.3d 170, 178 (3d Cir. 2018). As statutorily defined, the term 'qualified individual with a disability' requires that a Title II plaintiff meet the *essential* eligibility requirements for participation in the public entity's programs or services:

> The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the *essential* eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C. § 12131(2) (emphasis added).

For Parker's Title II claim, one eligibility requirement for a P or an S endorsement in New Jersey is that the CDL license holder meet the minimum federal hearing standards. *See* N.J. Stat. §§ 39:3-10.18(a)(2), 39:3-10.1; N.J. Admin. Code § 13:21-14:5(a), (c)(11); *id.* § 13:21-14.3; 49 C.F.R. § 391.41(b)(11); *see also Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 573 (1999) ("When Congress enacted the ADA, it recognized that federal safety rules would limit application of the ADA as a matter of law."). There is no dispute that Parker cannot meet that requirement, even with the benefit of "auxiliary aids and services," the removal of barriers, or reasonable modifications to other "rules, policies, or practices." 42 U.S.C. § 12131(2).

It is, however, an open question in this Circuit whether every eligibility requirement is also an *essential* eligibility requirement for purposes of Title

II. *Compare Mary Jo C. v. N.Y. State & Loc. Ret. Sys.*, 707 F.3d 144, 160 (2d Cir. 2013) (distinguishing 'essential eligibility requirements' from "all formal legal eligibility requirements"), *with PGA Tour, Inc. v. Martin*, 532 U.S. 661, 700 (2001) (Scalia, J., dissenting) (observing in the context of a Title III claim that "[t]o say that something is 'essential' is ordinarily to say that it is necessary to the achievement of a certain object"). But Parker does not contend that there is a difference between essential eligibility requirements and all eligibility requirements, much less that if there were such a difference, that a minimum ability to hear would not be an essential eligibility requirement for a P or an S endorsement. *Cf. Mary Jo C.*, 707 F.3d at 157 ("[W]hether an eligibility requirement is essential is determined by consulting the importance of the requirement to the program in question."); *cf. also Tennessee v. Lane*, 541 U.S. 509, 531–32 (2004) ("Title II does not require States to employ any and all means to make judicial services accessible to persons with disabilities, and it does not require States to compromise their essential eligibility criteria for public programs."); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 602 (1999) ("[T]he State generally may rely on the reasonable assessments of its own professionals in determining whether an individual 'meets the essential eligibility requirements' . . . ." (quoting 42 U.S.C. § 12131(2))). Instead, Parker asserts that the NJMVC and its Chief Administrator discriminated against her by failing to assess her individual competencies through a variance process for the P and S endorsements. But Parker's approach skips a step – only qualified individuals with a disability may claim discrimination under Title II. *See Geness*, 974 F.3d at 273; *Haberle*, 885 F.3d at 178;

see also Olmstead, 527 U.S. at 603 (explaining a modification that fundamentally alters a state's program is not reasonable). Parker has not made the showing that she is a qualified individual with a disability, so her claim fails without further consideration of its merits or lack thereof.

As a potential workaround to making the required showing that she is a qualified individual, Parker asserts a facial challenge to New Jersey's hearing requirement for the P and S endorsements. For this contention, she relies on *New Directions Treatment Services v. City of Reading*, 490 F.3d 293 (3d Cir. 2007), a successful facial challenge under Title II to a Pennsylvania statute that restricted the location of methadone clinics unless otherwise approved by a municipal government, *id.* at 298–99, 305. Parker argues that a similar result should follow here because New Jersey's hearing requirement for the P and S endorsements facially discriminates against deaf persons. But in *New Directions*, "[t]he parties d[id] not dispute that recovering heroin addicts are presumptively 'qualified' persons under the ADA and Rehabilitation Act." *Id.* at 308. Yet here, the NJMVC and its Chief Administrator dispute that Parker is qualified for the P and S endorsements, and Parker has not shown that she is, so *New Directions* is not a solution for her.

Parker also argues that under Title II a deaf person may drive school buses unless that person is a direct threat to the safety of others. The problem for her is that both of the sources that she relies on for that proposition – an EEOC guidance document[25] and an *en banc* decision by the Fifth Circuit[26] – activities. *See generally Stanley v. City of Sanford*, 145 S. Ct. 2058, 2063 (2025) ("The ADA contains five titles separately addressing employment, public entities, public accommodations, telecommunications, and miscellaneous matters."). And Title I uses the phrase 'essential functions of the employment position' to define the term 'qualified individual with a disability' for purposes of that title and allows for a direct-threat affirmative defense, while Title II uses the phrase 'essential eligibility requirements' to define the term 'qualified individual with a disability' for purposes of that title and contains no such affirmative defense. *Compare* 42 U.S.C. § 12111(8), (3) (Title I), *with id.* § 12131(2) (Title II). *See also* Jarod S. Gonzalez, *On the Edge: The ADA's Direct Threat Defense and the Objective Reasonableness Standard*, 103 Marq. L. Rev. 513, 518–21 (2019) (chronicling the history of the direct threat defense). Thus, even if Parker's sources were persuasive in the Title I context, those differences in statutory text matter. *See Stanley*, 145 S. Ct. at 2064 ("That Congress used different language in . . . two [ADA] provisions strongly suggests that it meant for them to work differently."). And because the definition of 'qualified individual with a disability' for

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[25] U.S. Equal Emp. Opportunity Comm'n, Guidance on Hearing Disabilities in the Workplace and the Americans with Disabilities Act (Jan. 24, 2023) [https://perma.cc/3VGN-ZLR3].

[26] *Rizzo v. Child.'s World Learning Ctrs., Inc.*, 213 F.3d 209, 211–13 (5th Cir. 2000) (en banc) (upholding a judgment in favor of a hearing-impaired teacher's aide who was reassigned from one of her duties, driving a school van, following a parent's safety complaint).

purposes of Title II includes a provision regarding the 'essential eligibility requirements' for the program, the sources cited by Parker do not address the critical issue in this case. Therefore, they do not provide a basis for concluding that she could meet the essential eligibility requirements for a P or an S endorsement.

