

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of

Letitia James as the Public Advocate
for the City of New York; and C.P.,
a minor by his next friend, Robin Ponsolle;
R.S., a minor by his next friend, Catherine
Boward-Simone;

Petitioners,

For Judgment Pursuant to Article 78
of the Civil Practice Law & Rules,

-against-

City of New York; New York City Department
of Education; Carmen Farina, Chancellor, in her
official capacity,

Respondents.
-----x

PLEASE TAKE NOTICE that upon the annexed petition of Letitia James verified on the 19th day of August 2015, the annexed affidavit of Letitia James, with exhibits, dated August 19, 2015, the annexed affidavit of Robin Ponsolle, dated August 11, 2015, with exhibits, the annexed affidavit of Catherine Boward-Simone, dated August 17, 2015, with exhibits, Petitioners submit this Petition requesting that this Court, at the Supreme Court, New York County, located at 60 Centre Street, Motions Submissions Part, Room 130, on the **31st day of August**, at 9:30 a.m., or as soon thereafter as counsel can be heard pursuant to C.P.L.R. Article 78, Article 4 § 403, and Article 60 § 6001, for an Order:

1. **Declaring** that Respondents have violated NYC Administrative Code § 19-605(a);

NEW YORK
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INDEX NO. 101557/15

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NYS SUPREME COURT - CIVIL**

2. **Declaring** that Respondents have violated the New York City Human Rights Law, Administrative Code § 8-101 *et seq.*, by denying reasonable accommodations;

3. **Directing** all Respondents to immediately enforce Administrative Code § 19-605(b) by provide functioning air-conditioned buses for children with disabilities who attend New York City schools by ensuring that all contractors and their entire fleets of buses used by children with disabilities who are enrolled in District 75 schools have functioning air conditioners;

4. **Directing** all Respondents to immediately enforce Administrative Code § 19-605(b) by establishing adequate systems to monitor all bus companies' performance under their contracts with the City, (i.e. the temperatures on the buses) to ensure children with disabilities are not transported on buses without air conditioning on days when the ambient temperature is above 70 degrees and present such plan for court approval no later than 10 days after the entry of this Order;

5. **Directing** all Respondents to immediately enforce Administrative Code § 19-605(b) by penalizing the bus companies pursuant to the Administrative Code's provisions;

6. **Directing** that Respondents pay to Petitioners C.P. and R.S. actual damages, punitive damages, and reasonable attorneys' fees and costs pursuant to Administrative Code §8-502; and

7. **Granting** such other and further relief as the Court may deem just and proper.

Answering affidavits, if any, must be served at least two (2) days prior to the return date of this motion.

Dated: August 19, 2015
New York, New York



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PRELIMINARY STATEMENT

1. This is a proceeding brought pursuant to Article 78, § 7801 and § 7803(1), and Article 60, § 6001, of the Civil Practice Law and Rules, seeking to compel the Respondents to enforce Administrative Code §§ 6-102 and 19-605 by immediately providing functioning air conditioned buses for children with disabilities who attend New York City schools, and to establish systems to affirmatively monitor contract compliance of bus companies. The suit is brought by the Public Advocate for the City of New York, Letitia James, and two minor children with disabilities, by their parents as next friends.

2. Temperatures inside buses for children with disabilities have been recorded as high as 85 and 90 degrees this summer. Many of these children have health issues that

necessitate air conditioning. These are simply unacceptable conditions for children to endure, and this failure to provide air-conditioning violates City law.

3. These children with disabilities attend District 75 schools, and due to the nature of their disabilities, many are not able to verbalize complaints about the temperature inside their buses. These children are harmed, year after year, by the heat on their buses, and the City has failed to provide the statutorily required air conditioning.

4. The City must set up a system to affirmatively monitor bus temperatures, rather than maintaining the status quo which relies on parents to report high temperatures after-the-fact when their children have already been harmed. The City should not place oversight responsibility on the backs of these children – it is a New York City Department of Education responsibility.

5. The Petitioner Letitia James is the city-wide elected Public Advocate for the City of New York. In her position as Public Advocate, Petitioner is responsible for monitoring and reporting on the performance of city agencies.

JURISDICTION

6. The Court has jurisdiction over Petitioner's claims pursuant to C.P.L.R. § 7801.

VENUE

7. Venue is properly laid in this Court under C.P.L.R. §§ 506(b), 7804(b), and 503 as Respondents all have principal offices in this county.

PARTIES

8. Petitioner LETITIA JAMES is the duly elected Public Advocate for the City of New York, with a principal place of business in the borough of Manhattan.

9. C.P. is a minor and is diagnosed with autism. Due to his disability, he attends a District 75 school and has an Individualized Education Plan (IEP) required by federal law to ensure that he receives appropriate educational services. His next friend, Robin Ponsolle, is his mother. They reside in Queens, New York.

10. R.S. is a minor and is diagnosed with autism. Due to his disability, he attends a District 75 school and has an Individualized Education Plan (IEP) required by federal law to ensure that he receives appropriate educational services. His next friend, Catherine Boward-Simone, is his mother. They reside in Queens, New York.

11. Respondent City of New York is a municipal corporation with its principle place of business in the borough of Manhattan.

12. Respondent New York City Department of Education (DOE) is the largest school district in the United States, serving 1.1 million students in over 1,800 schools. DOE has a principal place of business in Manhattan.

13. Respondent Carmen Farina is the Chancellor of the DOE, and has a principal place of business in Manhattan.

STATUTORY AND REGULATORY FRAMEWORK

14. The Public Advocate for the City of New York, Letitia James, is a citywide elected official, the immediate successor to the Mayor, and an *ex officio* member of the New York City Council. New York City Charter (“Charter”) §24, 10, 24(9)(e).

15. The Public Advocate is charged with monitoring, investigating, and reviewing the actions of City agencies. She is also responsible for identifying systemic problems, recommending solutions, and publishing reports concerning her areas of inquiry. She has the power to introduce legislation and hold oversight hearings on legislative matters.

16. The Office of the Public Advocate was created to serve as a “watchdog” against the inefficient or inadequate operation of City government.

17. The Petitioners Ponsolle and Boward-Simone, as well as other parents, have complained of the recurrent lack of air-conditioning to the DOE through their Office of Pupil Transportation, and have found repeated complaints to be futile.

18. NYC Administrative Code § 19-601 provides, “Safety measures on school buses; declaration and findings,” states as follows:

The council hereby finds that a serious emergency exists as to the safety of handicapped children transported to and from schools in school buses and other vehicles. ... The council finds that in order to prevent further tragedies to our handicapped school children the provisions of this section are declared necessary and are designed to protect, the safety, health and general welfare of our school children.

19. NYC Administrative Code § 19-605, “Air-conditioning,” provides as follows:

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. Driver 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.

b. The penalty provisions set forth in section 19-607 of this chapter shall not apply to any violation of the provisions of this section. Any owner, operator or contractor responsible for transporting a child with a disability to and from a school in the city pursuant to any agreement or contract shall be liable for a civil penalty of four hundred dollars for each violation of this section.

20. NYC Administrative Code § 6-102 provides that city agencies each have the responsibility for making sure their contractors actually perform on contracts, and when they fail, the City must provide the service itself. It reads as follows:

Performance of contracts. a. Each agency shall require and enforce the faithful performance of every contract made by it. b. If the contractor or contractors shall fail in any respect to fulfill the contract within the time limited for its performance, then the agency in charge thereof shall complete the same in the manner provided for in the contract. The cost of such completion shall be a charge against such delinquent contractor or contractors.

21. Title 8 of the New York City Administrative Code § 8-101 *et seq.* prohibits discrimination based on disability. New York City Administrative Code §8-107(5)(a)(1) requires the granting of reasonable accommodations based on disability.

22. Petitioners C.P. and R.S. are persons with disabilities as that term is defined in the New York City Administrative Code § 8-102(16).

23. New York City Administrative Code §8-502 provides that aggrieved persons are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

STATEMENT OF FACTS

Weather Conditions in the Summer and Early Fall

24. New York City is hot every summer. The New York City government's tourist guide warns "[t]he summer months can bring stifling heat and humidity to the city. Even at night, temperatures may remain in the 90s."¹

25. The ambient temperature has reached above 70 degrees Fahrenheit in New York City for every day in July of 2015, and in August so far, triggering a legal requirement to provide air-conditioned busing to children with disabilities.² NYC Admin. Code § 19-605.

¹ New York City's official tourist guide, at http://www.nyc.com/visitor_guide/weather_facts.75835/editorial_review.aspx

26. This September the average ambient temperature is expected to be above 70 degrees every school day,³ and last October air temperatures were above 70 degrees on ten of the school days that month.⁴

Background Regarding Services Required to be Provided by DOE

27. Children with disabilities may have an IEP which describes the type of educational and other services to which they are entitled. The IEP is required by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and New York State Education Law § 4402.

28. An IEP may mandate that the child have a temperature-controlled environment or other conditions conducive to that child's learning. Petitioners Ponsolle and Boward-Simon's children have such conditions in their IEPs. Affidavit of Robin Ponsolle (hereinafter "Ponsolle Aff.") at ¶ 8, Affidavit of Catherine Boward-Simone (hereinafter "Boward Simone Aff.") at ¶ 7.

29. Children with disabilities may also attend a District 75 school. District 75 provides citywide educational, vocational, and behavioral support programs for students who are on the autism spectrum, have significant cognitive delays, are severely emotionally challenged, sensory impaired and/or multiple disabled. All of the children in District 75 schools have IEPs.

30. The DOE is responsible for ensuring that children with disabilities who need air conditioning for health reasons have air-conditioned buses so that they may attend summer programs. Affidavit of Letitia James (hereinafter "James Aff.") at ¶ 3.

31. The Department of Education contracts with bus companies to provide transportation to students who need it, including children with disabilities who have health needs for air conditioning. James Aff. at ¶ 11, and exhibit 3 (bus contract).

