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THE SPECIAL COMMISSIONER OF INVESTIGATION
FOR THE NEW YORK CITY SCHOOL DISTRICT

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December 4, 2019

Hon. Richard Carranza
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

Re: SCI Investigation into the Operation of
Dangerously Hot School Buses
SCI Case #2019-5863

Dear Chancellor Carranza,

The Office of the Special Commissioner of Investigation (“SCI”) conducted a self-initiated investigation into New York City Department of Education (“DOE”) school bus vendors who operated buses at dangerously warm temperatures. SCI became aware of the issue when a complaint was received on July 22, 2019 – a day in which air temperature reached a high of 90 degrees Fahrenheit – regarding a special needs student who was transported on a perilously-warm bus. That particular complaint is addressed in detail below.¹ As a result, SCI conducted a review of the processes employed by the DOE to respond to reports of high temperatures on school buses that transport Pre-K students and those with special needs.

I. Background: DOE Bus Contracts and Ridership:

The New York City Department of Education (“DOE”) has contractual agreements with 44 bus companies to provide transportation services for students.² All bus companies must adhere to the DOE School Age Bus Contractor’s Manual of Procedures and Requirements (“Contractor’s Manual”). Some companies have contracts to transport both special education and general education students; the 42 companies service between seven routes and one thousand routes each.

As enacted by Chancellor’s Regulation A-801 on September 5, 2000, bus ridership is termed as provided by “contract bus” companies, and pupil transportation documentation is submitted to the DOE Office of Pupil Transportation (“OPT”).³ OPT is responsible for, among

¹ See <https://www.accuweather.com/en/us/new-york-ny/10007/july-weather/349727>.

² See <https://www.schools.nyc.gov/school-life/transportation/bus-companies-for-school-age-children>.

³ See <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-801-english>.

other things, determining bus routes, stops, and schedules; determining eligibility for yellow school bus transport, public transit bus, or subway pick-up for students; conducting inspections of bus companies, including background checks of bus drivers and matrons; and liaising with schools and with bus drivers.

The New York City Administrative Code directs buses transporting students with special needs to utilize air conditioning whenever the ambient outside temperature is above 70 degrees Fahrenheit.⁴ Students with special needs, who comprise approximately 50,000 of the total DOE ridership of 150,000 students, often require air conditioning on the bus in their Individualized Education Programs (“IEPs”).⁵ The typical length of ride time for a student attending a District 75 school is naturally longer, as District 75 schools provide services for students from non-local areas.⁶

It is worthy of mention that the subject of “hot” buses has been a topic of recent local reports. For years, parents have expressed displeasure regarding children – particularly children with special needs – commuting for hours on hot buses. In 2011, one parent told the *New York Daily News* that “Our kids are being cooked alive in these buses.”⁷ In 2014, former Public Advocate and current New York State Attorney General Letitia James called on the DOE to install air conditioning on all school buses, particularly those that transport students with special needs who are unable to signal distress while on a hot bus.⁸

⁴ See Admin. Code § 19-605: “Air-conditioning. a. Any bus or other motor vehicle transporting a child with a disability to and from a school in the city pursuant to any agreement or contract shall be air-conditioned when the ambient outside temperature exceeds seventy degrees Fahrenheit. Drivers of all such vehicles shall utilize such air conditioning systems in order to make the internal climate of such vehicles comfortable to passengers in order to protect or enhance the health of children with disabilities. Any failure, mechanical or otherwise, of an air-conditioning system required by this section shall be repaired and restored to operable condition as soon as is practicable, but in no event more than three business days subsequent to the failure. For purposes of this section, “child with a disability” shall mean a child with a disability as defined in section 4401(1) of the education law who requires an air-conditioned environment for health reasons.”

⁵ Per DOE statistics, 51,874 special education students utilized DOE transportation as of June 21, 2019.

See <https://nycsci.org/wp-content/uploads/2018/Public/9-19-OPT-Press-Rel.pdf>.

⁶ District 75 schools are specifically designed for students with special needs, though not all students with IEPs attend District 75 schools. Per the DOE, “District 75 provides highly specialized instructional support for students with significant challenges, such as: Autism Spectrum Disorders; Significant cognitive delays; Emotional disturbances; Sensory impairments; Multiple disabilities.” See <https://www.schools.nyc.gov/special-education/school-settings/district-75>.

⁷ See “Parents of special-needs kids furious at bus rides without A/C; complain to NYC, get shortened rides,” available <https://www.nydailynews.com/new-york/parents-special-needs-kids-furious-bus-rides-complain-nyc-shortened-rides-article-1.129769>.

