

July 14, 2010

Hon. Joel I. Klein
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

Re: Columbia Secondary School
SCI Case #2010-3226

Dear Chancellor Klein:

The Office of the Special Commissioner of Investigation (“SCI”) has concluded an investigation into the circumstances surrounding the death of Nicole Suriel, a 12-year-old female student at the Columbia Secondary School for Math, Science & Engineering (“Columbia Secondary School”) in Manhattan, who drowned during a class trip to Long Beach in Nassau County.¹ We gathered evidence from many individuals, including members of the administration and staff at the Columbia Secondary School, one of the chaperones on the trip, students, parents, and City of Long Beach officials. We also obtained information from another Department of Education (“DOE”) school whose students were on a trip to Long Beach on the day of the tragedy. This report describes our findings.

The Columbia Secondary School opened in September 2007. For the 2009-2010 school year, it serviced 6th through 8th Graders, with approximately 96 students in each grade; a 9th Grade class will enter in September 2010, and the school will expand each year until the 12th Grade is reached. Most students enter in the 6th Grade and admission is highly competitive; 500 to 1,000 or more 5th Graders vie for the 96 spots.² Priority is given to applicants from the four Manhattan School Districts above 96th Street. The

¹ No one was reassigned as a result of this investigation.

² According to Principal José Maldonado-Rivera, 2,000 students Citywide vied for the 15 available spots in the incoming 9th Grade class. Students enter the 7th and 8th Grades through a waiting list.

classes are broken into “houses” named for great minds. This year, the 6th Grade houses were Edison, Einstein, and Hypatia. The month of June is a “Mini Semester,” known as “J-Term.”

Late in the day on June 22, 2010, DOE General Counsel Michael Best contacted SCI, reported Nicole’s drowning death, and requested an investigation.

On the morning of June 23, 2010, SCI dispatched a team of investigators to Long Beach and a team of investigators to the Columbia Secondary School. We also obtained documents from the DOE legal office; these included an occurrence report completed by Assistant Principal Andrew Stillman, a report of an injury to Teacher Erin Bailey, “Universal” permission slips for both trips and swimming relating to 24 students – including Nicole – who attended the trip in question, and an e-mail message from Stillman to parents and students announcing the trip.³ There were no permission slips specific to the Long Beach trip.

A review of the documents revealed:

- Stillman’s occurrence report described the incident as follows:

During a school trip to Long Beach students were instructed to stay in shallow water, but some of the students did not listen and ventured further out. They were swept out by a strong current. All but one of the students were recovered and brought to safety. Nicole was pulled deeper into the water and could not be saved. A rescue attempt was made by a pedestrian, but he was unsuccessful. 911 was called and the Fire and Rescue Department divers were unable to locate her. Divers found her an hour later, but she was in full cardiac arrest. EMS transported her to Long Beach Hospital. After an hour she was pronounced dead.
- The injury report indicated that, during a swimming activity at a school function, a field trip, Teacher Erin Bailey received scratches to her leg. The causal agent was a penetrating object and an ambulance was used.
- The “Universal Field Trip Permission Form” was meant for “regular fieldtrips within Manhattan either walking distance or short public transportation ride from our school and take place within regular school hours (8 am – 4 pm).” These forms were signed by parents or guardians on dates in July, August, and September 2009.
- The “Universal Swim Permission Form” referred to the pool at the school. It indicated: “CSS has a great indoor pool which is regularly use [*sic*] for pool parties, swimming and snorkeling classes and classroom activities.” The portion

³ Several students were academically ineligible from attending the trip and one student was absent.

granting permission for the child to use the pool added: “Only students that are capable swimmers should participate in any activity.” The parent or guardian further understood: “that while there will be a lifeguard, and that faculty and parents will be supervising the students in the pool, neither the school nor its representatives, are liable for any accident that may occur.” These documents were signed by parents on dates in July, August, and September 2009.

- The e-mail message from Professor Stillman, addressed to the students in Nicole’s class and their parents, said “[w]e’re headed to the beach tomorrow.” Stillman advised participants that lunch would be provided and they should “[c]ome at 8am dressed to swim and play in the sun.”⁴ It did not request permission to attend the trip.

The investigators who headed to Long Beach visited the area where the students gathered on the trip and where the tragedy occurred. They took photographs at the Edwards Boulevard entrance to the boardwalk – where Nicole and her class entered the beach. The signs read:

**BEACH
CLOSED
11PM – 5AM**

CITY OF LONG BEACH
OCEAN BEACH PARK

**NO
LIFEGUARD
ON DUTY**

**NO
BATHING OR SWIMMING**

The red lifeguard chairs – empty – sat atop a mound of sand. Printed in white on the back of the chairs was the sign:

**NO LIFEGUARD
ON DUTY⁵**

⁴ The plan was to have pizza delivered to the beach.

⁵ “NO” was larger than depicted here.

The investigators met with town and law enforcement officials. City Manager Charles Theofan was not available.

At the Long Beach Police Department, SCI investigators met with Detective Sergeant Howard Domitz, the Deputy Commanding Officer of the Detective Division. Detective Sergeant Domitz reported that the Department was conducting an investigation into Nicole's drowning. According to Detective Sergeant Domitz, so far the investigation had revealed that the Columbia Secondary School trip participants, 24 children and three adults, arrived at Long Beach on the Long Island Rail Road ("LIRR") at approximately 10:30 a.m. They walked approximately ¼ mile to the Edwards Boulevard entrance to the boardwalk, and onto the beach, where the posted signs clearly indicated that the lifeguards were not on duty.