² National Weather Service: <http://w2.weather.gov/climate/index.php?wfo=okx>

³ <http://www.accuweather.com/en/us/new-york-ny/10007/september-weather/349727>

⁴ <http://www.accuweather.com/en/us/new-york-ny/10007/month/349727?monyr=10/01/2014>

32. The City's contracts with the bus companies mandate that the buses provide air conditioning. The City's contracts with bus companies read as follows:

By June 30, 2010, one hundred percent (100%) of Small School Buses operated by the Contractor under this Contract must be equipped with air conditioning/climate control systems... the Contractor must cause and permit each such air conditioning/climate control system to be operated on any and all warm weather periods and/or at any time as necessary for the medical needs of any passengers.

James Aff. ¶ 11, exhibit 3, (bus contract Page 19, section 8(c)).

33. The DOE posted the following notice on its website⁵ this summer:

“SUMMER 2015 - WARM WEATHER ADVISORY As we prepare for hotter weather it is important for schools and parents to note the capacity and limits of school bus air conditioning systems: Climate control systems on school buses are only capable of cooling a vehicle to approximately 15-20 degrees below the outside temperature, therefore, if it is 100 degrees outside, the bus can only be expected to cool to about 80 degrees. For some students who are medically fragile and/or sensitive to temperature changes, it may be in the student's best interest not to ride on extremely hot days. The decision of whether a student rides or not (as with extremely cold temperatures as well) will remain with the principal and/or the parent. We have sent a memo to all bus companies so that they will ensure operability of their vehicles, vents, cooling and, when necessary, students with severe issues can be moved closer to the front if that part of the bus is cooler.

34. Sending “a memo” to bus companies falls short of DOE's legal obligation to ensure that buses have air conditioning and that children are not harmed by dangerous bus temperatures.

35. The DOE warm weather advisory notably suggests that proper air conditioning will be “capable of cooling a vehicle to approximately 15-20 degrees” below the outside temperature. However, as discussed further within, buses this summer have often been as hot, or hotter, than the outside temperature. Ponsolle Aff. ¶¶ 12-19, Boward-Simone Aff. ¶¶ 6, 9-20, James Aff. ¶¶ 7-10, 18- 23. On the days where the buses were 90 degrees, it certainly was not 110 degrees outside and there is simply no excuse for the heat condition on the buses.

⁵ DOE website at: <http://www.optnyc.org/public1/default.aspx?logout=1>

36. Also troubling is the fact that the warm weather advisory implies that children with disabilities may just be better off staying home on hot days. In fact, the DOE is required by federal law to ensure that extended school year services are available for children whose IEPs state a need for the services. 34 C.F.R. 300.106. Children with disabilities should not be expected to stay home; rather, DOE is expected to provide air-conditioned buses.

37. This Court must mandate that the DOE have systems to affirmatively check the bus temperatures and fine the bus companies for violations of the law.

38. Instead, historically, DOE has relied on parents of children with disabilities – some of whom are non-verbal and cannot complain about the heat – to notify the DOE of hot buses after the fact, when children have already been harmed. *Boward-Simone Aff.* ¶¶11-21, *Ponsolle Aff.* ¶ 8-18.

39. The complaint-based system, which is wholly reactive, has repeatedly failed to remedy the problem. *Boward-Simone Aff.* ¶¶11-21, *Ponsolle Aff.* ¶ 12. Logic dictates that the government cannot put a reporting responsibility on these families. A proactive system must be Ordered to ensure that the buses all have functioning air conditioning. Petitioners request that the Court direct the DOE to comply with the law by routinely monitoring temperatures and fining bus companies that violate the law.

The Public Advocate Attempted to Obtain Compliance from DOE

40. As explained above, Administrative Code § 19-605 mandates that children with disabilities who have health reasons for air conditioning must be provided with air conditioning on every day that the ambient temperature is more than 70 degrees. The City is required to ensure the bus contractors perform on their contracts. NYC Admin. Code § 6-102.

41. Despite this clear law, and despite the predictability of summer heat, every summer parents find their children subjected to excessively hot temperatures on their bus rides. Ponsolle Aff. ¶¶ 12, 15-23, Boward-Simone Aff. ¶¶ 22-25.

42. Numerous parents have complained to the Office of the Public Advocate that their children with disabilities are subjected to overly hot and dangerous temperatures on City school buses. James Aff. ¶¶ 7, 18-25.

43. The Public Advocate notified the DOE in the summer of 2014 that this problem was serious, systemic, and needed to be remedied. James Aff. ¶¶ 8-10, exhibit 2 (letter).

44. On September 14, 2014, the Public Advocate wrote a letter to the DOE explaining, "... this summer, a special needs child who is autistic was stuck on a school bus in sweltering heat without any air conditioning. The extreme heat caused the child to become dehydrated and the police were called and the student had to be taken to the emergency room." James Aff. ¶¶ 8-10, exhibit 2 (letter).

45. The Public Advocate also explained, "[o]f the many complaints that my office received, I am particularly concerned about the transportation of children who attend District 75 schools, as many have severe medical challenges and are nonverbal." James Aff. ¶¶ 8-10, exhibit 2 (letter).

46. The Public Advocate asked for a number of documents and assurances, and offered to work with the DOE in the 2014/2015 school year to ensure that the problem got resolved. James Aff. ¶¶ 8-10, exhibit 2 (letter). DOE did not provide the requested information or resolve the problem.

47. Despite the Public Advocate's efforts, DOE has not ensured that the buses are air-conditioned.

Parents' Unsuccessful Attempts to Obtain Compliance from DOE

Despite Excessive Heat This Summer

48. The Petitioner children are people with disabilities, and the requirements under their IEPs that they receive air-conditioned transportation to and from services are a reasonable accommodation designed to ensure that these children receive an appropriate education. Ponsolle Aff. ¶¶ 4, 8, Boward-Simone Aff. ¶¶ 3, 7.

49. This summer, as in most summers, the ambient temperatures in New York City have been well above 70 degrees Fahrenheit. Boward-Simone Aff. ¶ 6, Ponsolle Aff. ¶ 7. Bus temperatures have climbed to unacceptable levels this summer, and air conditioning has simply not been dependable. Ponsolle Aff. ¶¶ 14-25, Boward-Simone Aff. ¶¶ 9-21.

50. Parents have continued to complain to our office, and to the DOE's Office of Pupil Transportation (OPT), yet the problem of lack of air conditioning recurs and recurs.

51. The Public Advocate has worked to help parents who have children on these buses. She helped parents document what DOE was not affirmatively tracking – the parents placed thermometers in their children's book bags in order to determine the exact temperature of the buses that were not properly air-conditioned. Parents have submitted logs which detailed hot temperatures on their children's buses this summer. James Aff. ¶¶ 5, 15-17.

52. Temperature readings were taken by placing thermometers in the child's backpack, with an antenna sticking out to measure the ambient air in the bus. Bus aides then logged the readings. Ponsolle Aff. ¶ 13.

53. For example, for July 14, 2015, we received logs of temperatures including an 8 a.m. reading of 91.5 degrees and a 3:35 p.m. reading of 87.6 degrees for one child. James Aff. ¶ 19.

54. For the period of July 13 to July 24, we received logs of temperatures ranging from 80 to 91.5 for one child. James Aff. ¶ 20.

55. For the period of July 22 through July 24, we received logs of 77.1 to 90.2 for another child. James Aff. ¶ 21.

56. Petitioner Ponsolle's child has endured multiple days of excessive heat on the bus, and on August 4, 2015, a bus ride home that was 83 degrees. James Aff. ¶ 22.

57. As detailed in her affidavit, Ponsolle's son was extremely agitated after that bus ride and engaged in self-harm behavior including biting his own arm to break the skin. Ponsolle Aff., ¶¶15-18, and exhibits. Nine other children endured that day's bus ride with him. Due to their disabilities and younger ages, they may not have even been able to make their parents aware of the heat. Ponsolle Aff. ¶ 19.

58. Petitioner Boward-Simone's son R.S. has not had one bus ride this summer where he was on a bus equipped with air conditioning. Boward-Simone Aff. ¶ 9.

59. Petitioner Boward-Simone has also made numerous complaints to both the bus company and various people at the DOE. Boward-Simone Aff. ¶¶ 11-22.

60. Petitioner Ponsolle, like many other parents, has made repeated complaints to DOE about the hot bus temperatures which cause her child harm. Ponsolle Aff. ¶ 21, exhibits (example of email correspondence).

61. Ponsolle explained in correspondence to Chancellor Farina on July 13, 2014, "[t]he summer busing situation of our children has become intolerable. There are long rides, bus breakdowns and no air conditioning on many of the runs. I am sure you are aware of Letitia James' press conference this past Friday ..." Ponsolle Aff. ¶21.

62. Ponsolle explained that when inspectors are sent out after parent complaints, the bus company will switch to a better bus for a few days, then the situation reverts back to an unacceptable bus. Ponsolle Aff. ¶¶ 22-26.

63. The inspection system is flawed, to the extent that it allows shuffling rather than repair of buses. The buses without functioning air conditioning are used for other children while a better bus temporarily takes over the route.

64. A system that is set up only to respond to complaints, but does not affirmatively oversee performance on the contracts, is failing to protect these children as required by Administrative Code § 19-605. Likewise, by repeatedly failing to provide the reasonable accommodation, the system discriminates against these children based on their disability.

CLAIMS

65. Respondents have violated Administrative Code § 19-605.

66. Respondents have failed to ensure that the bus companies perform on contracts as the Respondents are required to do under Administrative Code § 19-605.

67. Respondents have violated a duty to perform the services they had delegated to DOE contractors, when the contractors fail. NYC Administrative Code § 6-102.