⁸ See “Group calls on Department of Education for air-conditioned buses that carry special-needs students,” available <http://brooklyn.news12.com/story/34786002/group-calls-on-department-of-education-for-air-conditioned-buses-that-carry-special-needs-students?clienttype=smartdevice> (“James says that buses equipped with air conditioning would help the 23,000 District 75 special-needs students. According to James, some of the students are nonverbal and travel nearly two hours back and forth from home to school, and would be unable to signal that they are in distress on a hot bus.”). See also “Public Advocate Alleges In Lawsuit Some NYC Special Ed Buses Are Dangerously Hot,” available <https://newyork.cbslocal.com/2015/08/19/hot-school-bus-lawsuit/>.

a. Hot Buses During the Summer of 2019:

The requirement that buses have an air conditioning system exists in several bus contracts. Generally, these contracts require the vendor to “maintain the reliable operation of the heating and air conditioning components on every bus. As measured en route, the interior bus temperature must be maintained...at no more than seventy-eight degrees Fahrenheit during warm weather months (usually April through October) or at least fifteen degrees Fahrenheit lower than the outside air temperature when the outside temperature exceeds ninety-three degrees Fahrenheit.” See RFB B2026 § 4.25, RFP B2321 § 4.26, and RFB B2192 § 4.26.⁹ As stated in the Contractor’s Manual § 1.2, “The Contractor shall comply with NYSDOT regulations expressed at 17 N.Y.C.R.R. § 720.4(I)(1)(a) regarding interior ambient air temperature, except that the Contractor shall maintain heating levels during cold weather months at not less than the temperature expressed in the [Request for Bid].”¹⁰ While not all school buses are required to have air conditioning, bus companies “must supply an air-conditioned vehicle(s) for each child(ren) with an [IEP] that requires air-conditioning for purposes of transportation to and from school and/or other destinations.” *Id.*¹¹

On July 27, 2019, *New York Post* published an article titled, “Parents livid after school buses with broken A/C left special-ed kids loopy.” The article discussed how a three-year-old child with special needs, for the entirety of the 65-minute journey, was on a bus without air conditioning. The child’s mother stated that her son was “drenched in sweat,” his “cheeks were beet red,” and that “he looked like he was drugged – out of it.” Another parent of a three-year-old with cerebral palsy complained that after her son’s 90-minute ride home, he was “soaking wet and a little loopy.” One parent described her son arriving home from school thusly: “My son gets off every day like he just got out of the pool. Soaked in sweat! So so hot. he’s out of it — fallen asleep.”¹²

⁹ Contracts for bus companies operating Pre-K routes have similar guidelines: “The Contractor must maintain the reliable operation of the heating and air conditioning components on every bus. As measured en route, the interior bus temperature must be maintained at a minimum of sixty-five degrees Fahrenheit during cold weather months (usually November through March) and maintained at no more than seventy-eight degrees Fahrenheit during warm weather months (usually April through October) or at least fifteen degrees Fahrenheit lower than the outside air temperature when the outside temperature exceeds ninety - three degrees Fahrenheit. The Contractor shall comply with State Department of Transportation regulations expressed at 17 N.Y.C.R.R. § 720.4(I)(1)(a) regarding interior ambient air temperature, except that the Contractor shall maintain heating levels during cold weather months at not less than the temperature expressed in this paragraph.”

¹⁰ Per 17 N.Y.C.R.R. § 720.4(I)(1)(a), bus companies must also provide adequate heat: “1) General requirements (all vehicles). (i) Temperature. Heater(s) shall be provided capable of maintaining an inside temperature of at least 50°F when the outside air is at the average minimum January temperature for that area, as established by the U.S. Department of Commerce, National Weather Service.”

¹¹ DOE’s OPT Assistant Regional Director Sheila Lucious-Lowe (“Lucious-Lowe”) confirmed to SCI investigators that students with IEPs are placed on air conditioned buses.

¹²See “Parents livid after school buses with broken A/C left special-ed kids ‘loopy,’” available <https://nypost.com/2019/07/27/parents-livid-after-school-buses-with-broken-a-c-left-special-ed-kids-loopy/>.

b. Purchase of Thermometers:

In May 2019, then-Director of OPT Alexandra Robinson (“Robinson”) requested the purchase of thermometers for all bus vendors. By invoice dated May 23, 2019, MSC Industrial Supply Co. d/b/a MSC, “a leading North American distributor of metalworking and maintenance, repair and operations (MRO) products and services,” sent 85 temperature/humidity recorders to the Office of School Support Services at a unit price of \$175.94 each, for a total of \$14,954.90.¹³ These devices were ostensibly delivered to the bus companies, as Robinson’s concern as expressed in a May 10, 2019 email was “to make sure the companies all have them.” It is the responsibility of the OPT inspectors to check the air temperature of buses and issue violations to bus companies when the air temperature on a bus is too high. It is unclear why Robinson would order these devices and deliver them to the companies, as it is the OPT inspectors’ jobs to measure and inspect whether buses are operating within the correct temperature parameters.