Detective Sergeant Domitz continued that approximately five students entered the ocean near the jetty and immediately became distressed. The two female adults from the Columbia Secondary School and some other beachgoers went into the water to attempt to rescue the students.

Detective Sergeant Domitz reported that the Police Department received a 9-1-1 call at 11:18 a.m.; patrol units and the Long Beach Fire Department were dispatched to where four of the five children had been pulled from the water. In addition, a few lifeguards, who had been in the area preparing for the opening of the beach season on June 26, 2010, entered the ocean and were joined by lifeguards from the neighboring town of Hempstead. The search for Nicole also included the New York City Police Department Aviation Unit, the Nassau Police Marine Unit, and the United States Coast Guard. Detective Sergeant Domitz informed investigators that the Long Beach Police Department investigation was ongoing.

The investigators visited the Town of Hempstead Lifeguard Headquarters and spoke with Lifeguard Keith Moran who explained that he was stationed at Lido Beach West when he learned that Long Beach had swimmers in distress. Moran headed to Long Beach to assist. Upon arrival, Moran was instructed to search in the ocean for Nicole who had entered the water on the east side of the jetty. Moran initially concentrated his efforts in that area but, after about 75 minutes, he went to the west side of the jetty where he located Nicole. Moran pulled the girl from the ocean and carried her to a waiting backboard stretcher. Moran had no further contact with Nicole; medically trained personnel began CPR and transported her to the hospital.

The investigators who visited the school attempted to speak with Columbia Secondary School Principal José Maldonado-Rivera who requested representation before answering questions. The assigned SCI investigator subsequently spoke with an attorney from Maldonado-Rivera's union who reiterated that SCI should not speak with the principal without representation.

The investigators met with Assistant Principal Andrew Stillman who turned over the original "Universal" trip and swim forms, other documents already provided to SCI by the DOE, additional relevant e-mail messages, and information about the Walk-A-Thon fundraising activity which gave rise to the trip. Stillman explained that 26-year-old Erin Bailey, who was injured in rescue efforts, was an 8th Grade teacher who chaperoned the trip.

Stillman also told the investigators that Nicole's class was studying the New York City water supply and the Science of water. Stillman said that the school had a pool and students took a swim course; however, Nicole had not taken the course. Stillman added that he conducted the search for a beach destination. He also reported that Superintendent Gale Reeves had not been advised about the trip to Long Beach.⁶

Stillman requested that a formal interview take place with representation present. The same union attorney who spoke with the assigned investigator about Principal Maldonado-Rivera also said that Assistant Principal Stillman should not be questioned without representation.

One document, an e-mail message sent from Maldonado-Rivera's address, relating to the Earth Day Walk-A-Thon, announced that "[t]he HOUSES with the highest fundraising totals - get a fieldtrip to Orchard Beach!" The nine individuals who raised the most money were rewarded with "a special dinner with Dr. Maldonado." The Walk-A-Thon consisted of several laps around Morningside Park. A student obtained monetary pledges from those who sponsored him or her.

Although some witnesses believed that Nicole's class raised the most funds, apparently they tied with another house in fundraising for the Walk-A-Thon. However, the other 6th Grade class, the house of Hypatia, was slated to go on a two-week J-term trip to Puerto Rico to study Island Biodiversity and the beach trip went to Nicole's class. Principal Maldonado-Rivera headed the trip to Puerto Rico which took place from June 5 through June 19, 2010. Investigators obtained copies of the parent notification and consent forms; they were trip specific and noted that canoeing, swimming, and snorkeling would be activities during the trip. Maldonado-Rivera's first day back at school was Monday, June 21, 2010.

Nicole's 6th Grade class was the house of Einstein, and Assistant Principal Stillman, also known as Professor Stillman, was the headmaster.⁷ The Einstein J-Term program was "Water," a course themed on the sustainability of the environment. Bailey, a first year 8th Grade English teacher, was assigned to the house of Einstein that month.⁸

⁶ In a conversation with the assigned SCI investigator, Superintendent Reeves said that, although she knew about the J-term trips, she did not know about the Long Beach trip.

⁷ Students refer to all of the faculty members as Professor.

⁸ During his formal interview, Stillman testified that Maldonado-Rivera paired Bailey with him so that she would be exposed to leadership skills.

The class already had been on about six outings during the month of June, including a day trip to the Croton Dam and an overnight trip from June 15 through 20, 2010, to Black Rock Forest in Cornwall, New York. Investigators learned that the school considered the educational “Water” day trips, including the Croton outing, as covered by the Universal permission form; permission slips for the overnight trip were in Bailey’s backpack, but were subsequently provided to SCI. Those slips were very trip specific – the children would be going kayaking and needed “Life vests.”⁹ The trip to Long Beach, though at the water, was not an educational trip; it was a fun day meant as a reward. There was no permission slip specific to this outing.

The investigators attempted to speak with Teacher Erin Bailey, but she was not at the school. They were told that she was at the headquarters of the United Federation of Teachers.

The investigators spoke with 19-year-old Intern Victoria Wong, an undergraduate student at Syracuse University, who provided relevant information.¹⁰ Wong started the internship at the Columbia Secondary School on June 1, 2010, for the J-Term. Wong knew that on Earth Day, April 22, 2010, the school held a fundraising Walk-A-Thon and Principal Maldonado-Rivera had promised a trip before the end of the school year, as a reward.