68. By violating Administrative Code § 19-605 and 6-102, Respondents have caused Petitioners C.P. and R.S. to be harmed physically and emotionally, and Petitioners C.P. and R.S. continue to be put in situations that risk their health and safety.

69. Respondents have violated Title 8 of the New York City Administrative Code § 8-101 *et seq.* which prohibits discrimination based on disability, and specifically Administrative Code §8-107(5)(a)(1) requires the granting of reasonable accommodations based on disability.

70. Petitioners C.P. and R.S. are persons with a disability as that term is defined in the New York City Administrative Code § 8-102(16). The services C.P. and R.S. are entitled to under their IEPs are reasonable accommodations based on their disabilities. Deprivation of the reasonable accommodation of air-conditioned buses required by Petitioners' IEPs is discrimination under Administrative Code §8-107(5)(a)(1).

71. New York City Administrative Code §8-502 provides that aggrieved persons, such as Petitioners C.P. and R.S., are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

RELIEF SOUGHT

WHEREFORE, Petitioners seek an Order:

1. **Declaring** that Respondents have violated NYC Administrative Code § 19-605(a);
2. **Declaring** that Respondents have violated the New York City Human Rights Law, Administrative Code § 8-101 *et seq.*, by denying reasonable accommodations;
3. **Directing** all Respondents to immediately enforce Administrative Code § 19-605(b) by providing functioning air-conditioned buses for children with disabilities who attend New York City schools by ensuring that all contractors and the entire fleet of buses used by children with disabilities who are enrolled in District 75 school have functioning air conditioners;
4. **Directing** all Respondents to immediately enforce Administrative Code § 19-605(b) by establishing adequate systems to monitor all bus companies' performance under their contracts with the City, (i.e. the temperatures on the buses) to ensure children with disabilities are not transported on buses without air conditioning on days when the ambient temperature is

above 70 degrees and present such plan for court approval no later than 10 days after the entry of this Order;

5. **Directing** all Respondents to immediately enforce Administrative Code § 19-605(b) by penalizing the bus companies pursuant to the Administrative Code's provisions;

6. **Directing** that Respondents pay to Petitioners C.P. and R.S., actual damages, punitive damages, and reasonable attorneys' fees and costs pursuant to Administrative Code §8-502; and

7. **Granting** such other and further relief as the Court may deem just and proper.

Dated: August 19, 2015
New York, New York



AMANDA MASTERS, ESQ.

Deputy Counsel

Counsel for Public Advocate

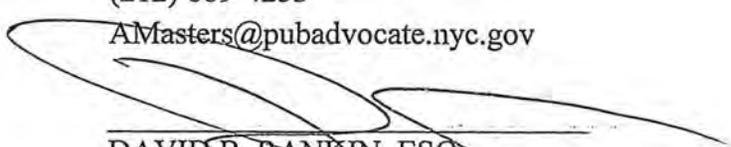
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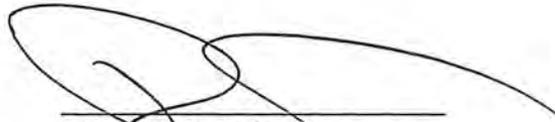
ATTORNEY'S VERIFICATION

I, David B. Rankin, an attorney duly admitted to practice before the Courts of the State of New York, affirm the following to be true under the penalties of perjury:

I am the attorney of record for the Petitioners, C.P., a minor by his next friend, Robin Ponsolle, and R.S., a minor by his next friend, Catherine Boward-Simone.

I have read the annexed Complaint and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My beliefs, as to those matters therein not stated upon knowledge, are based upon facts, records, and other pertinent information contained in my files.

Dated: New York, NY
 August 19, 2015



David B. Rankin, Esq.
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New York, New York 10007

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AFFIDAVIT IN SUPPORT OF
PETITION

LETITIA JAMES, an attorney duly admitted to practice before the Courts of the State of New York, hereby swears under penalty of perjury that the following is true:

1. I am an attorney duly licensed to practice law in the State of New York. The facts set forth below are based on my own knowledge, an examination of the files held at the Office of the Public Advocate, an examination of public records, an examination of the Affidavits of Robin Ponsolle, and Catherine Boward-Simone.

2. I am the Public Advocate for New York City and the Petitioner in this action, and as such, I am fully familiar with the facts and circumstances underlying this proceeding.

3. I submit this affidavit in support of my request for an Order declaring that Respondents have violated NYC Administrative Code § 19-605(a); Declaring that Respondents

have violated the New York City Human Rights Law, Administrative Code § 8-101 *et seq.*, by denying reasonable accommodations; Directing all Respondents to immediately enforce Administrative Code § 19-605(b) by provide functioning air-conditioned buses for children with disabilities who attend New York City schools by ensuring that all contractors and the entire fleet of buses used by children with disabilities who are enrolled in District 75 schools have functioning air conditioners; Directing all Respondents to immediately enforce Administrative Code § 19-605(b) by establishing adequate systems to monitor all bus companies' performance under their contracts with the City, (i.e. the temperatures on the buses) to ensure children with disabilities are not transported on buses without air conditioning on days when the ambient temperature is above 70 degrees and present such plan for court approval no later than 10 days after the entry of this Order; Directing all Respondents to immediately enforce Administrative Code § 19-605(b) by penalizing the bus companies pursuant to the Administrative Code's provisions; Directing that Respondents pay to Petitioners C.P. and R.S., actual damages, punitive damages, and reasonable attorneys' fees and costs pursuant to Administrative Code §8-502; and Granting such other and further relief as the Court may deem just and proper.

4. As set forth in the accompanying Verified Petition, as the duly-elected Public Advocate for the City of New York, I am charged with investigating and reporting on City agency performance.

5. Temperatures inside buses for children with disabilities have been recorded as high as 85 and 90 degrees this summer. See, exhibit 1, logs; and affidavits of Ponsolle and Boward-Simone. These are simply unacceptable conditions for children to endure, and clear violations of the law.

6. I am bringing this action because the Department of Education (DOE) must establish a system to affirmatively monitor bus temperatures, rather than relying on parental reports after-the-fact when children have already been harmed.

7. Numerous parents have complained to my office that their children with disabilities are subjected to overly hot and dangerous temperatures on City school buses, both this year and last year.

8. I notified the DOE in the summer of 2014 that this problem was serious, systemic, and needed to be remedied. See, exhibit 2.

9. On September 4, 2014, I wrote a letter to the DOE explaining, "... this summer, a special needs child who is autistic was stuck on a school bus in sweltering heat without any air conditioning. The extreme heat caused the child to become dehydrated and the police were called and the student had to be taken to the emergency room." See, exhibit 2, James letter dated September 14, 2014.

10. I explained, "[o]f the many complaints that my office received, I am particularly concerned about the transportation of children who attend District 75 schools, as many have severe medical challenges and are nonverbal." See, exhibit 2.

11. The City's contracts with the bus companies mandate that the buses provide air conditioning. See, exhibit 3, contract. The attached example of the City's contracts with bus companies read as follows:

By June 30, 2010, one hundred percent (100%) of Small School Buses operated by the Contractor under this Contract must be equipped with air conditioning/climate control systems... the Contractor must cause and permit each such air conditioning/climate control system to be operated on any and all warm weather periods and/or at any time as necessary for the medical needs of any passengers.

12. The Court must order the DOE to force their contractors to comply with their contractual obligations and with the clear Administrative Code requirement for air conditioning for these children. NYC Admin. Code § 19-605.

13. I asked for a number of documents and assurances from DOE, and offered to work with the DOE in 2014/2015 school year to ensure that the problem got resolved. DOE did not provide the information that was requested. See, exhibit 4, the responsive letter from DOE dated September 9, 2014.

14. Despite my efforts, DOE has not ensured that the buses are air-conditioned this summer.

15. I gave thermometers to parents so I could see the precise temperatures in the buses, because these children simply cannot be expected to explain their degree of discomfort on their own. They should not have to.

16. Logs were created by having the child's transportation aide place a thermometer in the child's book bag or backpack in order to capture a temperature reading.

17. Temperature reads were taken by placing thermometers in the child's backpack, each with an antenna sticking out to measure the ambient air in the bus. The readings were then logged by the bus aides.

18. I was disappointed to see that the temperature logs detailed hot temperatures on the children's buses this summer. See exhibit 1, temperature logs from constituents.

19. For example, for the date of July 14, 2015, I received logs of temperatures including an 8:00 a.m. reading of 91.5 degrees and a 3:35 p.m. reading of 87.6 degrees for one child.

20. And for the period of July 13 to July 24, I received logs of temperatures ranging from 80 to 91.5 for one child.

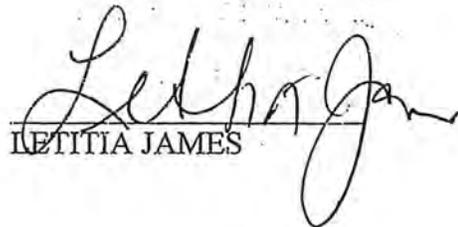
21. For the period of July 22 through July 24, I received logs of 77.1 to 90.2 for another child.

22. Petitioner Ponsolle's child has endured multiple days of excessive heat on the bus, and on August 4, 2015, a bus ride home that was 83 degrees. The details of her affidavit, including the video of her distraught child at home immediately after that inexcusable bus ride, show an unconscionable level of suffering. Her child was so frustrated that he bit through the skin on his arm. Oversight responsibility for bus conditions belongs to the DOE, not minor passengers with disabilities.

23. Petitioner Boward-Simone's child has not had a single bus ride this summer where he was provided a bus with an air conditioner, despite multiple complaints by his mother.

WHEREFORE Petitioner respectfully requests that the instant application be granted in all respects.

Dated: August 19, 2015
New York, New York


LETITIA JAMES

Sworn before me this 19 day of August 2015.