II. Bus Inspections and Violations:

a. Lifeline and the July 2019 Heatwave:

As noted above, SCI received a complaint in July 2019 regarding the issue of buses too hot to meet their contractual obligations and to safely provide transportation to students. On July 22, 2019, SCI received the complaint from former Executive Director Charles Caputo (“Caputo”) from the Lifeline Center for Child Development (“Lifeline”), which is a Queens-based private not-for-profit agency. Caputo explained that Lifeline maintained a license from the New York State Office of Mental Health (“OMH”) as a children’s day treatment provider. The DOE operated a District 75 school on the campus of Lifeline and OPT handled the transportation of students to the Lifeline programs. In his complaint, Caputo reported that for the past several days, OPT sent “hot” buses in the morning and in the afternoon at dismissal time. Caputo stated that the temperatures on the buses had been “upwards of 104 degrees” – far outpacing the agreed-upon standard as detailed above. Caputo noted that all of the students being transported suffered from mental illnesses and many of them were on psychotropic medications. According to Caputo, for these students, confinement on a hot bus could lead to serious medical issues. Caputo stated that he repeatedly informed the DOE senior administration on the school’s campus about this potentially life-threatening situation; however, on July 22nd, a bus arrived in the morning with a temperature reading of 91 degrees. The same bus returned in the afternoon and the temperature had risen to 104 degrees. Two special needs students, who travelled approximately two hours – from northeast Queens and the Bronx – were on the bus. In addition to contacting SCI, Caputo also lodged two complaints with OPT.¹⁴ One complaint was a “specific” complaint concerning the “hot” bus with the dangerously high temperature of 104 degrees. The other complaint was a “general” complaint that addressed the need to have air conditioning on buses that transport children with mental illnesses, many of whom were on psychotropic medications and traveled on buses for hours.

¹³ See <https://www.mscdirect.com/>.

¹⁴ SCI was provided with copies of these July 22nd Customer Service Incident Reports.

On July 23rd, SCI received another e-mail complaint from Caputo regarding the treacherous conditions on the buses. Caputo stated that more than 24 hours after the initial complaint was filed with OPT concerning the temperature on the “hot” bus, the same bus returned to the school without the problem having been fixed. Additionally, the same two special needs children who had travelled the long distance from northeast Queens and the Bronx the day prior, were again placed on the bus with no air conditioning for their lengthy afternoon commute home.¹⁵

In subsequent e-mail correspondences to SCI and during an interview with SCI investigators, Caputo provided additional relevant information. Caputo said that there were about 90 students who attended Lifeline, and 50 of those students participated in the summer session. At least 35 to 40 students of all ages rode the buses, and the geographical location of where the student resided was not a criterion for acceptance. Caputo noted that the bus ride “in and of itself” was too long for some of these children, but because many were in such desperate need of the clinical services provided, they travelled the distance.

Caputo stated that during a two-week time period, from about July 17th through July 31st, there were numerous buses that arrived at the school with varied degrees of hot temperatures, all of which he considered “unacceptable” and tantamount to “institutional neglect.”¹⁶ Caputo said that around July 17th, he was informed there were at least four buses in operation without air conditioning that transported the children to and from school.¹⁷ Caputo stated that it was only by happenstance, that the nurse from Lifeline, Danielle Gooden (“Gooden”), entered a bus to retrieve an item forgotten by a child and discovered that the bus was very hot. Gooden was not only “upset” but “furious” because she was aware that it was extremely dangerous to have children on psychotropic medications, and children with asthma, subjected to these life-threatening conditions.

Caputo said that over the next several days, he sent e-mail messages to the school’s administration, Principal Jaelyn Jones (“Jones”) and Assistant Principal Tavia Trush (“Trush”), indicating that this was “potentially a serious health issue” for the children.¹⁸ Caputo explained that it was his expectation that Jones and Trush would ensure that students were not placed on a hot bus.¹⁹ In addition to the mental health challenges faced by the children during this time period

¹⁵ Caputo noted that fortunately, the outdoor temperature was “not as bad as previous days,” but asserted it was still unacceptable to require the children to travel on such a hot bus.

¹⁶ Caputo stated that he only became aware of this detrimental situation in mid-July, however, these extreme temperatures on the buses could have occurred since the beginning of July.

¹⁷ July 2019 was the hottest month ever on record. See “NOAA Data Confirms July Was Hottest Month Ever Recorded,” *The New York Times*, available: <https://www.nytimes.com/2019/08/15/climate/hottest-july-noaa.html>. The July heat wave had a particularly negative impact on New York City, including several deaths and the cancellation of the triathlon. See “Heat Wave Kills At Least 7, Forces Cancellation of NYC Triathlon; Subway Lines Halted,” available <https://weather.com/news/news/2019-07-19-heat-wave-impacts>.

¹⁸ SCI was provided with one e-mail dated July 23rd from Caputo addressed to Jones and Trush. In his e-mail message Caputo stated, “A DOE staff member today told me that they too have raised their concerns about the hot buses from last week to today. Today, the same bus that 2 students were sent on yesterday to travel from Queens to the Bronx showed up with no A/C.”

¹⁹ When SCI investigators interviewed Trush she said, “I don’t deal with the busing at all.” Trush insisted that she never spoke with Caputo about hot buses and noted that bus matters were handled by McClain.

in July, there was a heatwave in New York City, with temperatures soaring above 90 degrees.²⁰ Caputo recounted that he directed Gooden to measure several of the buses with a room temperature thermometer to ascertain the temperatures on board.²¹ Caputo was advised that the temperatures were very hot – well above 100 degrees on some of them. As noted previously, on July 22nd, Caputo reported the matter to SCI. On that same date, he contacted OPT and lodged the “specific” and “general” complaints about this perilous situation which he felt was akin to child abuse.