2. The Section 504 Claim

Parker has not provided any reason to prevent a similar analysis from dispensing with her § 504 claim. To have a claim under § 504, a plaintiff must be an "otherwise qualified individual with a disability." 29 U.S.C. § 794(a). In construing the meaning of that phrase in the context of a hearing-impaired applicant for nursing school, the Supreme Court rejected another appellate court's interpretation that "'otherwise qualified' persons protected by § 504 include those who could meet the requirements of a particular program in every respect except as to limitations imposed by their handicap." *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 400, 406 (1979) (citing *Davis v. Se. Cmty. Coll.*, 574 F.2d 1158, 1160 (4th Cir. 1978)). It did so because such an approach "would prevent an institution from taking into account any limitation resulting from the handicap, however disabling," and "assumes, in effect, that a person need not meet legitimate physical requirements in order to be 'otherwise qualified.'" *Id.* at 406; *see also id.* at 407 n.7 ("Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be 'otherwise qualified' for the job of driving. Clearly, such a result was not intended by Congress." (quoting 45 C.F.R. pt. 84, App. A, p. 405 (1978))). Thus, rather than interpret 'otherwise qualified' in that manner – as Parker now asks this Court to do – the Supreme Court explained that "[a]n otherwise qualified person is one who is able to meet all of a program's requirements in spite of his handicap." *Id.* at 406; *accord Sullivan v. City of Pittsburgh*, 811 F.2d 171, 182 (3d Cir. 1987). And under that standard,[27] Parker is not an 'otherwise qualified individual' for purposes of § 504 because she cannot satisfy the hearing requirement for the P and S endorsements. *See Copeland v. Phila. Police Dep't*, 840 F.2d 1139, 1148–49 (3d Cir. 1988) (rejecting a § 504 claim by a 13-year veteran police officer because he was not otherwise qualified for the position by virtue of his drug use). Accordingly, Parker's § 504 claim fails as well.

3. *The LAD Claim*

Much like the requirements for a § 504 claim, to succeed on a disability discrimination claim under the LAD, *see* N.J. Stat. § 10:5-12(f)(1), a plaintiff must demonstrate that he or she "was otherwise qualified to participate in the activity or program at issue." *Wojtkowiak*, 106 A.3d at 527 (quoting *J.T. v. Dumont Pub. Schs.*, 103 A.3d 269, 282 (N.J. Super. Ct. App. Div. 2014)). In construing the LAD's qualification requirement, New Jersey courts have looked to federal court decisions on the qualification requirements for claims under § 504 of the Rehabilitation Act and Title II of the ADA. *See Lasky v. Borough of Hightstown*, 43 A.3d 445, 451–53 (N.J. Super. Ct. App. Div. 2012) (applying Title II principles to determine whether a person was qualified in the

[27] The general standard for 'otherwise qualified' is dispositive here because Parker does not invoke the technological advances exception. *See Davis*, 442 U.S. at 412 (recognizing a 'technological advances' exception to the general definition of the term 'qualified individual' in § 504); *see also Strathie v. Dep't of Transp.*, 716 F.2d 227, 228–31 (3d Cir. 1983).

context of a denial of a place of public accommodation LAD claim); *J.T.*, 103 A.3d at 282 ("To determine the extent of the protection afforded to disabled persons under the LAD, we must look to the analytical framework of the RA and the ADA."); *cf. Victor v. State*, 4 A.3d 126, 140 (N.J. 2010) ("We can infer, since the Legislature has never amended the LAD to afford rights to the disabled that are different from those found in Section 504 and the ADA, that the regulatory interpretation [incorporating the federal statutes' reasonable accommodation paradigm] matches the Legislature's intent."). Consistent with that approach, if Parker could not show that she was an 'otherwise qualified individual with a disability' for purposes of § 504 or that she was a 'qualified individual with a disability' for purposes of Title II, she has not shown that she is a qualified individual for purposes of the LAD. Thus, the District Court did not err in granting summary judgment on this claim as well.

B. The Procedural Due Process Claim

Parker also appeals the entry of summary judgment against her § 1983 procedural due process claim. A Fourteenth Amendment procedural due process claim consists of three elements: (i) a deprivation of life, liberty, or property; (ii) by a state actor; (iii) without due process of law. *See Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Blum v. Yaretsky*, 457 U.S. 991, 1002–03 (1982) (recounting that the Fourteenth Amendment applies only to state action); *see also* U.S. Const. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law."). At summary judgment, based on a review of the undisputed material facts, the District Court determined that Parker, who alleged only a deprivation of a property interest, did not satisfy the first element because she did not have a property interest in the P or S endorsements. *Parker*, 2023 WL 2535328, at *6; *see generally* Fed. R. Civ. P. 56(a) ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–52 (1986) (explaining the meaning of the terms 'material' and 'genuine'). Parker now challenges that ruling. The NJMVC and its Chief Administrator respond that Parker did not have a property interest in the endorsements, but even if she did, she received the process that she was due because a pre-deprivation hearing was not required, and hence summary judgment was properly entered against her.

The question of whether a person has a property interest in endorsements on a driver's license is novel.[28] If Parker had a property interest in the endorsements, then she would have been due some adjudicative process because the endorsements were revoked on an individual basis. *Compare Londoner v. City & County of Denver*, 210 U.S. 373, 385–86 (1908) (holding that deprivations of property interests on an individual basis merit due process protection), *with Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239

[28] *See generally Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972) (explaining that to have a property interest for purposes of a procedural due process claim related to the revocation of a state-granted right or privilege, a "unilateral expectation" is insufficient; it takes a "legitimate claim of entitlement" to the right or privilege); *see also Mackey v. Montrym*, 443 U.S. 1, 10 n.7 (1979) (recognizing "the Due Process Clause applies to a state's suspension or revocation of a driver's license"); *Dixon v. Love*, 431 U.S. 105, 112 (1977) (similar); *Bell v. Burson*, 402 U.S. 535, 539 (1971) (similar).

U.S. 441, 445–46 (1915) (holding that the constitutional right to a hearing does not apply to rulemaking which involves "general determination[s]" that impact "more than a few people"), *and Bell v. Burson*, 402 U.S. 535, 539 (1971) ("If the statute barred the issuance of licenses to all motorists who did not carry liability insurance or who did not post security, the statute would not, under our cases, violate the Fourteenth Amendment."). And while the "core" process due under the Constitution is "notice and a meaningful opportunity to be heard," *LaChance v. Erickson*, 522 U.S. 262, 266 (1998), Parker does not contest the notice that the NJMVC provided her; she claims only a denial of a meaningful opportunity to be heard based on the lack of a pre-deprivation hearing.