Notary: 

MUHAMMAD UMAIR KHAN
Notary Public, State of New York
No. 02KH6268477
Qualified in Albany County
Commission Expires Sept 10, 2016

EXHIBIT 1

Bus Para/School Bus Matron/Bus Driver Log

Your Name: 

School Phone Number: 718-609-3320

Bus Route #: 521

Bus Company: _____

Temperature Log: *Highest Temperature*

Date:	AM Ride Temperature	Time Taken	FRONT or BACK of Bus	PM Ride Temperature	Time Taken	FRONT or BACK of Bus
Monday, July 20						
Tuesday, July 21						
Wednesday, July 22				85.1	2:50 PM	BACK
Thursday, July 23	79.5	8:00 ^{AM}	BACK	82.4	3:13 ^{PM}	BACK
Friday, July 24	77.1	7:57 ^{AM}	BACK	90.2	3:20 ^{PM}	BACK

Bus Para/School Bus Matron/Bus Driver Log

Your Name: _____

School Phone Number: 718-609-3320

Bus Route #: Q 524

Bus Company: _____

Temperature Log: *Highest Temperature SOME AIR @ FRONT of BUS only*

Date:	AM Ride Temperature	Time Taken	FRONT or BACK of Bus	PM Ride Temperature	Time Taken	FRONT or BACK of Bus
Monday, July 20 <i>Hot day</i>	85.	8:00 AM		86.2	3:20 PM	
Tuesday, July 21	80.2	8:00 AM		81.	3:15 PM	
Wednesday, July 22	81	8:00 AM		80.	3:20 PM	
Thursday, July 23 <i>Cool day</i>	80	8:00 AM		82	3:20 PM	
Friday, July 24 <i>Cool day</i>	82.5	8:00 AM		83.1	3:00 PM	

Bus Para/School Bus Matron/Bus Driver Log

Your Name: _____

School Phone Number: 718-609-3320

Bus Route #: R 524

Bus Company: _____

Temperature Log: **Highest Temperature** *ZONE AIR @ FRONT OF BUS ONLY*

Date:	AM Ride Temperature	Time Taken	FRONT or BACK of Bus	PM Ride Temperature	Time Taken	FRONT or BACK of Bus
Monday, July 13	X	X	X	86.7	3:15 PM	
Tuesday, July 14	91.5	3:00 AM		87.6	3:35 PM	
<i>Change Bus</i> Wednesday, July 15	85	3:00 PM		86.6	3:11 PM	
Thursday, July 16	90.50	3:00 PM		86.7	3:15 PM	
<i>last day</i> Friday, July 17	92	3:00 PM		85.2	3:00 PM	

Your name: _____

Where on the bus does your child sit? Back row

Where did you affix the thermometer? In his book bag The sensor hangs out

Temperature Log:

Date:	High Temp logged:	Time of High Temp:	Time recorded:
Tues Aug 4	83.2 (pm)	Between 2:30+ 3 pm	
Wed Aug 5	77.6 (pm)	"	
Thurs Aug 6	83.5	"	
Fri August 7	out	→	

Tue August 4 Complaint # 2690108 - [redacted] had a big meltdown & hurt himself

Thurs Aug 6 Complaint # 2690692 - Outside temp was only about 80 this day, the one, but bus hotter than outside air??

Your name: _____

Where on the bus does your child sit? Back row

Where did you affix the thermometer? In his book bag, sensor hangs out

Temperature Log:

Date:	High Temp logged:	Time of High Temp:	Time recorded:
Wed, July 29	88 (pm)	between 2:30 + 3pm	
Thurs, July 30	78.4 (pm)		
Fri July 31	78.5 (am)		

Your name: _____

Where on the bus does your child sit? Back row

Where did you affix the thermometer? in his book bag - the sensor hangs out

Temperature Log:

Date:	High Temp logged:	Time of High Temp:	Time recorded:
Mon Aug 10	78.4 cpm	2:30-3pm	
Tues Aug 11			

EXHIBIT 2



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Letitia James

September 4, 2014

Mr. Eric Goldstein
Chief Executive Officer
New York City Department of Education
44-36 Vernon Boulevard
Long Island City, NY 11101

Dear Mr. Goldstein:

I am writing to share my concerns regarding numerous school transportation complaints received by my office. For example, this summer, a special needs child who is autistic was stuck on a school bus in sweltering heat without any air conditioning. The extreme heat caused the child to become dehydrated and the police were called and the student had to be taken to the emergency room. Of the many complaints that my office received, I am particularly concerned about the transportation of children who attend District 75 schools, as many have severe medical challenges and are nonverbal. With a new school year beginning, I want to work with the Department of Education to ensure that all our children arrive at school safely and on time, and parents and caregivers are well informed about their child's transportation plans. To that end, and in accordance with the authority of the Office of the Public Advocate, I hereby request further information from the Office of Transportation (OPT) regarding the following issue areas:

Routes, Carriers and Volume

- Copies of all DOE school bus contracts for the 2012-13 and 2014-15 school years;
- The total number of children who receive bus transportation through the OPT;
- Total number of children in District 75 schools that receive transportation through OPT; and
- Average trip length for children receiving transportation through the OPT.

Vehicle Inspections

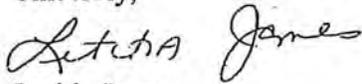
- Copies of all inspection reports for the 2011-2012, 2012-2013, and 2013-2014 school years;
- A record of notices of violation issued to each school bus operator with a DOE contract from 2011-2014;
- The number of OPT inspectors by borough; and
- The schedule of inspections for buses for the 2011-2014 school year.

Parent Complaints Concerning Pupil Transportation

- Copies of all complaints pertaining to school buses, along with any OPT responses to such complaints, for the 2013-2014 school year and the 2014 summer term; and
- Copies of any written procedures pertaining to pupil complaints.

I thank you for your response to this request. If you have any questions, please contact me directly or Barbara Sherman, the Deputy Policy Director in my office, at (212) 669-2412 or bsherman@pubadvocate.nyc.gov.

Sincerely,



Letitia James

Public Advocate for the City of New York

CC: Carmen Farina, Chancellor
Kathleen Grimm, Deputy Chancellor

EXHIBIT 3



**EXTENSION AND ELEVENTH AMENDMENT AGREEMENT FOR
SUMMER TRANSPORTATION OF SPECIAL EDUCATION PUPILS**

BY AND BETWEEN

THE

**BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE
CITY OF NEW YORK**

AND

THE SCHOOL BUS CONTRACTOR NAMED HEREIN

OLS CONTRACT LOG No. 20719

BOARD OF EDUCATION OF THE CITY OF NEW YORK

EXTENSION AND ELEVENTH AMENDMENT OF CONTRACT FOR
SUMMER TRANSPORTATION OF SPECIAL EDUCATION PUPILS

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BOARD OF EDUCATION OF THE CITY OF NEW YORK
EXTENSION AND ELEVENTH AMENDMENT OF CONTRACT FOR
SUMMER TRANSPORTATION OF SPECIAL EDUCATION PUPILS

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Attachment B:	Contractor's Schedule of Contract Serial Numbers, Item Designations, and Daily Rates per Vehicle
Attachment C:	Liquidated Damages Provisions for Special Education School Bus Contracts
Attachment D:	Schedule of Special Education Escort Costs
Exhibit 1:	Escort Cost Reimbursement Written Election Notice Form

BOARD OF EDUCATION OF THE CITY OF NEW YORK

EXTENSION AND ELEVENTH AMENDMENT OF CONTRACT FOR
SUMMER TRANSPORTATION OF SPECIAL EDUCATION PUPILS

Extension Agreement and Eleventh Amendment Agreement made and entered into on the date expressed at the end hereof by and between the BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK (hereinafter expressed as "Board of Education," "Board" or "BOE")¹ with principal headquarters located at the Tweed Courthouse, 52 Chambers Street New York, New York 10007-1222, and the Contractor whose name, address and authorized signature appear at the end of this document (hereinafter expressed as "Contractor").

W I T N E S S E T H

WHEREAS, in 1988 the Board solicited bids for the transportation of handicapped pupils under Serial Nos. 4515 and 4516; and,

WHEREAS, in 1989 the Board solicited bids for the transportation of handicapped pupils under Serial Nos. 4894 and 4952; and,

WHEREAS, in 1994 the Board publicly solicited competitive bids for the summer transportation of special education pupils under Contract Serial No. 7164; and,

WHEREAS, the Contractor submitted a bid(s) under one or more of the aforementioned serial numbers, and was duly awarded a contract(s) including certain Employee Protection Provisions for the transportation of handicapped pupils; and,

WHEREAS, the original term of all Contracts under Serial Nos. 4515 and 4516 would have expired August 26, 1988 unless extended, and Serial Nos. 4894 and 4952 would have expired September 1, 1989 unless extended, and Serial No. 7164 would have expired on September 5, 1997; unless extended; and, Education Law §305(14) authorizes extensions and provides a method for payment increases linked to a defined regional Consumer Price Index (hereinafter expressed as "CPI-U") increments; and,

WHEREAS, in 1989 the BOE and the Contractors agreed to amend and extend all contracts under Serial Nos. 4515 and 4516 (1st amendment); and,

WHEREAS, in 1990 the BOE and the Contractors agreed to amend and extend further all contracts under Serial Nos. 4515, 4516, 4894, and 4952 (2nd amendment); and,

WHEREAS, in 1991 the BOE and the Contractors agreed to amend and extend further all contracts under Serial Nos. 4515, 4516, 4894, and 4952 (3rd amendment); and,

WHEREAS, in 1992 the BOE and the Contractors agreed to amend and extend further all contracts under Serial Nos. 4515, 4516, 4894, and 4952 (4th amendment); and,

¹ The terms "New York City Department of Education," "Department," "NYCDOE" and "DOE," wherever they appear in this Extension and Eleventh Amendment Agreement, are "doing-business-as" or "dba" names of the Board of Education of the City School District of the City of New York.