According to Caputo, there were several dates during the heatwave in July when school buses assigned to Lifeline – located in northeast Queens - repeatedly transported special needs children with defective air conditioning units. Caputo stated that Gooden provided him with the temperatures on the following dates:

- On July 19th, a bus arrived in the morning with no air conditioning, and the air temperature on this bus was reported to be 91 degrees.
- On July 22nd, a bus arrived in the morning with 91 degree temperatures and an inspector from OPT was present. Two violations were issued that day due to “bus equipment malfunction.” One violation was imposed because the front unit air conditioner was deemed defective; the unit was not sufficient to cool down the bus. The other violation was issued because the driver’s side top brake light was inoperable.
- On July 22nd, the same bus returned in the afternoon with an air temperature reading of 104 degrees. Two special needs students were placed on the bus for their two-hour commute from Lifeline to the Bronx.
- On July 23rd, the same bus that was the subject of the complaint filed with OPT on July 22nd, showed up with the air conditioning not working. The two children, who were on this bus on July 22nd, were again placed on this bus for their commute home to the Bronx.
- On July 31st, a bus left the school with an extreme air temperature reading of 108.9 degrees. The same two students, who had been on extremely hot buses the previous two days, were again on the bus for their lengthy commute home to the Bronx.
- On July 31st, a bus left the school with no air conditioning and an onboard temperature of 107.2 degrees. There were six students aboard the bus for the trip to Brooklyn.

Caputo told investigators that, although Gooden was on the buses on numerous occasions, she did not check the bus temperatures every day. Further, Caputo noted that his “staff had nothing to do with dismissals or arrivals.” Caputo insisted that he tried to have DOE administrators address the situation but they ignored it. Caputo added that although he did not “control the (DOE)

²⁰ According to the July 2019 New York monthly AccuWeather report, the temperatures were as follows: July 17th 93 degrees; July 18th 79 degrees, July 19th 91 degrees, July 22nd 90 degrees, July 23rd 74 degrees, July 24th 83 degrees, July 25th 84 degrees, July 26th 88 degrees, July 29th 90 degrees, July 30th 92 degrees, and July 31st 87 degrees.

²¹ A plant manager from Lifeline provided a temperature gage to Gooden that she used to determine the various temperatures on the buses.

administration,” as the individual responsible for the supervision and operation of the school, it was his responsibility to ensure the safety and well-being of the children.

b. DOE’s Response to Lifeline:

In an interview with investigators, OPT Assistant Regional Director Sheila Lucious-Lowe (“Lucious-Lowe”) confirmed that children with IEP’s required air-conditioning on buses that transported them to and from school.²² Lucious-Lowe stated that OPT only became aware of air conditioning problems aboard school buses when there was a report by a parent or school administrator. Lucious-Lowe explained that when OPT received a complaint regarding a non-working air conditioner on a bus, the matter was referred to the Inspector’s Unit for review. According to Lucious-Lowe, within 24 hours, an inspector should have been sent to examine the bus and, until the bus was cleared by the inspector, it would remain “out of service.” Further, if required, the appropriate citation would be issued by the inspector.

SCI investigators reviewed the two July 22nd OPT incident reports filed by Caputo along with the violations issued for the bus with the malfunctioning equipment. Records revealed that the bus cited for the equipment malfunction violations was removed from service “as per OPT inspection standards” on August 1st. The necessary repairs were made and the bus returned to service on August 2nd. It should be noted that during July and August 2019, the same bus was inspected on four occasions: July 5th, July 22th, August 1st, and August 8th. On each date, violations were issued for insufficient air conditioning.²³

With respect to the “general” complaint made by Caputo concerning the extreme heat danger for children on psychotropic medications, the resolution documented on the report read as follows: “automatically closed on 7/22/2019 because all informational calls are automatically closed.”

In an interview with SCI investigators, Gooden corroborated Caputo’s account of what had transpired with respect to the “hot” buses in July. Gooden told investigators that Caputo had given her a temperature gauge that she used to check the temperatures on the buses. Gooden said that she periodically took readings from approximately mid-July until the first week of August. Gooden’s notes reflected bus air temperature readings at the following degrees: 86.4, 90.7, 91.1, 92.4, 107.2, and 108.9.

Gooden told SCI investigators that, “everyone was complaining to me,” and specified that she received complaints about “hot” buses from one-on-one paraprofessionals Brenda Barlow (“Barlow”) and Jeanette Rollan (“Rollan”). Gooden said that she reported these complaints to Caputo. Gooden told investigators that Dean of Students Michael McClain (“McClain”) was the DOE administrator who handled busing at the site. Gooden added that she recalled “two guys, I

²² According to Lucious-Lowe, general education buses, however, were not required to be air-conditioned.

²³ In each instance, the driver was verbally notified by the inspector that the bus was “out of service” and needed to return to the shop for repairs. Additionally, an automated e-mail message was sent to the vendor advising of same.

think from OPT, showing up only in the morning or on a cool day.” Gooden believed that they were the “same two guys who came all the time.” Gooden stated that she saw these same individuals approximately five times over the course of three weeks. Gooden provided the assigned SCI investigator with screen shots of two bus temperature readings that Paraprofessional Rollan sent her.