In many contexts, to be meaningful, an opportunity to be heard must occur before a deprivation of a protected interest. *See United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993). But the degree of procedural protection afforded by the Due Process Clause is "flexible" and circumstance dependent. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Not every deprivation of a property interest requires a pre-deprivation hearing. *See Gilbert v. Homar*, 520 U.S. 924, 930 (1997) ("[W]here a State must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies the requirements of the Due Process Clause."); *James Daniel Good*, 510 U.S. at 53 (tolerating exceptions to the pre-deprivation hearing rule when "some valid governmental interest is at stake that justifies postponing the hearing until after the event" (quoting *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972))); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 n.7 (1985) ("There are, of course, some situations in which a postdeprivation hearing will satisfy due process requirements."); *see also Culley v. Marshall*, 601 U.S. 377, 386 (2024) (holding that "[a]fter a State seizes and seeks civil forfeiture of personal property, due process requires a timely forfeiture hearing but does not require a separate preliminary hearing"). To determine whether there was "the opportunity to be heard 'at a meaningful time and in a meaningful manner,'" the Supreme Court, in *Mathews v. Eldridge*, 424 U.S. 319 (1976), articulated a three-factor test that considers (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation . . . and the probable value, if any, of additional or substitute procedural safeguards"; and (iii) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335; *see also B.S. v. Somerset County*, 704 F.3d 250, 271 (3d Cir. 2013) (applying the *Mathews* test to evaluate whether there was the opportunity to be heard at a meaningful time and in a meaningful manner).

The Supreme Court has twice employed the *Mathews* balancing test to evaluate procedural due process challenges to the lack of a pre-deprivation hearing associated with the deprivation of a driver's license. In *Dixon v. Love*, 431 U.S. 105 (1977), the challenge involved the revocation of a driver's license for repeated moving violations without a predeprivation hearing under that circumstance. *Id.* at 106–11. And in *Mackey v. Montrym*, 443 U.S. 1 (1979), the challenge was to the suspension of a driver's license for 90 days for refusing to take a breathalyzer after a drunk-driving arrest, also without a pre-deprivation hearing. *Id.* at 5–6. In both cases, safety concerns motivated the license revocation or suspension, and the Supreme Court rejected the contention that procedural due process required a pre-deprivation hearing. *See id.* at 19; *Dixon*, 431 U.S. at 115. *But cf. Bell*, 402 U.S. at 540–42 (holding, in a case decided before the formulation of the *Mathews* test, that procedural due process required an advance hearing when the justification for the deprivation of the driver's license was not grounded in safety concerns but rather in a fiscal interest in a judgment that had "no reasonable possibility of . . . being rendered"). Parker relies on the dissent in *Mackey*, to argue that she was entitled to a pre-deprivation hearing. *See Mackey*, 443 U.S. at 21 (Stewart, J., dissenting) ("When a deprivation is irreversible—as is the case with a license suspension that can at best be shortened but cannot be undone—the requirement of some kind of hearing before a final deprivation takes effect is all the more important."). And here, even supposing that Parker has a property interest in the endorsements, the *Mathews* factors also do not compel a pre-deprivation hearing for the revocation of Parker's endorsements.[29]

The first *Mathews* factor – the private interest – examines more than simply the presence of a property interest. *See Mathews*, 424 U.S. at 335, 340–43. Rather, it evaluates the strength of the asserted interest. *See Disability Rts. N.J., Inc. v. Comm'r, N.J. Dep't of Hum. Servs.*, 796 F.3d 293, 309 (3d Cir. 2015). The property interest, if any, that Parker has in the endorsements is not appreciable. It is true that she

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[29] *See generally TD Bank N.A. v. Hill*, 928 F.3d 259, 270 (3d Cir. 2019) (explaining that appellate courts "may affirm on any basis supported by the record, even if it departs from the District Court's rationale").

received those endorsements and that they opened employment opportunities for her, including her job at First Transit. But even so, the private interest in a driver's license – not merely an endorsement on the license – "may not be so vital and essential" as other government-conferred rights and privileges. *See Dixon*, 431 U.S. at 113. And any interest that Parker may have lost, however, was in the endorsements – not in the underlying CDL or even in a basic driver's license – so even with the additional employment opportunities that they make available, any interest she had in the endorsements would be comparatively less than the private interests in a basic driver's license or a CDL. *Cf. Cafeteria & Rest. Workers Union, Local 473 v. McElroy*, 367 U.S. 886, 895–96 (1961) (explaining that the private interest in following "a chosen trade or profession" was not affected when "[a]ll that was denied . . . was the opportunity to work at one isolated and specific military installation"). Also, any interest that Parker may have had in the endorsements is weakened significantly because she could not pass the hearing test required for them. *Cf. Mitchell v. W. T. Grant Co.*, 416 U.S. 600, 603–04 (1974) (holding that neither notice nor an opportunity for a pre-deprivation hearing was needed to sequester personal property when title to that property was "heavily encumbered"). So, without showing that she actually qualified for the endorsements, any legitimate claim of entitlement that Parker could have for them rests on her receipt of them – and that is not a particularly potent claim. For these reasons, any property interest Parker would have in the endorsements would be quite weak.