WHEREAS, in 1993 the BOE and the Contractors agreed to amend and extend further all contracts under Serial Nos. 4515, 4516, 4894, and 4952 (5th amendment); and,

WHEREAS, in 1994 the BOE and the Contractors agreed to amend and extend further all contracts under Serial Nos. 4515, 4516, 4894, and 4952 (6th amendment); and,

WHEREAS, in 1995 the BOE and the Contractors agreed to amend and extend further all contracts under Serial Nos. 4515, 4516, 4894, 4952 and 7164 (7th amendment); and,

WHEREAS, in 2000 the BOE and the Contractors agreed to amend and extend further all contracts under Serial Nos. 4515, 4516, 4894, 4952 and 7164 (8th amendment); and,

WHEREAS, effective as of Mach 31, 2003, the BOE and the contractors further supplemented and amended all contracts under Serial Nos. 4515, 4516, 4894, 4952 and 7164 (9th Amendment) to create BOE-sponsored, centralized purchasing programs for automobile liability insurance and vehicle fuels and to reduce other Contract cost factors;

WHEREAS, in 2005 the BOE and the Contractors agreed to amend and extend further all contracts under Serial Nos. 4515, 4516, 4894, 4952 and 7164 (10th amendment); and,

WHEREAS, the BOE has determined that all contracts under Serial Nos. 4515, 4516, 4894, 4952 and 7164 should be amended and extended still further, and the Contractor does hereby agree; and,

WHEREAS, pursuant to the BOE contract authorization process, the BOE Office of Pupil Transportation (herein expressed as "OPT") submitted an official request for authorization (herein expressed as "RA") to the BOE Office of the Chancellor; and, Chancellor Joel I. Klein approved the said RA, thus authorizing OPT to enter into further amendment and extension of contracts under Serial Nos. 4515, 4516, 4894, 4952 and 7164 (hereinafter expressed collectively as "Contract"); and,

WHEREAS, pursuant to the BOE contract authorization process, the BOE Office of the Chancellor submitted a resolution for adoption by the Board's Panel for Educational Policy (herein expressed as "PEP"), i.e., the governing body of the BOE; and, the PEP adopted the resolution approving the Agreement with the Contractor; and,

WHEREAS, the parties mutually desire to make this extension and amendment (11th amendment) of the Contract, as heretofore amended and extended;

NOW, THEREFORE, in consideration of the heretofore-recited stipulations and the hereinafter-expressed terms, conditions and specifications, the BOE and the Contractor, as the parties to this Extension and Eleventh Amendment Agreement, do hereby stipulate and agree both as above and as follows:

(1) TERM OF EXTENSION AND ELEVENTH AMENDMENT AGREEMENT.

ARTICLE 25 entitled, "PERIOD OF CONTRACT," is hereby amended so that the term of the Contract reads, "for the summer special education school periods as established by the Board of Education from July 1, 2010 through August 31, 2014, unless further extended." All references to the termination date

of the Contract, by whatever terminology, are hereby deemed to read, "August 31, 2014, unless further extended."

(2) COMPOSITION OF EXTENSION AND ELEVENTH AMENDMENT AGREEMENT.

The following are deemed to constitute this Extension and Eleventh Amendment Agreement for all general and particular intents and purposes and are hereby deemed to be incorporated into, and made part of, this Extension and Eleventh Amendment Agreement:

- (a) This Extension and Eleventh Amendment Agreement document consisting of pages i-iii and 1-38.
- (b) The RA is "Attachment A."
- (c) The Contractor's schedule of contract serial numbers, item designations and daily rates per vehicle is "Attachment B."
- (d) The new text and provisions pertaining to Liquidated Damages covered in Paragraph (10)(K), *infra*, are "Attachment C."
- (e) The Schedule of Special Education Escort Costs is "Attachment D."

(3) ORDER OF GOVERNANCE.

The BOE and the Contractor stipulate and agree that, to the extent there shall or may exist any inconsistencies or conflicts between and/or among any provisions of this Extension and Eleventh Amendment Agreement including this Extension and Eleventh Amendment Agreement document consisting of pages i-iii and 1-38 and Attachments A through D, the following descending order of governance is hereby established for every case and for all general and/or particular intents and purposes: first Attachment A, second this Extension and Eleventh Amendment Agreement document consisting of pages i-iii and 1-38, third Attachment B, fourth Attachment C and fifth and finally Attachment D. Exhibit 1 is appended for informational purposes only.

(4) PAYMENT DURING PERIOD OF EXTENSION.

ARTICLE 28 entitled, "PAYMENT," Paragraph D entitled, "PAYMENT DURING PERIOD OF EXTENSION," of the Contract is hereby amended to read as follows for the period of this Extension and Eleventh Amendment Agreement:

"(D) PAYMENT DURING PERIOD OF EXTENSION

"(1) During the Extension Year from July 1, 2010 to August 31, 2010, the Contractor's daily rate(s) per vehicle shall be adjusted by an amount not to exceed whichever of the following represents the least amount of actual increase: (i) the same percentage by which the Consumer Price Index (herein expressed as 'CPI-U') as of May 2010 shall have increased over the CPI-U as of May 2009; or, (ii) the amount in dollars expressed as a percentage by which the Contractor's actual Total Allowable Costs during the Extension Year from July 1, 2009 to September 1, 2009 shall have

increased over each Contractor's actual Total Allowable Costs during the Extension Year of July 1, 2008 to September 1, 2008.

"(2) During the Extension Year of July 1, 2011 to August 31, 2011, the Contractor's daily rate(s) per vehicle shall be adjusted by an amount not to exceed whichever of the following represents the least amount of actual increase: (i) the same percentage by which the CPI-U as of May 2011 shall have increased over the CPI-U as of May 2010; or, (ii) the amount in dollars expressed as a percentage by which the Contractor's actual Total Allowable Costs during the Extension Year of July 1, 2010 to August 31, 2010 shall have increased over the Contractor's actual Total Allowable Costs during the Extension Year of July 1, 2009 to September 1, 2009.

"(3) During the Extension Year of July 1, 2012 to August 31, 2012, the Contractor's daily rate(s) per vehicle shall be adjusted by an amount not to exceed whichever of the following represents the least amount of actual increase: (i) the same percentage by which the CPI-U as of May 2012 shall have increased over the CPI-U as of May 2011; or, (ii) the amount in dollars expressed as a percentage by which the Contractor's actual Total Allowable Costs during the Extension Year of July 1, 2011 to August 31, 2011 shall have increased over each Contractor's actual Total Allowable Costs during the Extension Year of July 1, 2010 through August 31, 2010.

"(4) During the Extension Year of July 1, 2013 to August 31, 2013, the Contractor's daily rate(s) per vehicle shall be adjusted by an amount not to exceed whichever of the following represents the least amount of actual increase: (i) the same percentage by which the CPI-U as of May 2013 shall have increased over the CPI-U as of May 2012; or, (ii) the amount in dollars expressed as a percentage by which the Contractor's actual Total Allowable Costs during the Extension Year of July 1, 2012 to August 31, 2012 shall have increased over the Contractor's actual Total Allowable Costs during the Extension Year of July 1, 2011 to August 31, 2011.

"(5) During the Extension Year of July 1, 2014 to August 31, 2014, the Contractor's daily rate(s) per vehicle shall be adjusted by an amount not to exceed whichever of the following represents the least amount of actual increase: (i) the same percentage by which the CPI-U as of May 2014 shall have increased over the CPI-U as of May 2013; or, (ii) the amount in dollars expressed as a percentage by which the Contractor's actual Total Allowable Costs during the Extension Year of July 1, 2013 to August 31, 2013 shall have increased over the Contractor's actual Total Allowable Costs during the Extension Year of July 1, 2012 to August 31, 2012.

"(6) Decrease in CPI. Anything in the foregoing payment increase provisions to the contrary notwithstanding, where there is a decrease in the regional consumer price index for the New York, New York-Northeastern, New Jersey area as based upon the index for all urban consumers (herein expresses as 'CPI-U') during the preceding twelve month period, the amount to be paid to the Contractor in any succeeding extension year shall reflect that decrease in a manner satisfactory to the New York State Education Department (herein expressed as 'SED').

"(7) Special Costs for Drivers Covered by Statute. Anything in the foregoing payment increase provisions to the contrary notwithstanding, the BOE shall pay the Contractor each extension year for actual costs allowable pursuant to Education Law §305(14)(c) under the following conditions, even if such reimbursement shall cause annual payments to exceed the relevant CPI-U increment. To be eligible for such payment, the Contractor shall provide to OPT a separate fully de-

tailed written cost reimbursement request for reimbursement of expenses covered by Education Law §305(14)(c), which shall be described for purposes of this Contract as 'special vehicle operator administrative costs,' which reimbursement shall equal (a) the actual costs of qualifying criminal history and driver licensing testing fees attributable to special requirements of Vehicle and Traffic Law Articles 19 and 19-A, and (b) the actual costs of all diagnostic tests and physical performance tests that shall be deemed necessary by an examining physician or the Director to determine whether each applicant to drive a school bus under this Contract possesses the physical and mental ability to operate a school bus and to perform satisfactorily all other responsibilities of a school bus driver as required by this Contract and all applicable Federal, State of New York, City of New York and BOE laws, rules, regulations and policies.² All Contractor cost claims under Education Law §305(14)(c) shall be subject to review and/or audit by the BOE, its employees and agents. Upon BOE approval of Contractor cost claims under Education Law §305(14)(c), the BOE shall pay the Contractor for such actual costs without interest.