The house of Einstein had returned from the Black Rock Forest trip on Sunday June 20, 2010, and Monday, June 21, 2010, was a light curriculum day for them. They worked in their journals and on book reviews. The class was eager to claim its reward – the end of the school year was fast approaching – and they were vociferous in pushing the issue. Stillman, who was at home that day, contacted Maldonado-Rivera who apparently agreed to the proposed trip and Stillman began to do online research about the beach destination for the outing.

In the afternoon on Monday, Bailey informed Wong that she had spoken to Stillman and Tuesday would be a beach day. Bailey instructed Wong and the students to bring beach stuff: towels, swim attire, sunscreen, and sunglasses. Wong saw Stillman’s “[w]e’re headed to the beach” message with the 8:00 a.m. meeting time.

June 22, 2010, was a sunny and warm day. The 8:51 a.m. temperature in Central Park in Manhattan was 76 degrees and, by 10:51 a.m., it was 80 degrees at JFK Airport on Long Island. The dew point was 59 and the humidity level was 48%. At 10:44 a.m., the tide at Long Beach was low at about .19 feet.

On Tuesday, June 22, 2010, the house of Einstein students, Wong, and Bailey met at the school at 8:00 a.m. That morning, Stillman announced that he would not be going;

⁹ During his formal interview, Stillman reported that the kayak company provided the life vests.

¹⁰ Wong was hired for the internship at the last minute when someone else backed out. She was not fingerprinted by the DOE.

something had come up.¹¹ Bailey's 28-year-old boyfriend, Joseph Garnevicus, a former teacher at Brooklyn Technical High School whose regular teaching credentials had lapsed, arrived before the group headed to the subway to travel to Penn Station to board an LIRR train to Long Beach. Garnevicus was a frequent volunteer at the Columbia Secondary School and the children knew him; he was a chaperone on the overnight trip to Black Rock Forest.¹²

They boarded the 9:35 a.m. train and arrived in Long Beach at approximately 10:30 a.m.¹³ The group walked several blocks and entered the beach at Edwards Boulevard. Wong did not see any signs indicating that the beach was closed, that there was no swimming, or that there were no lifeguards. The students dropped their belongings on the beach and Bailey gave instructions: the children were to stay in a certain area to the left of the rock jetty and were not to venture any farther than waist level in the water. Wong reinforced those rules. At least eight students headed to the ocean to cool off and four boys played catch with a football near the shore. One girl, Student J, who had proven she was a good swimmer during the Croton Dam trip, was farther out than the others.¹⁴ Wong reported that there were at least 100 other people on the beach.

According to Wong, all of a sudden, the children were heading toward the jetty and yelling "help!" Bailey started calling "where is the lifeguard," as if one were on duty. Garnevicus told Bailey, "you have to help them," because he could not swim. Bailey, who formerly held lifeguard certification, and Wong, an average to above average swimmer, entered the water, and started pulling the children to safety onto the jetty.¹⁵ Wong pulled out at least four students; Bailey pulled out at least one student before being slammed against the jetty by the force of the water; and an unidentified man saved another boy. An unidentified man and woman attempted to rescue Nicole, but grew tired. Another unidentified man reached Nicole, grabbed her by the wrist, but then submerged, and resurfaced without her. Wong said that Bailey had to be rescued and she later saw Bailey seated on the back of a truck wearing an oxygen mask.

Wong reported that everyone, except Nicole, was accounted for and the distraught, crying house of Einstein children gathered on the beach waiting for word about their classmate. The students who had been in the ocean told Wong that, all of a sudden, "we were just dragged out." Some of the students used cell phones to contact their parents and then handed the phone to Wong. According to Wong, none of the parents she spoke with expressed surprise that the children were at the beach.

¹¹ Wong said that Stillman went on all the trips and she thought an administrative issue, possibly involving the budget, had surfaced.

¹² On that trip, Garnevicus was in charge of a "pod" of eight students.

¹³ An e-mail message from Stillman to Bailey reported the scheduled departure and arrival times.

¹⁴ During the Croton trip, the children entered what was described as a deep pond. There was no trip specific parental consent form for that outing. During his formal interview, Assistant Principal Stillman said that the students were wading in water no deeper than two feet and he was in the water as well.

¹⁵ Wong is from Maine.

Long Beach officials had taken over the search for Nicole. After more than an hour, she was found on the other side of the jetty. CPR was performed as Nicole was raced to the hospital. Tragically, she was dead.

On Thursday, June 24, 2010, the team of investigators assigned to the Columbia Secondary School portion of the investigation began contacting parents to seek permission to speak with the children who attended the trip to Long Beach. Over the next few days, the investigators met with the students and parents. With a few exceptions, likely due to the stress of the incident which caused the student to be confused, the children gave consistent accounts. The investigators spoke with eight students and learned:

- Student B, a 10-year-old male, reported that, on Monday, June 21, 2010, Bailey said to bring beach stuff, a towel, and a bathing suit to the trip the next day. They met at 8:00 a.m. and took the subway to the LIRR train to the beach. Student B did not see any signs about the beach or lifeguards, but did not see any lifeguards on duty. He saw Student T and Student U in the water. Student B played games with the waves, but did not go out far. Bailey told everyone not to go in too deep and not to go out past the other school group or near the set of rocks.¹⁶ Student B said that Wong and Bailey saved students and he saw cuts and scrapes on Bailey.
- Student C, a 12-year-old female, reported that, after lunch on Monday, June 21, 2010, Bailey informed them about the Walk-A-Thon trip and told them what to bring to the beach. They met at 8:00 a.m. on Tuesday, June 22, 2010, and at 8:30 a.m. they took the subway to the LIRR train to Long Island. The group walked two or three blocks to the beach; upon arrival, Student C did not see any signs, but did not see any lifeguards on duty. Student C said that they were to have pizza for lunch. Student C added that, she, Nicole, Student F, Student K, and Student L put their hair in buns and headed into the ocean. Student C acknowledged that one of the chaperones had given instructions about not going in too far. Student C said that they were splashing and in the water up to their knees. Bailey was on the sand when the trouble arose; Wong assisted several of the students in trouble.
- Student D, an 11-year-old female, thought that the class had raised the most money for the Walk-A-Thon. She confirmed that, after lunch on Monday, Bailey told them about the trip the next day and that they should bring a swimsuit and a towel. Student D said that they met at school and took the “A” train to the LIRR train to the last stop on that train. Student D saw the “NO LIFEGUARD ON DUTY” sign on the lifeguard chair. Bailey instructed those entering the ocean not to go in above the waist, to stay in the same area, and not to go far. Student D was with Student G and Student M, with the water between her knees and waist,

¹⁶ Another DOE school group was on a trip at the beach. Facts about that trip are found later in this report.

and they were splashing. Student J swam far out and was told to come back. Student H tried to help Nicole, but Wong had to help him.

- Student E, an 11-year-old female, was particularly perceptive. She said that the house of Einstein actually came in second in the amount of Walk-A-Thon money raised. Student E confirmed that, after lunch on Monday, Bailey told the m to bring a towel and a swimsuit to the trip the next day. They met at the school at 8:00 a.m. and “Professor G,” Bailey’s boyfriend, also attended the trip. After getting off of the LIRR train, they headed to the beach a few blocks away. Student E reported that the lifeguard chair was empty and “NO LIFEGUARD ON DUTY” was spray painted on the back of the chair. Student E added that there were other signs low to the ground that could not be read because of sand formations blocking them. When they put their towels down, Bailey instructed that those who could not swim were allowed in the water to the mid-thigh; those who could swim a little were allowed to go as far as the waist; and those who were good swimmers could go no further than certain designated parameters. The students were not to go within five feet of the jetty. Student E and Student N went to change – they were the only students who did not wear a swimsuit under their clothes – and then went knee deep in the water. Nicole, Student C, Student F, Student K, and Student L were together and there was a large group near the rocks. When Nicole, Student H, Student K, Student L, Student O, and Student P had trouble, Bailey and Wong went in to help, but Professor G could not swim.
- Student F, a 12-year-old female, confirmed that Bailey announced the beach trip reward for the Walk-A-Thon and said to bring a bathing suit, towel, sunscreen, and sunglasses. Student F said that, on Tuesday, June 22, 2010, they met at “7:58 a.m.” and left at 8:30 a.m. to take the subway to the LIRR to Long Beach. The beach was three blocks away; Student F saw the lifeguard chair, but did not see any signs or any lifeguards. Student F said that they placed their towels by the seaweed and, about five minutes after they arrived, Bailey announced the swimming rules: if you could swim, you were allowed to go waist deep, but if you could not swim, you had to stay near the shoreline. Student F could not swim. Nicole, Student L, and Student P were in the same area. Nicole was standing in water between her knees and waist. Suddenly, Nicole was overcome by waves and students started screaming. Student G and Student O were also in trouble and Bailey and Wong entered the ocean to help rescue them.
- Student G, an 11-year-old female student, reported that the class raised the second most money for the Walk-A-Thon and, the day before the reward trip, Bailey told the class to bring a Frisbee, suntan lotion, a bathing suit, and a change of clothes.¹⁷ They met at 8:00 a.m., left at 8:30 a.m., and took the subway to a special train with padded seats. They walked some blocks to the beach and

¹⁷ Student G has turned 12.

placed a mat on the sand. Student G did not see any signs or any lifeguards. Student G was with Student D and Student M, they entered the water and went closer to the jetty than others. Professor G told them “don’t go so close to the rocks.” Student L yelled for help, but Student G thought she was playing because she could swim. Student L was rescued and a man saved Student P. Student D tried to help Nicole, but Student D had to be rescued. Professor G was on the rocks afterward, but did not get wet.

- Student H, a 12-year-old male, was absent on Monday, but received Stillman’s e-mail message about the trip. Student H expected Stillman to go on the trip, but heard that he had administrative work that kept him from attending. The class and chaperones met at 8:00 a.m. and took the 9:30 a.m. train to Long Island. Student H did not see any signs about lifeguards, but did not see any lifeguards. However, Student H saw signs in a low mound of sand, but could not read them. Student H did not recall receiving any swimming instructions, but remembered that Wong said not to go past the line of rocks. Student B, Student O, and Student Q played football. Student H was walking in the water catching waves, but they were not too high. Student H, who swam a little, went with Student J, who was a good swimmer. Student D was with Nicole who was in distress. Student H and Student J swam over and asked whether the girls were “drowning.” Nicole grabbed Student H and then he “started drowning.” Wong helped Student H, but he thought Bailey took him to the rocks, and then went to assist others. Student P, Student D, and Nicole continued to be in distress. Student H sustained scratches to his legs.¹⁸
- Student I, a 12-year-old male, recalled Stillman’s e-mail message advising the students to come dressed to swim and play in the sun. Student I said that Stillman did not go on the trip; he believed the assistant principal had administrative work relating to the Regents. The class met at 8:00 a.m. on Tuesday, June 22, 2010, and then took the subway to the train to the beach. They walked some blocks to the beach. Student I did not see any signs at all, but after the incident he realized that there were no lifeguards. Bailey instructed: “If you can’t swim, don’t go in the water past your waist; don’t go past the rocks.” Student O, Student P, Student Q, Student R, and Student S were playing catch with a football. Student I went in the ocean, but not too far, between his knees and his waist. Student H and Student L started screaming. Wong was in the water, but Bailey was on the sand before “it happened.” Student I thought that Bailey placed Student H and Student L onto the rocks. Student L started pointing to someone in the water; everyone knew it was Nicole. Bailey and a stranger tried to help Nicole, but were unsuccessful. Afterward, back on the sand, Wong spoke by phone with parents.