The second *Mathews* factor – risk of error – also tilts heavily against Parker. *See Mathews*, 424 U.S. at 335, 343–47. Without evidence that Parker could pass the hearing test needed for the P and S endorsements, there is no reason to believe that the NJMVC erred in concluding that Parker could not pass the test. Parker instead argues that a pre-deprivation hearing was needed to perform an individualized assessment of her ability to safely drive commercial motor vehicles with passengers. But as explained above, none of the antidiscrimination statutes that she invokes require such an assessment at any point – pre- or post-deprivation – for persons who do not meet the essential eligibility requirements or are otherwise qualified for the endorsements. *Cf. Davis*, 442 U.S. at 407. Moreover, the availability of post-deprivation remedies further minimizes risk-of-error concerns. *See Hudson v. Palmer*, 468 U.S. 517, 532 (1984); *Parratt v. Taylor*, 451 U.S. 527, 538 (1981) ("We have, however, recognized that postdeprivation remedies made available by the State can satisfy the Due Process Clause."), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 330–31 (1986). And here, unlike the typical revocation of a driver's license, where the only redress is restoration of the license through the administrative process,[30] Parker also had available to her and has pursued post-deprivation claims for disability discrimination, which have the potential to provide more comprehensive relief than simply the restoration of her endorsements. *See* 42 U.S.C. § 12133 (Title II); 29 U.S.C. § 794a(a)(2) (Section 504); N.J. Stat. 10:5-12.11 (LAD); *see also* 42 U.S.C. § 2000d-7(a)(1). Thus, Parker's ability to seek meaningful post-deprivation redress in court increases not only the likelihood of correcting error

[30] *E.g.*, *Dixon*, 431 U.S. at 113 (observing in a case that did not involve discrimination claims that "a licensee is not made entirely whole if his suspension or revocation is later vacated").

but also the availability of potential compensation for any error. In sum, with the risk-of-error analysis localized to the question of Parker's ability to hear and with the availability of comparatively more comprehensive relief though civil claims for disability discrimination, the second factor weighs definitively against the need for a pre-deprivation hearing.

The third *Mathews* factor – the government's interest – likewise cuts against any pre-deprivation hearing. *See Mathews*, 424 U.S. at 335, 347–49; *Honda Lease Tr. v. Malanga's Auto.*, 152 F.4th 477, 487 (3d Cir. 2025) ("[S]ituations where some valid governmental interest is at stake . . . justif[y] postponing the hearing until after the event" (alteration in original) (quoting *Fuentes*, 407 U.S. at 82)). The criteria for the endorsements reflect an important governmental interest in the public safety of commercial motor vehicles carrying passengers. *See Dixon*, 431 U.S. at 114 (recognizing a strong governmental interest "in [the] safety on the roads and highways, and in the prompt removal of a safety hazard"). Yet Parker could not meet one of those safety requirements for the endorsements – the minimum hearing standard. *See* N.J. Stat. § 39:3-10.1; N.J. Admin. Code § 13:21-14.5(a), (c)(11); *id.* § 13:21-14.3; 49 C.F.R. § 391.41(b)(11). With safety concerns at issue, even without any specific consideration of the additional fiscal and administrative burdens associated with a pre-deprivation hearing, the government's interest strongly favors revocation of the endorsements without a pre-deprivation hearing. *See* N.J. Stat. § 39:3-10.10 ("The purpose of this act is to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by strengthening licensing and testing standards for drivers of commercial motor vehicles[.]").

In sum, none of the *Mathews* factors counsels in favor of affording Parker a pre-deprivation hearing: any property interest that Parker may have had in the endorsements would be weak; no one identifies any risk of error, much less one that would not be subject to adequate civil redress in court; and the NJMVC has a strong interest in public safety. So, just as the Supreme Court in *Dixon* and again in *Mackey* rejected procedural due process challenges to the lack of a predeprivation hearing associated with the revocation of a driver's license under the *Mathews* balancing test, Parker's procedural due process claim related to the lack of a pre-revocation hearing with respect to her P and S endorsements also fails. *See Dixon*, 431 U.S. at 115; *Mackey*, 443 U.S. at 19.

III. CONCLUSION

For the foregoing reasons, we will affirm the judgment of the District Court.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

No. 3:19-cv-08926-ZNQ-DEA

KATRINA PARKER,

Plaintiff,

v.

B. SUE FULTON, *in her Capacity as Chief Administrator of the New Jersey Motor Vehicle Commission*, *et al.*,

Defendants.

[Filed: March 16, 2023]

OPINION

QURAISHI, District Judge

THIS MATTER comes before the Court upon two separate Motions for Summary Judgment filed pursuant to Rule 56 of the Federal Rules of Civil Procedure. The first Motion for Summary Judgment ("Def's Motion", ECF No. 40) was filed by Defendants B. Sue Fulton, in her official Capacity as Chief

Administrator of the New Jersey Motor Vehicle Commission ("Fulton") and New Jersey Motor Vehicle Commission ("NJMVC") (collectively, "State Defendants"). The second Motion for Partial Summary Judgment (ECF No. 41) was filed by Plaintiff Katrina Parker ("Plaintiff").

State Defendants filed a Brief in Support of their Motion ("State Moving Br.", ECF No. 40-1) and a Statement of Material Facts Not in Dispute ("State's SMFND", ECF No. 40-2). Plaintiff Katrina Parker filed a Brief in Opposition to Def's Motion ("Plf.'s Opp'n to State ", ECF No. 46) along with her Statement of Material Facts Not in Dispute ("Plf.'s Resp. SMF ", ECF No. 47). State Defendants filed a Reply Brief in response to Plaintiff's Brief in Opposition ("State's Reply", ECF No. 48).

Plaintiff filed a Brief in Support of her Motion ("Plf.'s Moving Br.", ECF No. 41-1) and a Statement of Material Facts ("Plf's SMFND", ECF No. 41-2). State Defendants filed a Brief in Opposition to Plaintiff's Motion (ECF No. 45) along with a Statement of Material Facts Not in Dispute (ECF No. 45-1). Plaintiff filed a Reply Brief in response to State Defendants' Brief in Opposition (ECF No. 49).

The Court has carefully considered the parties' submissions and decides the matter without oral argument pursuant to Federal Rule of Civil Procedure 78 and Local Civil Rule 78.1. For the reasons set forth below, the Court will GRANT State Defendant's Motion for Summary Judgment and DENY Plaintiff's Motion for Partial Summary Judgment as moot.

I. BACKGROUND AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

Plaintiff initiated the instant action against State Defendants by filing a five-count Complaint ("Compl." ECF No. 1") alleging a deprivation of her procedural due process rights under the Fourteenth Amendment[1] (Count One), discrimination under 42 U.S.C. § 1983 (Count Two), discrimination under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (Count Three), Title II of the ADA, 42 U.S.C. § 12131 (Count Four); and discrimination under the New Jersey Law Against Discrimination ("NJLAD") (Count Five).