"(8) Cost Justification Financial Statements. Education Law §305(14) requires the Contractor to substantiate any cost increases that he/she claims to justify annual payment increases during the term of this Extension and Eleventh Amendment Agreement. The Director of the Office of Pupil Transportation (herein expressed as 'OPT') shall determine whether to approve all or any portion of the claims in each of the Contractor's annual Cost Justification Financial Statement as described immediately below:

"(a) To substantiate any payment increases received under ARTICLE 28(D) during the Extension Year of July 1, 2010 to August 31, 2010, the Contractor must submit by July 1, 2010, a Cost Justification Financial Statement(s) detailing the Total Allowable Costs incurred by the Contractor for all its operations and, separately, for its operations under this Contract for Extension Years 2009 and 2008.

"(b) To substantiate any payment increases received under ARTICLE 28(D) during the Extension Year of July 1, 2011 to August 31, 2011, the Contractor must submit by July 1, 2011, a Cost Justification Financial Statement(s) detailing the Total Allowable Costs incurred by the Contractor for all its operations and, separately, for its operations under this Contract for Extension Years 2010 and 2009.

"(c) To substantiate any payment increases received under ARTICLE 28(D) during the Extension Year of July 1, 2012 to August 31, 2012, the Contractor must submit by July 1, 2012, a Cost Justification Financial Statement(s) detailing the Total Allowable Costs incurred by the Contractor for all its operations and, separately, for its operations under this Contract for Extension Years 2011 and 2010.

"(d) To substantiate any payment increases received under ARTICLE 28(D) during the Extension Year of July 1, 2013 to August 31, 2013, the Contractor must submit by July 1, 2013, a Cost Justification Financial Statement(s) detailing the Total Allowable Costs incurred by the

² Allowable diagnostic tests and physical performance tests shall include pre-employment medical and physical performance tests and examinations and pre-employment alcohol and substance abuse tests. Allowable diagnostic and physical performance tests shall *not* include tests and examination performed during the course of a driver's employment with the Contractor such as, but not limited to, random substance and/or alcohol abuse tests, post-accident substance and/or alcohol abuse tests, reasonable suspicion substance and/or alcohol abuse tests, and/or annual medical examinations.

Contractor for all its operations and, separately, for its operations under this Contract for Extension Years 2012 and 2011.

“(e) To substantiate any payment increases received under ARTICLE 28(D) during the Extension Year of July 1, 2014 to August 31, 2014, the Contractor must submit by July 1, 2014, a Cost Justification Financial Statement(s) detailing the Total Allowable Costs incurred by the Contractor for all its operations and, separately, for its operations under this Contract for Extension Years 2013 and 2012.

“(f) Until six (6) years after completion of its services hereunder or six (6) years after the termination of this Contract, whichever is later, the Contractor shall retain and maintain complete and correct books and records relating to all aspects of the Contractor’s obligations hereunder. Records must be maintained separately so as to identify clearly the expenses applicable to this Contract and be distinguishable from all other costs not incurred under this Contract.

“(g) Required Analysis of Costs. To determine the allowable increase in costs for the extension period, as specified in ARTICLE 28(D) of this Contract, the following analysis of each Cost Justification Financial Statement must be undertaken:

“Step 1: Divide the total applicable annual operating costs by the number of vehicle days for both the base year and the year previous to the base year to determine the average daily cost per vehicle for each of those years. The base year is the year immediately before the current extension year, to which a rate increase is to be applied.

“Step 2: Subtract the average daily cost per vehicle for the year previous to the base year from the average daily cost per vehicle for the base year to determine the increase in the average daily cost per vehicle.

“Step 3: Divide the increase in the average daily cost per vehicle by the average daily cost per vehicle for the year previous to the base year to determine the percent increase in the average daily cost per vehicle.

“Step 4: Compare the percentage of increase in the average daily cost per vehicle to the percentage by which the CPI-U as of May of the base year shall have increased over the CPI-U as of May of the year previous to the base year. Whichever is the lesser of the two percentages will be the allowable increase applied to the daily rate for the extension period.

“(h) Alternative Comparison of Costs. As an alternative to the procedures expressed in Subparagraph (8)(g), *supra*, to determine the allowable adjustment in daily rates per vehicle for Extension Years 2010 through 2014, the Contractor may elect with respect to each such Extension Year to use the percentage increase in the Contractor’s Total Allowable Costs on an aggregate business entity basis with respect to each of the applicable base years as compared to each of the years prior thereto, respectively. Nevertheless, the Contractor must undertake the analysis described in the preceding sentence in the form of an annual Cost Justification Financial Statement as defined in Paragraph (9)(i), *infra*. If the Con-

tractor shall *not* make the foregoing election in writing to the Director on or before July 1st of each Extension Year, the analysis of the Cost Justification Financial Statement, as provided in Subparagraph (8)(g), *supra*, shall apply and govern.

“(i) Allowable Cost Increases. Total Allowable Costs are limited by the following: costs not attributable to the Contractor’s operations under this Contract; costs that are not ordinary and/or reasonable; costs that are not documented; and/or, costs disallowed by the SED and/or by BOE auditors for non-compliance with the definition of Total Allowable Costs as limited by this Subparagraph (8)(i). Such costs shall be subject to disallowance by the BOE and are not permitted to justify increases of the daily rate(s) per vehicle. The Director shall have the right to prescribe miscellaneous standardized cost categories for all contractors including the Contractor.

“(j) Access to Subcontractors. If with the Director’s approval the Contractor subcontracts any portion of the services under this Contract, the Contractor must include in any such subcontract a provision that allows full and unimpeded access by the BOE, the SED and/or the New York City Office of Comptroller to the books and records of a subcontractor for inspection, audit and copying. The Contractor does hereby agree and warrant to render all necessary assistance to obtain any requested documents from subcontractors. The Contractor’s inability to obtain requested documentation from any subcontractors shall not excuse a failure to provide the documentation as a means to justify payment increases.

“(k) Absence of Cost Justification Financial Statement. The Contractor’s failure to submit an annual Cost Justification Financial Statement by each deadline date as above expressed will result in the forfeiture of any increase later justified for the period from the service start date to the day the statement is received at OPT, *unless* the Director determines that reasonable circumstances exist to excuse the Contractor’s late submittal.

“(l) Adjustments to Later Payments. Based on the Board’s audit of the Contractor’s annual Cost Justification Financial Statements and financial records, the BOE may make any necessary adjustments in any later payments that become due and owing to the Contractor to compensate for any excess of payments over cost increases. Notwithstanding the foregoing, the BOE shall make no adjustment in payments or the rate(s) of payment due the Contractor and shall make no claim for overpayments to the Contractor, unless the BOE audit, upon which such adjustment or claim is based, shall have been completed and submitted to the Contractor within two (2) years after the date on which the Contractor shall have submitted to the Board the Cost Justification Financial Statement and final supporting documentation for such Cost Justification Financial Statement,³ which is the subject of such audit. The limitation upon payment adjustments expressed in the preceding sentence shall *not* apply to any payment adjustment(s) required by any applicable laws, rules and/or regulations as applied by governmental agencies, other than the Board, which may apply to this Contract.

³ If the Contractor shall amend or otherwise change the Cost Justification Financial Statement and/or any supporting documentation after having made an initial submittal to the BOE, the two year limitation period shall be tolled and shall start again with the date of the submittal of each such amendment or other change.

“(m) Refund of Overpayment. The Contractor agrees and warrants further to refund all additional monies due to the BOE within thirty (30) days of the Board’s final findings regarding any given Cost Justification Financial Statement (provided such final findings are completed and submitted to the Contractor not later than two years after the submission to the BOE of such Cost Justification Statement), if the amount of a given Extension Year’s payment excess over allowable cost increase is greater than any payments due and owing for the balance of a given Extension Year. The limitation upon refunds expressed in the preceding sentence shall *not* apply to any refund(s) required by any applicable laws, rules and/or regulations as applied by governmental agencies, other than the Board, which may apply to this Contract.

“(n) Inconsistencies. In the event of any apparent inconsistencies between any other provisions of the Contract and ARTICLE 28(D) hereof, the provisions of ARTICLE 28(D) shall prevail and govern in every case and for all intents and purposes.

“(9) Definitions. The definitions below control the meanings of the described terms wherever they appear in this Contract and Extensions thereto. These definitions add to and supplement any definitions or instructions expressed in the original Contract and, as such, do not supersede, revoke, replace, revise or limit any similar or analogous provisions in the original Contract.

“(a) For Contract Serial Nos. 4515 and 4516:

“(i) ‘Twenty-second Extension Year’ means July 1, 2010 to August 31, 2010.

“(ii) ‘Twenty-third Extension Year’ means July 1, 2011 to August 31, 2011.

“(iii) ‘Twenty-fourth Extension Year’ means July 1, 2012 to August 31, 2012.

“(iv) ‘Twenty-fifth Extension Year’ means July 1, 2013 to August 31, 2013.

“(v) ‘Twenty-sixth Extension Year’ means July 1, 2014 to August 31, 2014.

“(b) For Contract Serial Nos. 4894 and 4952:

“(i) ‘Twenty-first Extension Year’ means July 1, 2010 to August 31, 2010.

“(ii) ‘Twenty-second Extension Year’ means July 1, 2011 to August 31, 2011.

“(iii) ‘Twenty-third Extension Year’ means July 1, 2012 to August 31, 2012.

“(iv) ‘Twenty-fourth Extension Year’ means July 1, 2013 to August 31, 2013.

“(v) ‘Twenty-fifth Extension Year’ means July 1, 2014 to August 31, 2014.

“(c) For Contract Serial No. 7164:

“(i) ‘Thirteenth Extension Year’ means July 1, 2010 to August 31, 2010.

“(ii) ‘Fourteenth Extension Year’ means July 1, 2011 to August 31, 2011.

“(iii) ‘Fifteenth Extension Year’ means July 1, 2012 to August 31, 2012.

“(iv) ‘Sixteenth Extension Year’ means July 1, 2013 to August 31, 2013.

“(v) ‘Seventeenth Extension Year’ means July 1, 2014 to August 31, 2014.