SCI investigators met with McClain – the bus coordinator – who confirmed that he was in charge of buses when they arrived and departed Lifeline. He told investigators that he had documented several complaints for buses without air conditioning which he forwarded to OPT. The assigned SCI investigator was subsequently provided with notes titled “Summer Violations” from McClain that covered the time period from July 5th through July 11th. In the document, McClain recorded buses that received violations, that arrived late, and that did not have air conditioning. During this short time frame, McClain noted “no AC” next to a bus on July 5th, one on July 9th, and one on July 10th.

SCI investigators met with the two paraprofessionals identified by Gordon as having complained to her about the “hot” bus situation. Barlow told investigators that the past summer had been the “worst for hot buses,” and that she complained to McClain. Barlow further stated that Rollan and Paraprofessional Marlyn Arjune had a lot of problems with hot temperatures on buses.²⁴ When SCI investigators spoke with Rollan, she confirmed that she was a one-on-one paraprofessional who rode the bus with a seven-year-old male student. Rollan recalled that there was one occasion when the bus was so hot that when a child was returned home, his mother placed him in a pool to cool him down. Rollan stated that on two occasions during afternoon hours, she took temperature readings from the bus which she provided to Gooden. On July 30th, the temperature was 97.1 degrees and on July 31st, the temperature was 92.9 degrees.

In an interview with SCI investigators, Principal Jones acknowledged that Caputo had received complaints from his staff about “hot” buses and had contacted her on more than one occasion about the matter. According to Jones, Caputo was extremely adversarial on the phone, used derogatory language, and threatened to call the state to complain about the matter.²⁵ Jones said that she contacted OPT about the buses and inspectors arrived within a day or two. Jones added that she heard that an OPT inspector said, “when the bus is sitting, it’s gonna be hot.”

c. Press Reports and Lack of Violations Issued:

As mentioned, public reporting detailed the dangerous conditions students face when on hot buses. *See supra* at p. 3. SCI investigators reviewed violations and, despite the reporting of this potentially life-threatening incident in the newspaper, there were no violations issued to the bus company, Island Charter, as a result.

²⁴ When SCI investigators interviewed Arjune she said, “My bus didn’t have air but after complaining a few times, we got a bus with air.”

²⁵ Jones told investigators that she was going to file a complaint against Caputo but she did not because she knew he was scheduled to retire.

III. General Incidents and Complaints Process:

a. Receipt and Issuance of Complaints:

Per OPT Director of Safety Paul Weydig (“Weydig”), DOE’s inspectors conduct inspections on buses twice annually, either at the bus yard or when it is stationary outside of a school. These scheduled inspections occurred after the bus company was given two or three days’ prior notice. Inspectors also examined buses upon receipt of a complaint or performed sporadic spot-checks.²⁶

Weydig explained that when DOE inspectors are notified of a bus-related complaint regarding one or several issues on a bus, including a malfunctioning or non-existent air conditioning system, an incident report is prepared regarding the complaint. These complaints arrived from four sources:

- the inspectors themselves, while performing inspections as detailed above;
- OPT staff, via a web-based system;
- school personnel, also via a web-based system; and
- OPT’s call recording system.²⁷

The incident reports detail student information, school information, the bus company, *i.e.* vendor information, and who made the complaint. The report contains a brief description of the complaint, any follow-up steps taken by the bus company, and what – if any – the resolution was.

Lucious-Lowe stated that OPT was only made aware of an air conditioning problem aboard a school bus if a parent or school administrator reported the matter to OPT; such a complaint would then be forwarded to OPT’s Inspectors Unit for review. OPT Manager of Field Operations Elena Ruocco (“Ruocco”) further explained the complaint process as follows: Once OPT’s customer service representatives receives a complaint regarding school bus malfunctions, Ruocco would review the complaint and schedule OPT bus inspectors to visit the bus.

b. Clearing Complaints:

Ruocco receives complaints forwarded by customer service in a queue, and would close out complaints “when required” based on information she received from a company – such as when a company advised her that mechanical issues had been resolved or a bus had been pulled from service. Her daily routine includes preparing the schedule for inspectors and analyzing the locations of complaints by school and route to best assign an inspector to maximize efficiency. Ruocco said that she currently had a staff of 10 inspectors to whom she sent emails with details of

²⁶ Of note, DOE inspectors do not perform “under the hood” inspections; those were done instead by the New York State Department of Transportation. DOE inspectors review a bus’s air conditioning, brake lights, and any other obvious physical issue, and subsequently prepare an inspection report.