Plaintiff sought injunctive relief to "restore the P and S endorsements and/or provide pre-reaction review," declaratory judgement that the State Defendants violated her constitutional and statutory rights, compensatory damages and attorney's fees under all counts, and punitive damages under Count II, § 1983. (*See generally* Compl.) On May 7, 2019, State Defendants filed a motion to dismiss. (ECF No. 7.) On December 31, 2019, the Court, dismissed Count I; dismissed Count II as to the plaintiff's monetary relief; and dismissed all Counts as to Plaintiff's requested injunctive relief against the NJMVC. (ECF No. 13.) The Court permitted Plaintiff to file an amended complaint, but she elected not to file one.

Accordingly, the following claims remain:

- Count Two: Claims under 42 U.S.C. § 1983, seeking injunctive relief against Fulton and declaratory relief against State Defendants

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[1] U.S. Const. Amend. XIV.

- Count Three: Claims under the Rehabilitation Act, seeking declaratory relief and money damages against State Defendants and injunctive relief against Fulton
- Count Four: Claims under the Americans with Disabilities Act ("ADA", 42 U.S.C. § 12101), seeking declaratory relief and money damages against State Defendants and injunctive relief against Fulton
- Count Five: Claims under the NJLAD, seeking declaratory relief and monetary damages against State Defendants and injunctive relief against Fulton

B. UNDISPUTED FACTS

The Court has found the following facts to be relevant and undisputed.

Plaintiff is a hearing-impaired individual who applied for a hearing exemption from the Federal Motor Carrier Safety Administration ("FMCSA") to exempt her from the FMCSA's commercial driver license ("CDL") hearing requirements pursuant to 49 C.F.R. § 39.41(b)(11). (State's SMFND ¶¶ 1, 2; Pl's Resp. SMF ¶¶ 1,2.) On September 2, 2016, the FMCSA approved Plaintiff's application and issued a hearing exemption ("Hearing Exemption", ECF No. 40-7.) (State's SMFND ¶ 4; Plf.'s Resp. SMF ¶ 4.)

The Hearing Exemption provided the following restrictions:

> 1. If you have a CDL, your State motor vehicle department must remove the "intrastate only" restriction from your license.

2. You must keep the exemption and a copy of the medical examiner's certificate on your person while operating a [Commercial Motor Vehicle ("CMV")]. Upon request, these documents must be presented to a duly authorized Federal, State, or local law enforcement official.
3. You must retain copies of both the medical examiner's certificate and the exemption in your driver qualification file.
4. You must report any crashes or accidents as defined in 49 CFR 390.5 to FMCSA.
5. You must report all citations and convictions for disqualifying offences [sic] under 49 CFE 383 and 391.
6. You are prohibited from operating a motorcoach or bus with passengers in interstate commerce.

The enclosed exemption is valid for operation of a CMV only within the United States for purpose of interstate commerce. It does not exempt the driver from the physical qualification standards of any bordering jurisdiction.

(Hearing Exemption, ECF No. 40-7.) On October 17, 2017, the NJMVC issued a passenger enforcement ("P endorsement") and a school bus endorsement ("S endorsement") (collectively, "P and S endorsements") to Plaintiff's CDL, which permitted her to drive a school bus. (State's SMFND ¶ 12; Plf.'s Resp. SMF ¶ 12.)

On July 6, 2018, Carl Rosatti, a supervisor in the NJMVC's Driver Review Bureau, received a telephone call from a transportation company inquiring whether Plaintiff was permitted to drive a school bus with the Hearing Exemption she obtained. (State's SMFND ¶ 13; Plf.'s Resp. SMF ¶ 13.) Following this call, the NJMVC internally investigated the matter and consulted with subject matter experts with the NJMVC. (State's SMFND ¶ 14; Plf.'s Resp. SMF ¶ 14.)

On August 9, 2018, the NJMVC sent Plaintiff a notice that the P and S endorsements were to be removed from her CDL effective August 28, 2018. (State's SMFND ¶ 20; Plf.'s Resp. SMF ¶ 20.)

II. Jurisdiction

The Court has subject matter jurisdiction over Plaintiff's claims under 28 U.S.C. § 1331 because Plaintiff's claims under § 1983, the Rehabilitation Act, and the ADA arise under the laws of the United States. The Court has supplemental jurisdiction over Plaintiff's state law NJLAD claim under 28 U.S.C. § 1367.

III. LEGAL STANDARD

A "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A material fact raises a "genuine" dispute "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Williams v.*

Borough of W. Chester, 891 F.2d 458, 459 (3d Cir. 1989) (quoting *Anderson*, 477 U.S. at 248).

"In evaluating the evidence, the Court must consider all facts and their logical inferences in the light most favorable to the non-moving party." *Rhodes v. Marix Servicing, LLC*, 302 F. Supp. 3d 656, 661 (D.N.J. 2018) (citing *Curley v. Klem*, 298 F.3d 271, 276-77 (3d Cir. 2002)). "While the moving party bears the initial burden of proving an absence of a genuine dispute of material fact, meeting this obligation shifts the burden to the non-moving party to 'set forth specific facts showing that there is a genuine [dispute] for trial.'" *Id.* (quoting *Anderson*, 477 U.S. at 250).

"Unsupported allegations, subjective beliefs, or argument alone . . . cannot forestall summary judgment." *Read v. Profeta*, 397 F. Supp. 3d 597, 625 (D.N.J. 2019). "Thus, if the nonmoving party fails 'to make a showing sufficient to establish the existence of an element essential to that party's case, . . . there can be no genuine issue of material fact.'" *Id.* (quoting *Katz v. Aetna Cas. & Sur. Co.*, 972 F.2d 53, 55 (3d Cir. 1992) (quotation marks omitted)). "In considering the motion, the Court 'does not resolve factual disputes or make credibility determinations.'" *Rhodes*, 302 F. Supp. 3d at 661 (quoting *Siegel Transfer, Inc. v. Carrier Express, Inc.*, 54 F.3d 1125, 1127 (3d Cir. 1995)).