Some of the parents spoke with investigators as well. They recalled signing the Universal permission slips and the Black Rock Forest form, but did not see or sign a

¹⁸ The assigned investigator observed scratches on Student H’s legs.

consent form that was specific to the Long Beach trip. The parents acknowledged receiving the e-mail message from Stillman on Monday, June 21, 2010, announcing the trip.

On Monday, June 28, 2010, a team of investigators returned to Long Beach and met with City Manager Charles Theofan who said that, about two years ago, the Long Beach City Board decided to open the beach season earlier, a week before the 4th of July, because the schools were closed. By resolution this year, the City Board opened beach season on June 26, 2010. Theofan explained that, when the beach was open, Department of Health regulations required that the lifeguard stations be manned by two lifeguards with rotation by additional lifeguards for mandated breaks.

According to Theofan, riptides were present every day and, on June 22, 2010, were not particularly severe. Theofan added that, beginning about two years ago, specific signs warning swimmers about the riptides were posted on the beach. Theofan said that members of the Long Beach Police Department often patrolled the area, but were not always on the beach. According to Theofan, he never heard of school groups taking a day at the beach in the off season when school was still in session. Theofan informed the investigators that, when a large group of beachgoers calls ahead, it was Long Beach policy to place additional lifeguards on duty to ensure the safety of the swimmers.

The investigators then visited the Long Beach Lifeguard Headquarters and spoke with Paul Gillespie, the chief lifeguard. Gillespie explained that the ocean current flowed from east to west, pulling the sand away, and causing a deep crater depression. According to Gillespie, Nicole was found on the west side of the jetty, after entering the ocean on the east side of the jetty, because of the east to west flow of the current. Gillespie said that the most dangerous place to swim in the ocean was in the vicinity of the jetty. Gillespie added that children feel a false sense of security around the jetty because they believe they can grab on to a rock if they get into trouble. However, once they are near the jetty, the current sweeps them away from the rocks and deeper into the ocean. Gillespie explained that a rip current was created by the weakening of a sand bar, which allowed the water to return from the shore to the ocean at a faster rate, creating a tremendous undertow.

In her interview with investigators, Wong mentioned meeting students from another school at Penn Station; those children boarded the same train and went to Long Beach; Wong saw them on the beach. The assigned SCI investigator identified the school as PS 3 in Manhattan. A visit to that school confirmed that there had been a trip to Long Beach on June 22, 2010. Principal Lisa Siegman explained that the annual trip of students, most of whom had participated in the swimming course at the 14th Street Y, usually occurred at Brighton Beach, but for some unexplained reason, Long Beach was chosen this year.

In contrast to the way the beach trip was handled at Columbia Secondary School, PS 3 had 24 adult chaperones – two veteran teachers, a student intern, an educational volunteer and 20 parents – to supervise 51 children who went on the outing to Long Beach on June 22, 2010. The students were from two classes: 2nd and 3rd Graders and 4th and 5th Graders. A Long Beach resident had informed one of the teachers that the beach had lifeguards; upon arriving there, they found that there were no lifeguards. Both teachers were experienced in water safety and consulted with the parent chaperones to decide whether to enter the water. Upon deciding to do so, they carefully selected the swimming site and had the adults construct a “cage” with their bodies to surround the students. When the teachers realized a child from another school was missing, the PS 3 students were taken out of the water. Parents who were not on the trip as chaperones were contacted and told that their children were safe.

PS 3 also produced permission slips specific to the trip. These clearly indicated that the trip was to Long Beach, that transportation was by subway and LIRR, and that swimming was a specific activity planned. In addition to signing the form, the parent or guardian was asked to check whether the child had permission to ride on the subway, play on the beach, and go in the water. Swimming permission was to be given “only if able to swim.” The “Parent Notification/Consent Form for a Day Trip” also asked whether the child would bring lunch or needed a school lunch.

After SCI declined to afford her criminal use immunity, through her attorney, Erin Bailey declined the opportunity to speak with investigators from this office, citing her Fifth Amendment privilege against self-incrimination.

Through his attorney, Joseph Garnevicus declined the opportunity to speak with investigators from this office, citing his “constitutional right to not be questioned.” In a conversation with the assigned SCI investigator, the attorney explained Garnevicus was asserting his Fifth Amendment privilege against self-incrimination.

On July 6, 2010, an attorney representing Nicole’s parents contacted SCI seeking information about the investigation and asking whether we would be speaking with the Suriel family. The assigned investigator offered to speak with Nicole’s parents, particularly her father whose signature appeared on the Universal forms, but the attorney was unsure when such a meeting could occur because the family was still grieving their loss.