²⁷ This is also OPT’s main customer service line.

the complaints; once the inspectors complete their inspections, they upload their findings to DOE. From the information gathered, it appeared that Ruocco was solely responsible for closing complaints and designating inspectors to investigate complaints.

c. **Tracking Multiple Complaints:**

This investigation did not reveal a system by which multiple complaints about the same company were tracked or merged. The entire system appeared to create a natural timing issue: a complaint about an afternoon drop-off would likely not be investigated until the following day at the earliest, meaning that the conditions – both the weather and bus conditions – would be different, allowing bus companies to avoid violations. Further, according to OPT personnel, each complaint is given a unique reference number. However, complainants who call about the same bus several days in a row, or multiple complaining parents all calling about the same bus, do not have these reference numbers tied in any way to a violation that may be issued. (This issue is discussed more extensively below.) If a company takes its bus out of service, Ruocco would be notified via email. Ruocco advised that buses are not re-inspected by the DOE, and that the bus companies were responsible for fixing their own buses; they are also responsible for notifying DOE that the buses had been fixed and were returned to service. This last point should not be underscored: bus companies, with no incentive to fix their buses, are wholly responsible for advising the DOE that a past violation had been resolved. Complaints – as received by the above-described process – identify a bus company and date of incident. The incident reports further detailed this information. Yet not all complaints resulted in violations and, when a complaint did rise to the level of a violation, the violation did not bear a unique identifying number that originated from the complaint. As further stated below, nearly half of all complaints do not result in a violation being issued.

IV. **Violations Process:**

As further explained by Ruocco, if an inspector determines that a bus was not compliant, the inspector would write a violation. DOE-issued violations detail the violation date, the route number, the vendor/bus company name, the violation code, and a brief violation description – but not the complaint reference number, or any information that tied it to the original complaint. A violation for failure to adequately cool a bus would fall under Section 5.10 of the bus contracts, which states, “Failure of any vehicle to be properly equipped with the requisite climate control systems.” A violation of this nature bears a \$400 penalty. This is per the fixed penalty schedule, though the number inexplicably differs regarding Pre-K buses, as that fine is only \$85.²⁸ Upon issuance of a violation, a respondent is provided two weeks’ to schedule a hearing, at which time a violation could be sustained or waived. These violations were heard before DOE Hearing Officer Gilbert Acosta (“Acosta”), a 10-year temporary employee.²⁹

²⁸ Per Moran, current Pre-K transportation contract negotiations are addressing the discrepancy.

²⁹ Per Moran, Acosta was made a full-time employee on or about December 3, 2019.

Acosta – who holds a Juris Doctor but is not a bar-admitted attorney in any jurisdiction– has operated in his current Hearing Officer capacity since 2009, and reported to OPT Assistant Contract Manager Everett Parker (“Parker”) until December 3, 2019, at which time he began reporting to OPT Field Counsel, per Moran.³⁰ For violation hearings – which occur at Acosta’s desk, on the 6th floor of 44-36 Vernon Boulevard – a respondent bus company would, through a representative, present evidence in an attempt to have Acosta waive the violation. Acosta further stated that any fines he imposed were based upon the violation fee schedule, and that he could not alter or downgrade the fines. Acosta waived violations only if they were facially defective or if the company provided sufficient documentary evidence to challenge their validity. Lucious-Lowe advised SCI that the fines were not fines in a traditional sense; rather, if a company were to be found in violation, said amount would be deducted from the DOE’s next payment due to the company, essentially acting as a debit. All violations’ penalties were subject to a pre-set penalty schedule; Parker advised SCI that there was no ability for a fine to be decreased if a company is found to have been in violation. If a violation is upheld, the respondent has the right to appeal, which may have been heard by Robinson or one of her designees.³¹

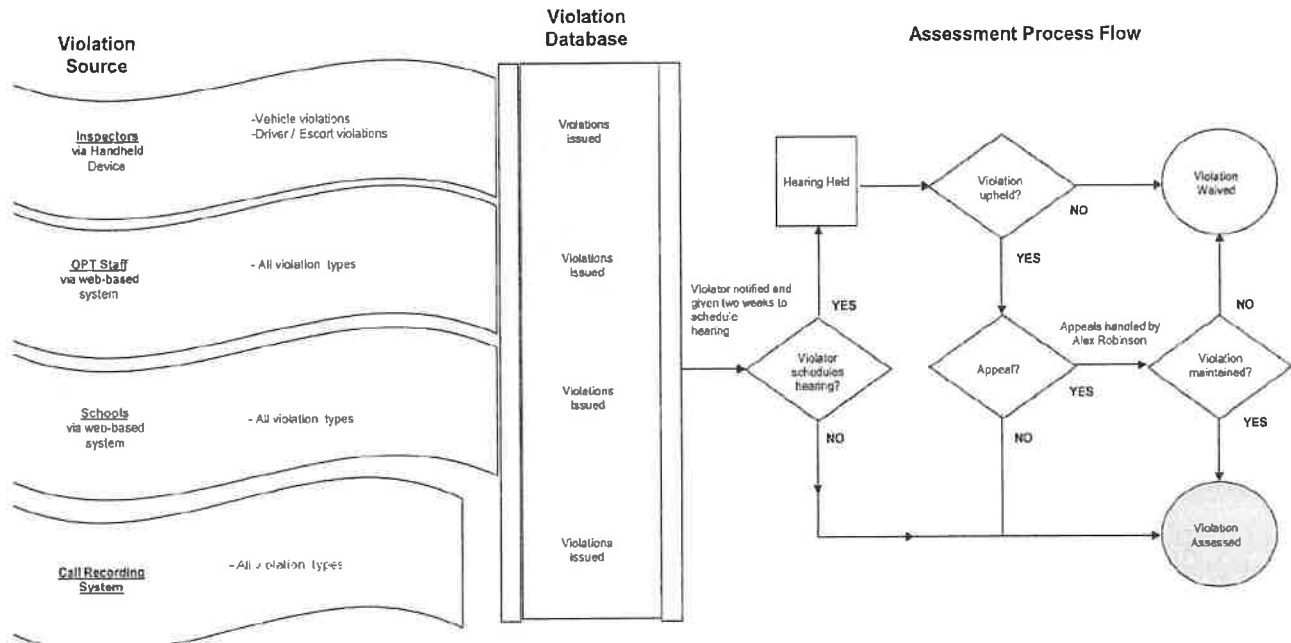
After a violation has been reviewed and assessed by Acosta in his role as hearing officer, the violation documents are given to an OPT clerical employee to input into a violations system. A copy of the decision is sent electronically to OPT’s Department of Finance for appropriate action. For instance, SCI reviewed one bus company’s October 1, 2019 invoice (covering the period of September 1 – September 30, 2019). The invoice demonstrated that the company paid \$18,170 in violations, and therefore the DOE paid \$18,170 less for that period. The system – rife with potential error and/or misconduct – does not appear to allow for prorated or installment payments, and SCI has not been able to verify that every violation is adequately captured both in the database and on each required invoice. SCI was made aware that from September 18, 2018 through July 31, 2019, OPT was supposed to collect a total of \$8.4 million dollars from bus companies as penalties for violations.