IV. DISCUSSION

A. WHETHER PLAINTIFF WAS QUALIFIED TO RECEIVE P AND S ENDORSEMENTS

State Defendants argue that Plaintiff's interstate CDL and endorsements are subject to FMCSA's physical qualification standards, not the State's standards. (State Moving Br. at 6.) State Defendants assert that the NJMVC should not have issued P and S endorsements because they were prohibited by the Hearing Exemption's express language. (*Id.* at 7.) The Hearing Exemption was only valid for use with an interstate CDL that is subject to FMCSA's physical qualification requirements. (*Id.*) State Defendants contend that Plaintiff was not qualified to receive the P and S endorsements based on the terms of the hearing exemption and federal law. (*Id.* at 8.) Further, State Defendants assert that failing to remove the P and S endorsements would have put the NJMVC at risk of losing Motor Carrier Safety Assistance Program ("MCSAP") funding. (*Id.*)

In opposition, Plaintiff argues that she was qualified to receive the P and S endorsements. (Plf.'s Opp'n to State at 3.) Plaintiff contends that State Defendants' witnesses admit that operating a motor coach with passengers in "interstate" commerce was the only restriction on her Hearing Exemption, which does not prohibit her from operating a motor coach with passengers "intrastate" or obtaining P and S endorsements. (*Id.* at 4.) Plaintiff argues that if the Hearing Exemption prohibited her from obtaining the P and S endorsements, then she would have been in violation of the Hearing Exemption when she drove a school bus in New Jersey. (*Id.*) Plaintiff maintains that State Defendants' CDL coordinator admitted that he has no evidence or reason to believe that Plaintiff was violating the condition in her Hearing Exemption. (*Id.* at 4–5.) Plaintiff argues that if State Defendants claim that federal law or her Hearing Exemption expressly prohibit her from obtaining the P and S endorsements, then State Defendants or the FMCSA should have revoked her underlying CDL as well. (*Id.* at 5.) Plaintiff asserts that because her underling CDL and her Hearing Exemption were never revoked, she did not violate her Hearing Exemption or federal law and it "follows that neither federal law nor her Hearing Exemption expressly prohibit her from obtaining the P and S endorsements and driving a bus intrastate." (*Id.* at 6.)

Plaintiff additionally argues that State Defendant's blanket policy excluding deaf individuals from obtaining New Jersey's P and S endorsements violates the Constitution and federal and state laws. (Plf.'s Opp'n to State at 6.) Plaintiff contends that State Defendants do not operate an exemption program for intrastate licenses, unlike the FMCSA. (*Id.* at 7.) Plaintiff argues that because there is no way for her or other deaf individuals to obtain the P and S endorsements, such a "blanket policy violates the Constitution and federal and state laws." (*Id.*)

In reply, State Defendants reiterate that the Hearing Exemption was only valid for an interstate CDL and prohibited issuance of the P and S endorsements on an intrastate only CDL by its express language. (State's Reply at 2.) State Defendants again maintain that Plaintiff's CDL was subject to Federal, not State law. (*Id.* at 3.) They also clarify that Plaintiff never applied for, nor received, an intrastate-only CDL. (*Id.*)

The FMCSA is authorized to develop and enforce effective, compatible, and cost-beneficial regulations and practices for motor carrier, commercial motor vehicle, and driver safety. 49 U.S.C.A. § 31100. The FMCSA's regulations "prescribe minimum safety standards for commercial motor vehicles." 49 U.S.C.A. § 31136. Accordingly, the FMCSA has issued regulations, including setting the minimum standards for CDL applications, 49 C.F.R. § 383.71, and the physical qualifications for drivers, 49 C.F.R. § 391.41.

Further, the FMCSA administers the Motor Carrier Safety Assistance Program ("MCSAP"). MCSAP is a "federal grant program that provides financial assistance to states to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles." 49 C.F.R. § 350.101(a) and 49 U.S.C. § 31102. A state participating in MCSAP agrees to adopt and enforce CMV safety "regulations, standards, and orders that are compatible with the regulations, standards, and orders of the Federal government." 49 U.S.C. § 31102(c)(1). Accordingly, a state participating in MCSAP must enforce laws and regulations that meet the minimum standards set by the FMCSA regulations or risk losing MCSAP funding. See 49 U.S.C. §§ 31314, 31311(a)(1).

The FMCSA requires drivers who are applying or renewing their CDL to certify the type of commerce (interstate or intrastate) in which the driver intends to participate and the type of transportation or operation in which the driver intends to engage to determine whether the FMCSA or state physical qualifications apply to a CDL. 49 C.F.R. §§ 383.71 (b)(1) and (d)(1). If the driver is subject to the physical requirements for drivers, the driver must obtain a medical examiner's certificate in which a qualified medical examiner certifies that the driver meets the physical qualification standards. 49 C.F.R. §§ 383.71 (b)(1) and (d)(1); 49 C.F.R. §§ 391.41(a)(1)(i); and 49 C.F.R. § 391.43.

49 C.F.R. § 391.41 sets forth FMCSA's physical qualification standards. Under the FMCSA, if a driver does not meet the physical qualification requirements,

the driver can request an exemption. 49 U.S.C. §§ 31136(e), 31135(b); 49 C.F.R. § 381.300(c)(5). A driver who is granted an exemption is required to comply with all the terms and conditions of that exemption. 49 C.F.R. § 381.330(a). Receiving an exemption and complying with the medical examination requirement renders the driver physically qualified to drive a CMV. 49 C.F.R. § 391.41(3)(2). If an exemption is granted, "no state shall enforce any law or regulation that conflicts with or is inconsistent with the . . . exemption . . . with respect to a person operating under the . . . exemption." 49 U.S.C.A. 31135(e).

In New Jersey,

> [t]he Chief Administrator of the Motor Vehicle Commission may not issue a passenger endorsement or may revoke or suspend the passenger endorsement of any person when it is determined that the applicant or holder of such passenger endorsement has . . . [f]ailed to meet the medical and physical qualifications set forth in the regulations of the United States Department of Transportation, Federal Motor Carrier Safety Administration, 49 CFR 391.41, as amended and supplemented. Pursuant to N.J.A.C. 13:60–1.1 et seq., failure to meet the medical and physical qualifications of this paragraph will subject the applicant or holder of such passenger endorsement to denial, revocation, or suspension of that person's underlying CDL, as well as his or her passenger endorsement.

N.J.A.C. 13:21-14.5 (c)(11).