On July 8, 2010, in the presence of his attorneys, Andrew Stillman was placed under oath and gave relevant testimony for approximately two hours. He was not afforded criminal use immunity.

Stillman reported that, in addition to the overnight outing to Black Rock Forest for which there was a trip specific consent form, the house of Einstein went on five Water

study day trips: the Croton Dam and Aqueduct, the Department of Environmental Protection (“DEP”) sewage treatment facility in Brooklyn, the Hydrology Lab at Barnard College, a walk to the Hudson River to obtain water samples, and a visit to the DEP education sailing vessel, *The Pioneer*, at South Street Seaport. There were no day trip consent forms for any of these outings. Stillman said that the specifics of the J-term itinerary were presented directly to parents during an information session. At the time, he thought the “blanket” – Universal – permission slips were sufficient.¹⁹ Stillman testified that generally the “blanket waiver” was for trips local to the City and a separate permission form was used for trips outside the City. Stillman admitted that he did not use a separate form for the Croton trip and responded, “I’m not sure,” when asked why he had not done so. However, Stillman noted that they were back at the school before the end of the day, he had discussed the trip during the information session with parents, and he had sent an e-mail communication about the trip. Stillman acknowledged that children entered the water at the shore of the Croton River at the base of the Dam, but drew a distinction between “wading” – as he described this activity – and swimming.

Regarding the Walk-A-Thon reward, Stillman said that he was not present at the assembly where Principal Maldonado-Rivera made the original offer of an incentive trip and he “did not pick up on the specifics of what promise had been made” – the trip to Orchard Beach which was in Maldonado-Rivera’s message about the Walk-A-Thon. When the house of Einstein tied with another house in raising the most money, Stillman was “caught off guard” as students started inquiring about the promised beach trip. The children told him that the principal had made the promise and Stillman said he would look into it. However, the issue drifted to the back of his mind until the Black Rock Forest trip when, on a daily basis, students asked why they had not gone to the beach. Stillman responded that he had not made that promise, but promised to look into it.

The house of Einstein returned from the Black Rock Forest trip on Sunday, June 20, 2010. Stillman took a personal day on Monday, June 21, 2010, but spent part of the day doing work for the Columbia Secondary School from home. Stillman was not aware that Orchard Beach had been mentioned for the beach trip and he started looking at Long Beach because his memory was that it was “very doable from a transportation perspective.” Within the past two years, Stillman had been to Long Beach with his family on a weekend during the month of June and he remembered it as a safe and well-populated environment and a convenient destination by public transportation with easy lunch options. Stillman went to the City of Long Beach website and saw no indication that the beach was closed. At the LIRR website, he found group rates. Stillman reported that he expected to go on the trip.

Stillman sent a reminder e-mail message to Maldonado-Rivera about his promise of a “beach” trip for raising money at the Walk-A-Thon. Stillman asked: “Can I do this tomorrow with the Water kids?” The principal responded, “call me.” Stillman

¹⁹ After the tragedy, Stillman made the “unpleasant discovery” that seven of the house of Einstein students had no Universal forms on file. He also realized that the form had a narrow scope of authorized activity.

telephoned the principal when he received that response. According to Stillman, the first topic they discussed was the beach trip and Maldonado-Rivera “acquiesced.” Stillman explained that any hesitation on the principal’s part related to his concern that the assistant principal would not attend to the administrative duties he needed to complete before the end of the school year, which was fast approaching. The primary concern was “spending down” the school’s nine procurement cards (“P Cards”) which had an aggregated balance of about \$30,000. The school would lose the money if not used by the end of the term.

With the trip approved, Stillman made a reservation on the LIRR and sent the train schedule to himself and to Bailey. He then called Bailey and advised her to tell the students that the beach trip would take place the next day and they should come prepared. Thereafter, Stillman sent the e-mail message to the “water parents” and the “water students” to come “dressed to swim and play in the sun.” Stillman acknowledged that he did not expect a response to this e-mail, that there was no consent form for this trip other than the “blanket waiver,” and that it was not part of the J-term Water study.

Stillman awoke at about 4:30 a.m. on Tuesday, June 22, 2010, worried about the P Cards.²⁰ Although he packed his bathing suit in preparation for the trip, Stillman planned to look for someone to take his place. He arrived at the school at about 6:20 a.m. and, at about 6:30 a.m., received a text message from Bailey who asked whether Garnevicus could attend the trip. Thus, Garnevicus presented himself as Stillman’s replacement. Stillman met some of the house of Einstein students in the hallway and informed them that he would not be going because he had \$26,000 to spend before Friday. The students, who were already excited about the Long Beach trip, had fun offering suggestions for ways to use the money.

Stillman associated Wong with the coast of Maine, and described Bailey as a strong athlete and swimmer. He described Garnevicus as having limited swimming ability. However, Stillman testified that he considered the chaperones to be supervising adults, rather than lifeguards, because he thought there were actual lifeguards on duty at Long Beach who would be responsible for the water safety aspect of the operation.

Stillman did not hear from anyone on the trip before the tragedy. After it occurred, during multiple telephone conversations with Stillman, Wong described the swift and unexpected heartbreaking turn of events at the beach. Stillman immediately notified Maldonado-Rivera and it was decided that Stillman would head to the beach; he did so, by taxi. On the way there, Maldonado-Rivera contacted him and wanted to know whether there were lifeguards on duty at Long Beach when the children were swimming. Stillman did not know; he called Wong who reported, “apparently not.” Another call from Wong – also received when Stillman was in the cab – reported that Nicole had been found, but her condition was unknown. Stillman later learned from a doctor that EMTs tried to resuscitate Nicole and doctors took over that task when she arrived at the hospital.