³⁰ According to Moran, the position does not require bar admission.

³¹ Robinson has since left her employment with the DOE; Chief of Staff Robert Carney is now filling that role, per Moran.

OPT created a flow chart to describe its violation process:

OPT Violation Process



*This chart was provided by OPT.

The flow chart does not adequately capture complaints and incidents that become violations and have no way of being tracked. As noted previously, the complaint/incident system does not correspond to the violation system in any practical manner. SCI investigators spoke with OPT Customer Service Manager Richard Sperazza (“Sperazza”) and Ruocco on October 18, 2019. Sperazza advised that OPT had approximately 80 different technology applications and platforms.³² When a complaint is received by customer service for a late bus, a violation was automatically issued. However, per Sperazza, if a complaint is related to air conditioning or other mechanical issues, it would be forwarded to the field inspectors. Ruocco added that when she received an air conditioning complaint, she would review and ascertain if there was a particular geographical location that had shown a large number of complaints (a “cluster”), and then direct the inspectors to that school. Ruocco emphasized that there was a resolution to all complaints received by field inspectors, either by the issuance of a violation or “other disposition,” which would include speaking to the bus company or noting that the reported condition was unfounded after an inspection. Most importantly, Sperazza and Ruocco stated that the present system did not track when a violation was issued pursuant to a complaint – the disparate applications “don’t speak to each other.” Both said it would be a “dream” if they were able to have all of the applications –

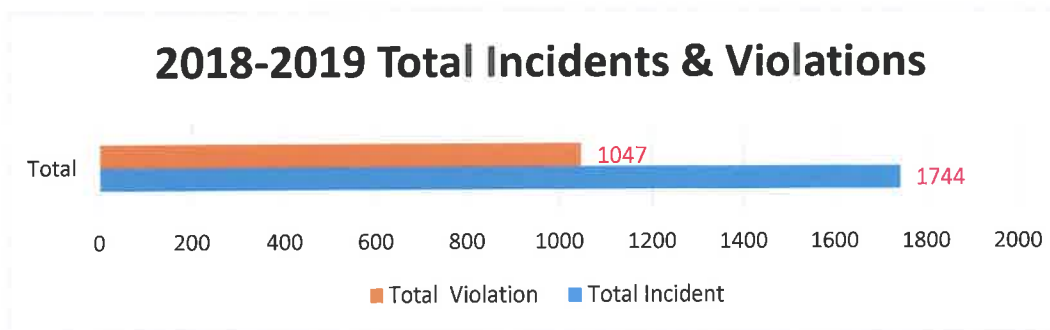
³² Moran advised SCI in a December 3, 2019 phone call that the number was likely closer to 60.

including customer service, field inspectors, and routing – be on one system, so that complaints could be properly tracked.

V. **Recent Statistics and Analysis:**

SCI reviewed 1,744 incident reports, only 1,047 of which subsequently were issued as violations. Of note, in emails reviewed by SCI, Robinson confirmed that for years, OPT offered a two-week “grace period” – the first two weeks of the school year – during which time OPT investigators would not issue violations to school bus companies for mechanical issues. When asked “will vendors [bus companies] be granted a grace period on assessed violations for the first two weeks of school opening as done in past years,” Robinson responded with brevity in no uncertain terms: “Yes.” Naturally, the first two weeks of the school year would also likely be the warmest weeks, when companies would accrue more violations regarding air conditioning. It is SCI’s understanding that this “grace period” policy was not in place for the 2019-2020 school year.