Importantly, N.J.A.C. 13:60-1.3(d) provides "[w]henever the term "interstate" is used in the Federal Motor Carrier Safety Regulations, adopted and incorporated, by reference, herein, and all supplements and amendments thereto, it shall, for the purpose of this chapter, mean or include both "interstate" and "intrastate" transportation in commerce[.]" N.J.A.C. 13:60-1.3(g) also provides that "[t]he provisions and requirements of these regulations as well as the Federal Motor Carrier Safety Regulations . . . are applicable to all motor vehicles . . . engaged in transportation in interstate and intrastate commerce or operating in interstate and intrastate commerce[.]"

Further, the State of New Jersey has incorporated Federal Motor Carrier Safety Regulations. *See* N.J.A.C. 13:60-1.3; *see also Rafanello v. Taylor-Esquivel*, 465 N.J. Super. 304 (App. Div. 2020). Accordingly, because "no state shall enforce any law or regulation that conflicts with or is inconsistent with the . . . exemption . . . with respect to a person operating under the . . . exemption" 49 U.S.C.A. 31135(e), and a state participating in MCSAP must enforce laws and regulations that meet the minimum standards set by the FMCSA regulations or risk losing MCSAP funding, *see* 49 U.S.C. §§ 31314, 31311(a)(1), NJMVC was not permitted to issue P and S endorsements to Plaintiff's license. Plaintiff applied for and received the Hearing Exemption from the FMCSA that exempted her from the FMCSA's CDL hearing requirements set forth at 49 C.F.R. 391.41(b)(11). (State's SMFND ¶¶ 2, 4; Plf.'s Resp. SMF ¶¶ 2, 4.) The Hearing Exemption provided it was "valid for operation of a CMV only within the United

States for the purpose of interstate commerce." (ECF No. 40-7.) Accordingly, Plaintiff's Hearing Exemption was only valid for an interstate CDL. As noted above, the Hearing Exemption itself explicitly prohibits Plaintiff from "operating a motorcoach or bus *with passengers* in interstate commerce." (Hearing Exemption at 1) (emphasis added). P and S endorsements on an interstate CDL conflict with this prohibition by permitting Plaintiff to carry passengers in interstate commerce. The Court therefore finds that there is no genuine issue of material fact, and that Plaintiff did not qualify for the P and S endorsements erroneously issued by the NJMVC.[2]

B. PLAINTIFF'S PROCEDURAL DUE PROCESS CLAIMS

State Defendants argue that Plaintiff's procedural due process claim must fail because she does not have a property interest in the P and S endorsements. (State Moving Br. at 9.) State Defendants further argue that Plaintiff was not entitled to a hearing prior

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[2] Plaintiff contends that Defendants removed her P and S endorsements not because of the Hearing Exemption or federal law, but rather, because of Defendants' alleged blanket policy excluding deaf individuals from obtaining these endorsements. (*See* Opp'n Br. at 10–11.) Such an argument, however, is not relevant to the Court's conclusion here. Because the Court finds no genuine issue of material fact that the Hearing Exemption and federal law prevented Defendant from obtaining the P and S endorsements, it will reject Plaintiff's pretext argument. *See Johnson v. Phila. Hous. Auth.*, 218 F. Supp. 3d 424, 434 (E.D.Pa. 2016); *see also Hughes v. Bryn Mawr Trust Co.*, Civ. No. 19-2417, 2022 WL 1553495, at *8 (E.D.Pa. Oct. 27, 2022) (finding plaintiff failed to rebut Defendant employer's nondiscriminatory explanation for its decision to terminate her and rejecting her pretext argument); *Houston v. Dialysis Clinic, Inc.*, Civ. No. 13-4461, 2015 WL 3935104, at * 9 (D.N.J. June 26, 2015).

to the removal of the P and S endorsements because there were no factual nor legal issues. (*Id.* at 10.)

In opposition, Plaintiff asserts that the Court already determined, in deciding State Defendant's Motion to Dismiss, that State Defendants failed to show that she was expressly prohibited from receiving the P and S endorsements under New Jersey law. (Plf.'s Opp'n to State. at 13.) Plaintiff contends that even if State Defendants issued her P and S endorsements in error, such an error does not deprive her of the existence of her property interest. (*Id.*) Plaintiff argues that because State Defendants have failed to show that she was expressly prohibited from receiving the P and S endorsements, she had a protected property interest in them when they were issued to her. (*Id.* at 14.) Plaintiff contends that State Defendants' failure to provide her with a pretermination hearing violated her procedural due process rights. (*Id.* at 15.)

In reply, State Defendants reiterate that because Plaintiff does not have a protected property interest in the P and S endorsements, she does not have a protected property interest. (State's Reply at 7.) State Defendants contend that under New Jersey law, an evidentiary hearing was not required here. (Id. at 8.) State Defendants argue that there were no issues of fact or law regarding Plaintiff's entitlement to the P and S endorsements. (*Id.*)

To prevail on "a claim under § 1983 for deprivation of procedural due process rights, a plaintiff must allege that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of 'life, liberty, or property,' and (2) the procedures available to him did not provide due process of law." *Hill v. Borough of Kutztown,* 455

F.3d 225, 234 (3d Cir. 2006) (internal quotation marks and citation omitted); *see also Baraka v. McGreevey*, 481 F.3d 187, 205 (3d Cir. 2007). Property interests are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law, rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Board of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Id.* State law does not define the parameters of due process for the purposes of the Fourteenth Amendment. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985). Rather, federal law defines those parameters. *Witkowski v. Welch*, 173 F.3d 192, 205 (3d Cir. 1999).

Here, the NJMCVC issued Plaintiff's P and S endorsements in violation of the Hearing Exemption and federal law. She does not have a "legitimate claim of entitlement" to the endorsements and therefore does not a protected property interest in them. *See Board of Regents of State Colls.*, 408 U.S. at 577. . Accordingly, Plaintiff's Due Process claim must fail.

C. PLAINTIFF'S CLAIMS UNDER THE REHABILITATION ACT AND NJLAD

State Defendants assert that § 504 of the Rehabilitation Act (the "RA") prohibits discrimination against qualified individuals with a disability. (State Moving Br. at 11.) State Defendants argue that because Plaintiff was not qualified to receive the P and S endorsements under the express terms of the

Hearing Exemption and federal law, that Plaintiff's claims under the Rehabilitation Act should be dismissed. (*Id.* at 12.) State Defendants additionally argue that Plaintiff's ADA and NJLAD claims should be dismissed for the same reason. (*Id.*)

In opposition, Plaintiff argues that she was qualified for the P and S endorsements under the RA, ADA, and NJLAD. (Plf's Opp'n to State at 15.) Plaintiff reiterates that neither the Hearing Exemption nor federal law prohibit her from obtaining the P and S endorsements. (*Id.* at 16.)