²⁰ Stillman cited uploading grades and reporting the Regents grades as other duties to be performed.

At the beach, Stillman sent Bailey and Wong with the students who returned to the school by chartered bus. Garnevicus stayed with Stillman and Long Beach Detective Orlando Garcia transported them to the hospital. Stillman questioned Garnevicus to determine what the teachers had done prior to the students entering the water, whether they had been aware that there were no lifeguards on the beach, what their thinking had been, and what rescue efforts had been attempted. Based on his responses, the assistant principal completed the DOE incident report.

Garnevicus told Stillman that Bailey assembled the students on the beach, got their attention, and instructed them on the swimming rules: they were to go no further than waist deep and no deeper than where they could stand. A group of younger children was in the water and Bailey told the students that they were not to go further than the “little kids.” From the shore, Garnevicus watched the house of Einstein children who were in the ocean, he became uncomfortable as they started drifting left, and he called them in. Multiple students moved closer and closer to the jetty, quickly going from waist high in the water to in over their heads. Bailey and Wong dashed in and successfully pulled children to safety on to the jetty. Garnevicus considered entering the water, but judged that it would be best if he stayed on the shore to monitor the other students, and he persuaded another beachgoer to join the rescue mission. That individual got a physical hold on Nicole, but had to abandon his effort when the strength of the current placed his safety in jeopardy.

Garnevicus informed Stillman that, shortly thereafter, a team of lifeguards, who had been training elsewhere on the beach, appeared and commenced a rescue attempt. Bailey was stopped from further efforts to reach Nicole and was pulled out of the water – she was lacerated and physically exhausted – and placed under the care of EMTs.

Following Nicole’s death, Stillman had subsequent conversations with Wong and Garnevicus about what happened at the beach that day. It was clear to Stillman that “they were not fully aware that lifeguards were not on duty.” Approaching the beach from the train, neither recalled seeing signs about the beach being open or closed. On the beach, at least 70 people were in the water, including 25 2nd Graders, 25 5th Graders, and 20 adults. There was a lifeguard chair 300 feet to the left and 400 feet to the right, but neither saw a “NO LIFEGUARD” sign on them until after the tragedy. Both chairs were in the upright position and Garnevicus believed that this meant the beach was open. However, he did not see a lifeguard. Stillman also spoke with Bailey, but he “did not push her very much on these kinds of details.”

At the conclusion of the interview, at the request of one of his attorneys, Stillman informed SCI that, throughout the year and especially in June, the Columbia Secondary School students begged to use the school pool, but the clear policy was that no one went in the water unless a certified lifeguard was on duty. Stillman said that both Bailey and Wong were aware of that strict policy. In Stillman’s judgment, that standard of care was

very clearly communicated. Stillman said that his full expectation in staffing the trip was that lifeguards were on duty at Long Beach and had he contemplated the possibility that there were none – even after the group had left on the trip – he would have expected the trip leaders to assess the situation and declare no swimming or to contact Stillman. According to Stillman, the Chancellor’s regulation on trips did not require the presence of a lifeguard for swimming activity, but he employed a higher standard, based on his assumption that lifeguards were present.²¹ Stillman asserted that he did not follow local news and was unaware of other incidents of riptides, drowning, or near drowning at Long Beach.

On July 8, 2010, in the presence of his attorneys, José Maldonado-Rivera was placed under oath and answered questions from SCI staff for about 90 minutes. He was not afforded criminal use immunity.

Maldonado-Rivera identified his name on the Walk-A-Thon document promising the Orchard Beach trip, said that he had approved the document, and acknowledged that it was sent from his e-mail address. He testified that the idea of a reward was consistent with the school’s standard practice to motivate children. Maldonado-Rivera had no specific recollection of exploring destinations other than the beach for the reward trip or any discussions about it. Maldonado-Rivera described Orchard Beach as one he was familiar with, that the school used fairly regularly, and which was consistent with the environmental focus of the Columbia Secondary School. The principal said that Orchard Beach had inherent educational value, even though this was to be a fun trip: “There is no reason why a good education can’t be fun also.” Maldonado-Rivera confirmed that he offered the reward trip “literally in the middle of” an assembly at school, but had no recollection of the Orchard Beach reference until seeing the Walk-A-Thon document at the interview.

Maldonado-Rivera testified that the actual trip took place on Long Beach because Stillman had suggested it. The principal maintained that sometime during the week before the beach trip, he and Stillman spoke about the promise of a beach outing and, at some point, the destination of Long Beach was introduced.²² Maldonado-Rivera confirmed that he received the e-mail message from Stillman on June 21, 2010, asking about taking the trip the next day, and that they had a subsequent telephone conversation about it. Maldonado-Rivera asserted that he resisted the idea of the beach reward – because the students had been on so many trips already – and he attempted to defer it to

²¹ Stillman acknowledged that, after the tragedy, he became much more familiar with the Chancellor’s regulation on trips. The Chancellor’s regulation does not contain a specific reference to “lifeguard.”

²² The week before, Stillman was on the Black Rock Forest trip and Maldonado-Rivera was in Puerto Rico. Stillman testified that Internet and telephone access in the forest was limited and he was not in a position to look into the beach trip until he returned to New York City.

the fall as there was no need to do it now. Asked why he changed his mind, Maldonado-Rivera responded, "I don't really recall what made me change my mind, yeah um, but but it was, I mean Andrew, Andrew was was you know with three people and the trip it was – it's not an extraordinary thing in our school to do these trips."