“(d) The term ‘Consumer Price Index,’ as of a given date, is defined as that statistic of the United States Department of Labor or its successor agency which the New York State Education Department deems as the ‘regional consumer price index for the New York, New York-Northeastern, New Jersey area, based upon the index for all urban consumers (CPI-U),’ according to Education Law §305(14) or as the same may be updated, revised or otherwise changed during the life of this Extension and Eleventh Amendment Agreement. If Education Law §305(14) shall be amended to permit a stated or fixed percentage(s) of annual rate increase(s) for pupil transportation contract extensions, which increases may exceed the applicable CPI-U increments(s), this Contract shall be deemed to be amended automatically and without the need for any action by the parties to this Extension and Eleventh Amendment Agreement by substituting such stated or fixed percentage(s) of increase in place of the actual percentage(s) of increase in the CPI-U in any extension year in which the CPI-U shall be lower than the stated or fixed percentage(s).

“(e) The term ‘Contractor’s average cost per vehicle per day’ for a given extension year is defined as the Contractor’s ‘Total Allowable Costs’ for that extension year divided by the total number of ‘vehicle days.’

“(f) The term ‘Total Allowable Costs’ is defined as the Contractor’s actual accrued costs related directly to transportation services provided to the BOE under this Contract.⁴

“(g) The term ‘vehicle days’ is defined as the total number of ‘authorized vehicles’ the Contractor actually operates multiplied by the number of actual school days per Extension Year for the term of this Extension and Eleventh Amendment Agreement,⁵ *except* for certain additional vehicles which shall be treated in the manner hereinafter provided.

“(h) The term ‘authorized vehicles’ is defined as the total number of contract and additional vehicles, but excluding spare vehicles, that the Contractor shall have been granted expressly by the Director. If the Director shall grant the Contractor additional vehicles during any given Extension Year of this Extension and Eleventh Amendment Agreement, such additional vehicles shall be counted among the ‘authorized vehicles’ during the first Extension Year in which such vehicles shall be awarded but only to the extent of the actual number of school days that the Contractor actually shall have operated the affected additional vehicles.⁶ During the succeeding Extension Year(s), such additional vehicles shall be

⁴ The term “Total Allowable Costs” for purposes of annual Cost Justification Financial Statements shall be determined solely upon the actual accrued costs submitted by this Contractor and shall not include the costs of any other contractor. In the event of a contract assignment sought by the Contractor and approved by the Director, however, the Contractor must elect for its cost increases to be analyzed and justified on a per vehicle per day cost basis (as expressed in Paragraph (6) entitled, “Required Analysis of Costs,” *infra*), and not on an aggregate basis (as expressed in Paragraph (7) entitled, “Alternative Comparison of Costs,” *infra*), i.e., in order for the preceding sentence to be operative.

⁵ In calculating the Contractor’s average cost per vehicle day for purposes of determining rate augmentation under this Extension and Eleventh Amendment Agreement, the actual number of days that vehicles shall operate shall be applied for each Extension Year included in such calculation.

⁶ This partial exclusion of additional vehicles during the first extension year of award shall not apply to any vehicles that the Contractor may obtain by assignment or other transfer of contract or by acquiring the corporate shares of another school bus

counted as 'authorized vehicles' for all actual school days so long as such additional vehicles are in use for the entire summer session.

“(i) The term ‘Cost Justification Financial Statement’ is defined as a written ‘review report’ prepared by a Certified Public Accountant (herein expressed as ‘CPA’) or Public Accountant (herein expressed as ‘PA’) licensed by the State of New York, except as otherwise noted herein. Each Cost Justification Financial Statement shall include all of the facts and figures deemed necessary by the Director and/or the SED to provide a complete view of the Contractor’s cost increase claims for the applicable comparative periods specified in this Extension and Eleventh Amendment Agreement. Each review report shall state that a review shall have been performed in accordance with AU623, *et seq.*, as established and periodically updated by the American Institute of Certified Public Accountants (herein expressed as “AICPA”), and the BOE Office of Auditor General’s manual of cost increase justification rules and procedures (herein expressed as “OAG Manual”) as of the date of a given review report, and that the information in each Cost Justification Financial Statement shall have been based upon the representations of the Contractor’s management. Each review report shall describe the nature of a review as distinct from an audit and shall describe the standard procedures that the CPA/PA shall have performed, *e.g.*, an inquiry and an analytical review. Each review report shall give the limited assurance that, based upon the review, the CPA/PA shall not have been aware of any material modifications that should be made to the Cost Justification Financial Statement for it to be in conformity with AU623, *et seq.*, as established and periodically updated by the AICPA, and the OAG Manual. A compilation report is insufficient to qualify as a Cost Justification Statement. In addition, the CPA/PA preparing each review report must state that he/she shall have studied the cost justification manual supplied by the BOE and shall have applied the standards contained in the said OAG Manual to the development of each Cost Justification Financial Statement. If the Contractor shall not have had a CPA-audited financial report performed for any purpose within the three (3) years before June 30, 2010, then the Contractor must submit an audited Cost Justification Financial Statement by a CPA for its first or second such statement under this Extension and Eleventh Amendment Agreement.⁷ The CPA/PA who shall prepare each Cost Justification Financial Statement must have no interest in this Contract, the Contractor and/or any entity affiliated in any manner with the Contractor and must so certify in writing in each review report. Each Cost Justification Financial Statement shall be in a form prescribed by the Director as approved by SED.”

“(10) Any text in the Contract to the contrary notwithstanding, the Contract provisions are hereby amended as follows:

“(a) The Contractor agrees to execute any further amendment to the Contract which is required by SED to secure SED approval of this Extension and Eleventh Amendment Agreement and to maintain continuity of funding.”

contractor.

⁷ Such a CPA-audited Cost Justification Financial Statement must comply in all respects with AR 9100.63 entitled, “Special Purpose Financial Presentations to Comply with Contractual or Regulatory Provisions,” as established and periodically updated by the AICPA.

(5) ESCORT COST REIMBURSEMENT.

Contracts under Serial Nos. 4515, 4516, 4894, 4952 and 7164 are hereby amended by the addition of a new Paragraph "E" entitled, "ALTERNATIVE PAYMENT METHOD FOR SPECIAL EDUCATION ESCORTS," to ARTICLE 28 entitled, "PAYMENT," which shall read as follows for the term of this Extension and Eleventh Amendment Agreement:

"E. ALTERNATIVE PAYMENT METHOD FOR SPECIAL EDUCATION ESCORTS.

"(1) Election for Escort Cost Reimbursement.

"For Extension Years starting in 2010 and continuing through the period of this Extension and Eleventh Amendment Agreement, contracts under Serial Nos. 4515, 4516, 4894, 4952 and 7164 may elect, on or before June 11, 2010, by execution and delivery to the Board of a written election notice in the form annexed hereto for informational purposes only as **Exhibit 1**, to receive full reimbursement from the Board for all costs and expenses which the Contractor is or shall become legally obligated to incur in connection with the employment, training and qualification of escorts provided by the Contractor in accordance with the terms of this Contract including, but not limited to, the costs and expenses as itemized on the 'Schedule of Special Education Escort Costs' ("**Attachment B**" of the Extension and Eleventh Amendment Agreement and herein expressed collectively as 'Escort Costs'). Escort Costs shall not include (i) future adjustments in wages or benefits which exceed the rate of any such adjustment granted to the Contractors' drivers, with the exception that any decrease in the base wage rate for newly hired drivers set forth in any collective bargaining agreement(s) entered into after January 1, 2010 shall not require a decrease (equal or otherwise) in the base wage rate for any escorts; (ii) compensation for 'Shape' escorts in excess of six percent (6%) of the number of Escorts required on vehicles provided by the Contractor; (iii) Escort Costs that accrued prior to July 1, 2010 *except* any retroactive costs also paid to or for drivers as a result of collective bargaining, any retroactive Federal, State and/or local payroll withholding taxes, and/or any Worker's Compensation awards and/or settlements;⁸ (iv) compensation of holiday pay or holiday premium rates for escorts for Chancellor's Day as that day shall be scheduled each Extension Year in the sole discretion of the BOE; and/or, (v) indirect costs such as, but not limited to, attorney fees, consultant fees,⁹ accountant fees and investigator fees *except* as provided herein to the contrary. In addition to the reimbursement of Escort Costs, Contractors making the election hereunder shall be paid an administrative fee (hereinafter expressed as "Administrative Fee") for providing such escorts, which fee shall equal two percent (2%) of the Contractor's Escort Costs

⁸ To be eligible for the payment of retroactive Worker's Compensation awards and/or settlements, the Contractor must undertake all commercially reasonable steps to defend vigorously all affected Worker's Compensation claims, i.e., in which cases the BOE shall not unreasonably withhold, delay and/or condition such payments to the Contractor.

⁹ The term "consultant fees" shall not include the costs for a subcontractor(s) or other consultant(s) for (i) employee training for purposes required under this Contract, (ii) the development and administration of alcohol and controlled substances abuse prevention policies and alcohol, and (iii) controlled substance testing and analysis, all of which are deemed to be allocable on a per escort basis as direct costs of employment.

"(2) Termination of Other Escort Compensation.

"Starting the 2010 Extension Year, other than Escort Cost Reimbursement under **Paragraph E(1), supra:** (i) Contractors under contract Serial Nos. 4515, 4516, 4894, 4952 who make the election for Escort Cost Reimbursement shall receive no further or additional escort compensation under **Paragraph (D)** of ARTICLE 28 of such contracts; and, (ii) the daily rate per vehicle of Contractors under Serial No. 7164 making such election for Escort Cost Reimbursement shall be reduced (prior to application of the CPI-U increases as provided for in ARTICLE 28, **Paragraph D(1)(a)** of such contracts) by an amount equal to (a) the original bid amount specified for escort services per vehicle in such Contractor's bid under contract Serial No. 7164, *plus* (b) a percentage of such escort bid amount equal to the aggregate of all percentage increases of the daily rate per escort paid to such Contractor through the 2009 Extension Year.