Section 504 (29 U.S.C. § 794) of the RA and NJLAD are, for the most part, interpreted consistently with the ADA. *See Chisolm v. McManimon*, 275 F.3d 315, 324 n.9 (3d Cir. 2001).

"The standard under these three statutes requires [Plaintiff] to show she (1) has a disability, (2) was otherwise qualified to [receive the P and S endorsements], and was denied the [endorsements] because of [her] disability." *K.N. v. Gloucester City Bd. of Ed.*, 379 F. Supp. 3d 334, 345 (3d Cir. 2019) (internal quotation and citation omitted).

Here, the parties dispute the second element: whether Plaintiff was otherwise qualified to receive the endorsements. As the Court has already concluded, Plaintiff was not qualified to receive the P and S endorsements per the Hearing Exemption and federal law. Accordingly, Plaintiff's ADA, RA, and NJLAD claims must also fail.

D. PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT

Plaintiff seeks partial summary judgment on liability, declaratory relief, injunctive relief, and nominal damages for her disability discrimination claims under Title II of the ADA, RA, and NJLAD, and constitutional claims under 42 U.S.C. § 1983. (Plf.'s Moving Br. at 2.) The Court, however, already found no genuine issue of material fact as to Plaintiff's claims under the ADA, RA, and NJLAD in favor of State Defendants. Plaintiff's Motion as to her claims under the ADA, RA, and NJLAD will therefore be denied.

Additionally, the Court has already found no genuine issue of material fact as to Plaintiff's Due Process claims in favor of State Defendants. Accordingly, the Court will deny Plaintiff's Motion with respect to her Due Process claims.

Further, Plaintiff seeks summary judgment as to her claims under the Equal Protection Clause. (*Id.* at 24.) Plaintiff, however, does not allege an Equal Protection claim in her Complaint. Count Two vaguely asserts a violation of federal rights under the Fourteenth Amendment.[3] (Compl. ¶ 35.) However, read in the context of the remaining allegations in the Complaint, it appears Plaintiff only asserts Due Process violations. (*Id.* at 24; *see* Compl. ¶ 2 (seeking "declaratory, injunctive, and equitable relief . . . to redress Defendants' deprivation of Plaintiff's Due Process Right under the Fourteenth Amendment," but not seeking relief as to equivalent Equal Protection Right); and Prayer for Relief (praying for "declaratory judgment . . . stating that Defendants' policies,

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[3] The Court acknowledges that out of an abundance of caution, it previously construed Count Two as possibly alleging an Equal Protection violation in the context of considering Eleventh Amendment immunity. (*See* ECF No. 12 at 11.) However, upon further review of the Complaint, and the parties' submissions on summary judgment, the Court now concludes that no Equal Protection violation has been alleged.

procedures, and/or practices have subject Plaintiff to a deprivation of her Due Process Rights under the Fourteenth Amendment," but not a declaratory judgment regarding a deprivation of any Equal Protection Right).) The Court will therefore deny Plaintiff's Motion with respect to her Equal Protection Clause argument because such a claim is not raised in her Complaint.[4] *See Marshall v. Penn Twp., Pa.*, 458 F. App'x 178, 181 (3d Cir. 2012).

V. CONCLUSION

For the reasons stated above, the Court will GRANT State Defendant's Motion for Summary Judgment, and Plaintiff's Motion for Partial Summary Judgment will DENIED. An appropriate Order will follow.

Date: **March 15, 2023**

s/ Zahid N. Quraishi
ZAHID N. QURAISHI
UNITED STATES
DISTRICT JUDGE

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[4] For the same reasons, the Court will also reject Plaintiff's argument that State Defendants' Motion is "at best a motion for partial summary judgment because it fails to move for judgment on [Plaintiff's] Equal Protection claim under the Fourteenth Amendment." (Plf.'s Opp'n to State at 3.)

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

No. 3:19-cv-08926-ZNQ-DEA

KATRINA PARKER,

Plaintiff,

v.

B. SUE FULTON, *in her capacity as Chief Administrator of the New Jersey Motor Vehicle Commission*, *et al.*,

Defendants.

[Filed: March 16, 2023]

ORDER

QURAISHI, District Judge

THIS MATTER comes before the Court upon two separate Motions for Summary Judgment filed pursuant to Rule 56 of the Federal Rules of Civil Procedure. The first Motion for Summary Judgment (ECF No. 40) was filed by Defendants B. Sue Fulton, in her official Capacity as Chief Administrator of the

New Jersey Motor Vehicle Commission and New Jersey Motor Vehicle Commission (collectively, “State Defendants”). The second Motion for Partial Summary Judgment (ECF No. 41) was filed by Plaintiff Katrina Parker (“Plaintiff”).

For the reasons set forth in the accompanying Opinion and other good cause shown,

IT IS on this **15th** day of **March 2023**,

ORDERED that State Defendants’ Motion for Summary Judgment (ECF No. 40) is hereby **GRANTED**; and it is further

ORDERED that Plaintiff’s Motion for Partial Summary Judgment (ECF No. 41) is hereby **DENIED**; and it is further

ORDERED that **JUDGMENT** is hereby entered in favor of State Defendants, and the Clerk’s Office is instructed to mark this case **CLOSED.**

s/ Zahid N. Quraishi
ZAHID N. QURAISHI
UNITED STATES
DISTRICT JUDGE

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1520

KATRINA PARKER,
Appellant

v.

NEW JERSEY MOTOR VEHICLE COMMISSION;
B. SUE FULTON, in her official capacity as the Chief Administrator of the New Jersey Motor Vehicle Commission

(D.N.J. No. 3:19-cv-08926)

[Filed: November 24, 2025]

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, BOVE, and MASCOTT, *Circuit Judges*.

The petition for rehearing filed by **appellant** in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ *Peter J. Phipps*
Circuit Judge

Date: November 24, 2025
Gch/cc: All Counsel of Record