While there is no way to factor in the grace period in statistical analysis, SCI was able to review the raw data regarding complaints and violations. The following shows that there were 697 more complaints than violations:



Lucious-Lowe advised SCI that the 1,047 violations issued between September 4, 2018 and July 31, 2019 resulted in a total of \$326,340 in fines levied against 32 bus companies for air conditioning violations. Per SCI’s review, the 697 complaints not issued as violations could have created a windfall of between \$59,245 and \$278,000, depending on whether violations were for transporting Special Education (\$400) or Pre-K (\$85) students.

This serves to reiterate that the complaints system and the violations system do not work in concert. Hundreds of complaints are closed out without becoming violations and complaints that do ultimately become violations are not trackable, especially by the public who have the greatest vested interest in them.

VI. Policy Proposals and Recommendations:

SCI's review of the present system demonstrates that there are myriad areas for improvement. The following recommendations are submitted with the singular goal of ensuring that complaints made by parents, teachers, or other concerned parties regarding a bus's air temperature are dealt with swiftly and accurately:

- 1) Penalties: The penalty system should be updated:
 - a. A graduated penalty schedule should be adopted, so that a company is more greatly penalized for each infraction. A company that has received 15 violations regarding air conditioning should be penalized accordingly, and more so than a company receiving its first violation.
 - b. Further, all penalties – even those for Pre-K transportation – should be standardized.³³
- 2) Temperature Checks: DOE personnel at schools – especially the Transportation Coordinator – should perform temperature spot-checks on buses on days warmer than 78 degrees Fahrenheit.
 - a. Personnel should check buses when students are dropped off in the morning and before the afternoon run begins. Schools can best determine the gauges and / or thermometers to best meet this need, and the personnel best suited to do so. Principals should designate, in writing, the person responsible for this task.
- 3) Complaints and Violations: The complaints process and the violations process must be merged. As it stands now, these disparate systems lead to confusion and a lack of oversight or accountability, as well as standardization and uniformity.
 - a. Complaints should be assigned an individual tracking or incident number.
 - i. This number should also appear on the violation.
 - ii. Complainants can then track this number to see the ultimate resolution of the complaint, including but not limited to whether the bus was taken out of service, or whether a violation was issued.
 - iii. Repeated complaints about the same bus – especially when made by the same complainant – should all appear on one violation.
 - iv. When violations are not issued after a complaint, a written response to the complainant should be made.
 - b. Principals should be allowed to be complainants whose findings and observations serve as the basis of OPT inspectors to issue violations.
 - c. The number of OPT inspectors assigned to review complaints should be significantly increased, as there are currently only 10 inspectors for buses that serve over 9,600 routes.

³³ As noted, Moran advised that the DOE is attempting to standardize Pre-K violations to conform with the current penalty schedule.

- 4) Complainant Awareness: The DOE should begin an awareness campaign for parents and assigned paraprofessionals who accompany students with special needs, instructing that they can call OPT to complain about outrageous temperatures.
 - a. This would serve to ensure that those with legitimate complaints have the requisite information to timely and accurately do so.
 - b. A simple magnetic sticker on the side of the buses near the exit door with OPT's contact information stating, "Do you have a complaint re: this bus's air temperature or driver?" would suffice.

- 5) Update of Software: Per Sperazza and Ruocco's request, OPT's computer applications and software should be linked, so that various departments can access the same database and information. This will also assist in Recommendation 3 above, in the combination of complaints and violations.
 - a. This would prove especially useful for OPT's Finance Department to ensure that violations upheld by Acosta were properly entered so that every bus company was properly assessed for all violations.

- 6) Timing of Inspections: In the time between the conclusion of summer school and the commencement of the new school year, OPT inspectors should conduct inspections at the bus yards on school buses' AC units, and check for any other mechanical deficiencies.
 - a. This would provide companies an opportunity to resolve any issues prior to students riding in sub-optimal conditions.


- 7) Audit of Past Records: There should be a review of the purchasing account used for the thermometers purchased by Robinson, to determine if other monies were paid out and to ensure that other non-required materials were not purchased using DOE funds.
 - a. Extra expenses should be incurred by vendors, and not DOE.

- 8) Grace Period: Further, there should be a review of complaints received in the first two weeks of school years prior to 2019-2010.
 - a. During these prior years, OPT operated with a two-week "grace period," and purposefully chose not to issue violations therein. An accounting should be undertaken to determine what monies were never collected as a result.

We are sending a copy of this letter to the Office of Legal Services. Should you have any questions or concerns, please contact Jonathan Jacobs, the attorney assigned to this matter, at (212) 510-1423. Please notify SCI within 30 days of receipt of this letter of what, if any, action has been taken or is contemplated with respect to the findings detailed herein. Thank you for your attention to this matter.

Sincerely,

ANASTASIA COLEMAN
Special Commissioner

By: 
Daniel I. Schlachet
First Deputy Commissioner

AC:DS:JJ:ss

c: Howard Friedman, Esq.
Karen Antoine, Esq.
Katherine Rodi, Esq.