According to Maldonado-Rivera, he was not familiar with Long Beach, but Stillman told him that he had been there and had checked the website. The principal added that Stillman informed him that the beach was well-known and public, that there were lifeguards, and that public schools traveled there on a regular basis. Maldonado-Rivera authorized the trip. Maldonado-Rivera said that Stillman was going to attend the Long Beach trip, but did not go because there was a lot to be done at the school. Maldonado-Rivera asserted that it was Stillman's assessment not to go and that he did not tell Stillman not to go on the trip. The principal acknowledged that there was a concern about spending down the P Cards and, although he did not know the balance remaining, it was substantially more than predicted.

Maldonado-Rivera knew that the Water team would be on the trip – four adults if Stillman had gone; the principal apparently counted Garnevicus even though originally he was not slated to attend – but did not know whether there were extra people, such as parent chaperones. Asked whether this was a swimming trip, Maldonado-Rivera testified that he had no specific knowledge of the detailed activity of this particular trip. Asked whether there was a consent form for the Long Beach trip, Maldonado-Rivera responded: "That's a complicated question to answer." Maldonado-Rivera then explained the "three layers of permits" in the June semester. Maldonado-Rivera asserted that Stillman, as the team leader, was relied upon to address the forms. Asked whether this was a J-term trip, Maldonado-Rivera responded, "technically no, technically no." Maldonado-Rivera said that "it wouldn't be inconsistent with the concept of the Water course for there to be a beach trip." Ultimately, Maldonado-Rivera admitted that the "intent" of the trip was a reward, that it was not a Water trip, and that there should have been a separate consent form, "if [the trip] had not been included in the Water."²³ Maldonado-Rivera also admitted that – as principal – he was ultimately responsible for the trip.²⁴ Maldonado-Rivera did not know about drowning and near drowning incidents at Long Beach and did not know there was a problem with riptides.

On June 22, 2010, Maldonado-Rivera arrived at school between 9:30 a.m. and 10:30 a.m. According to Maldonado-Rivera, he did not realize that Stillman was not on the trip until sometime between 10:00 a.m. and 11:00 a.m., when he encountered him in the school. The principal expressed surprise and initially thought that no one had gone to the beach, but then learned that the assistant principal had stayed behind. Stillman reported that three adults and 24 children had gone to Long Beach.

²³ Maldonado-Rivera acknowledged that the Universal forms were narrow in scope. The swim form was for the school's pool and the fieldtrip form was for local outings.

²⁴ According to Chancellor's regulation A-670: "For all school trips, the principal shall be responsible for ensuring that appropriate care is taken to ensure the safety of all participants."

Before the tragedy, Maldonado-Rivera had no contact with anyone on the beach. He knew that Bailey, Garnevicus, and Wong were the chaperones.²⁵ Between 11:00 a.m. and 12:00 p.m. on June 22, 2010, Stillman reported that a child on the trip was missing – but there were no clear details. A short time later, they learned it was Nicole and she was missing in the water.

Maldonado-Rivera set a response in motion: a secretary found a bus to transport the children back to the City, the parent coordinator contacted Nicole's parents, another secretary notified the rest of the parents to respond to the building, Stillman was sent to Long Beach by taxi, and the principal stayed to manage the school.²⁶ Maldonado-Rivera notified the superintendent and the principal of the DOE school which shared space with the Columbia Secondary School.

Nicole's parents arrived at the school between 11:30 a.m. and 12:00 p.m. and Maldonado-Rivera broke the grim news about their daughter. Another parent volunteered to drive the Suriels to Long Beach and the principal sent two staff members, who spoke both Spanish and English, to accompany them. Other parents began to arrive and Maldonado-Rivera reported the drowning. The house of Einstein students arrived back at the school about 90 minutes later and Maldonado-Rivera told them about Nicole's fate because they were "not really sure if she had made it or not."

Maldonado-Rivera asserted that it was standard practice that a lifeguard was on duty when there was a swimming activity. The principal said: "That's my school's policy, it's not anybody else's policy, that's my school's policy."

Nicole Suriel's death was a tragedy. Certainly, Columbia Secondary School personnel did not intend to cause her harm. Nevertheless, there was a lack of adequate planning by the principal and the assistant principal, a failure to provide a sufficient number of adults to supervise the children at the beach, and poor judgment by the teacher in charge who either failed to realize that there were no lifeguards on duty or failed to recognize the additional danger presented by their absence.

We refer our findings for your review and whatever action you deem appropriate.

We are sending our findings to Nassau County District Attorney Kathleen Rice for whatever action she deems appropriate.

²⁵ Maldonado-Rivera confirmed that he had interviewed and hired Wong for the J-term; he did not remember whether she had been fingerprinted.

²⁶ Maldonado-Rivera did not remember the exact sequence of events.

We are forwarding a copy of this letter and of our report concerning this investigation to the Office of Legal Services. We also are sending our findings to the State Education Department for whatever action it deems appropriate. Should you have any inquiries regarding the above, please contact First Deputy Commissioner Regina Loughran, the attorney assigned to the case. She can be reached at (212) 510-1426. Please notify First Deputy Commissioner Loughran within 30 days of receipt of this letter of what, if any, action has been taken or is contemplated regarding this investigation. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By:

Regina A. Loughran
First Deputy Commissioner

RJC:RAL:gm

c: Michael Best, Esq.
Theresa Europe, Esq.