"(3) Procedure for Contractors Electing Escort Cost Reimbursement.

"On or about August 2nd of each Extension Year, starting with the 2010 Extension Year, each Contractor who shall have elected to receive Escort Cost Reimbursement under this ARTICLE 28, **Paragraph E**, shall submit to the Board a statement, certified by the Contractor's Chief Financial Officer and Chief Executive Officer, of its actual Escort Costs incurred for the preceding month of July. On or about September 3rd of each Extension Year, starting with the 2010 Extension Year, each Contractor who shall have elected to receive Escort Cost Reimbursement under this ARTICLE 28, **Paragraph E**, shall submit to the Board a statement, certified by the Contractor's Chief Financial Officer and Chief Executive Officer, of its actual Escort Costs incurred for the preceding month of August. Promptly following receipt of each such certified statement, the Board shall pay the Contractor such incurred Escort Costs together with an Administrative Fee equal to two percent (2%) of such incurred Escort Costs.

(6) AMENDMENTS TO INSURANCE PROVISIONS.

(A) PARAGRAPH (1) (pages 3-12) of the Supplemental Ninth Amendment of Contract for Summer Transportation of Special Education Pupils is hereby incorporated into, and made part of, this Extension and Eleventh Amendment Agreement as if set forth herein in its entirety, and the said PARAGRAPH (1) is hereby amended effective as of July 1, 2010 for purposes of Extension Years 2010 through 2012 as follows:

(1) ARTICLE 17, Paragraph (E)(1)(a) is hereby amended by the addition of the following to the end thereof:

"By way of amplification and clarification, no reduction in contract compensation under this ARTICLE shall be made regarding a Contractor who provides pupil transportation services to the BOE under another contract(s) (hereinafter expressed as "Related Contract") wherein the entire consideration for the Board's supply of Primary Insurance for vehicles utilized in performing this Contract is paid pursuant to the terms of such Related Contract.

(2) ARTICLE 17, Paragraph (E)(1)(a), Note 4 is hereby amended to read as follows:

⁴The first Primary Policy Year shall be from March 31, 2003 until March 30, 2004. The second Primary Policy Year shall be from March 31, 2004 until June 30, 2005. (For the second Primary Policy Year which is for a 15 month period, the Base Premium shall each be increased by twenty-five percent (25%.) The third Primary Policy Year shall be from July 1, 2005 until June 30, 2006. The fourth Primary Policy Year shall be from July 1, 2006 until June 30, 2007. The fifth Primary Policy Year shall be from July 1, 2007 until June 30, 2008. The sixth Primary Policy Year shall be from July 1, 2008 until June 30, 2009. The seventh Primary Policy Year shall be from July 1, 2009 until June 30, 2010. The eighth Primary Policy Year shall be from July 1, 2010 to June 30, 2011. The ninth Primary Policy Year shall be from July 1, 2011 to June 30, 2012. The tenth Primary Policy Year shall be from July 1, 2012 to June 30, 2013. The eleventh Primary Policy Year shall be from July 1, 2013 to June 30, 2014. The twelfth Primary Policy Year shall be from July 1, 2014 to June 30, 2015."

(B) The following provision is hereby added to the Supplemental Ninth Amendment of Contract for Summer Transportation of Special Education Pupils as **Paragraph (R) of Paragraph (1)** (amending **Article 17** entitled, "Insurance," of the Contract), as heretofore incorporated by reference into, and made part of, this Contract: "The Contractor shall ensure that all personnel it uses to provide any services under this Contract, i.e., especially in any relationship with an approved subcontractor, such as, but not limited to, vehicle operators (drivers), attendants (matrons or escorts), maintenance workers and other workers who may operate or otherwise work on vehicles under the Contract at all times shall be deemed to be 'general employees' or 'special employees' of the Contractor for purposes of Worker's Compensation Insurance coverage under the Worker's Compensation Law."

(7) EMPLOYEE PROTECTION PROVISIONS.

ARTICLE 44 entitled, "Employee Protection Provisions," is hereby amended to read as follows:

1. Priority in Hiring and Master Seniority Lists.

"There shall be established two industry-wide Master Seniority Lists. One list shall be composed of all operators (drivers), mechanics, and dispatchers and the other list shall be composed of escorts (matrons-attendants) who were employed as of June 30, 2010, under a contract between their employers and the Board for the transportation of school children in the City of New York, who are furloughed or become unemployed as a result of loss of contract or any part thereof by their employers, or as the result of a reduction in service directed by the Board during the term of the contract, in accordance with their date of entry into the industry. All operators (drivers), mechanics, dispatchers and escorts (matrons-attendants) on the Master Seniority Lists who participated in the Division 1181 A.T.U.-New York Employees Pension Fund and Plan as of June 30, 2010, and who do not exercise their option to withdraw from the Fund and Plan shall continue to participate in such Pension Plan. By not later than July 31st of each Extension Year, the Contractor shall supply the BOE with a Seniority List for all of the Contractor's employees, which Seniority List the Contractor shall input into a Web-Based Application to be supplied by the BOE.

"Any existing contractor or individual who conducted business as a sole proprietor, or as a member of a partnership or who held a controlling interest in a corporation that performed service pursuant to contract expiring in June 2010 ("existing contractor") shall give priority in employment in July 2010 or thereafter on the basis of position on the Master Seniority List of any additional or replacement operators, mechanics and dispatchers beyond those performing service as of June 30, 2010 consistent with the number of employees required by the specifications of the contract expir-

ing June 2010 for the number of vehicles providing service to the Board as of June 30, 2010 to individuals from the Master Seniority List until such list is exhausted.

"Any new contractors, *i.e.*, those who did not provide service pursuant to contract expiring June 2010 ("new contractor"), shall give priority in employment in July 2010 or thereafter on the basis of seniority to every operator (driver), mechanic and dispatcher performing service pursuant to such contract starting from the first employee from the Master Seniority List until such list is exhausted.

"Should the Board determine to require the Contractor to provide escort service in addition to the operator, and in the event that all escorts (matrons-attendants) on the Master Seniority List, who were employed as of June 30, 2010, are not employed as escorts by contractors for the beginning of service in July of 2010, then said escorts shall be employed in order of their position on the Master Seniority List.

"2. Compensation.

"All operators (drivers), mechanics, dispatchers and escorts (matrons-attendants) on the industry-wide Master Seniority Lists shall be employed and paid on a full-time basis based upon the wage scale received from prior employer under pupil transportation contracts.

"The Contractor shall compensate operators (drivers), mechanics and dispatchers and escorts (matrons-attendants) who appear on the Master Seniority Lists and who are employed pursuant to contracts to be awarded as follows for the term of the Contract:

"(a) operators (drivers) and dispatchers at a daily rate of pay, including any COLA, for each day of service, not less than that paid pursuant to the applicable labor collective bargaining agreement, if any.

"(b) mechanics at a daily rate of pay, including any COLA, for each day of service, not less than that paid pursuant to the applicable labor collective bargaining agreement, if any.

"(c) escorts (matrons-attendants) at a daily rate of pay, including any COLA, for each day of service, not less than that paid pursuant to the applicable labor collective bargaining agreement, if any.

"Such operators (drivers) and escorts (matrons-attendants) shall be available for extended service, without additional compensation, which shall be defined as performance within the particular job category, *i.e.*, drivers as drivers, and escorts (matrons-attendants) as escorts (matrons-attendants), within the eight (8) hour work day within the spread of ten (10) hours (8 within 10 hours) provided for in the collective bargaining agreement covering said employees, if any.¹⁰

¹⁰ The foregoing rule shall be adjusted depending upon the particular collective bargaining agreement, if any, which may have varying rules for varying employees.

"3. Welfare.

"Contributions by the Contractor for providing welfare benefits to operators (drivers), mechanics, dispatchers and escorts (matrons-attendants), in the event the Contractor employs escorts, who appear on the Master Seniority List shall be no less than \$939.00 effective July 1, 2008, to June 30, 2009 per employee per month on a twelve month basis during each year of the Contract.

"4. Pensions.

"The Contractor shall sign an agreement with Division 1181 A.T.U.—New York Employees Pension Fund and Plan to participate in such plan on behalf of all operators (drivers), mechanics, dispatchers and escorts (matrons-attendants), in the event the Contractor employs escorts, who appear on the Master Seniority Lists and who participated in the Fund and Plan as of June 30, 2010. This requirement shall not be interpreted to require any existing contractor or new contractor to enter into a collective bargaining agreement with the union, nor shall it prohibit any new contractor or existing contractor from entering into a collective bargaining agreement with the union. The Contractor shall file a copy of the executed agreement with the Trustees of the Fund and Plan to participate in said Fund and Plan and with the Director before the start of any school bus service under this Contract.

"The Contractor shall contribute \$74.40 per week per operator (driver), mechanic and dispatcher on the Master Seniority List, and participating in the Plan and Fund as of June 30, 2010, for forty weeks each year for the term of the Contract, or such greater amount as may be required, based on contributions by contractors on behalf of the majority of employees participating in the Fund and Plan pursuant to a collective bargaining agreement with Local 1181-1061. The Contractor shall withhold \$38.50 per week from each operator, mechanic and dispatcher participating in said Fund and Plan for forty weeks each year for the term of the contract, or such greater amount as may be required based on contributions of a majority of the operators (drivers), mechanics or dispatchers contributing to the Fund and Plan.

"Such new contractors and existing contractors who provide escort service, shall contribute \$70.40 per week per escort (matron-attendant) for forty weeks each year for the term of the contract, or such greater amount as may be required based on contributions by contractors on behalf of the majority of employees participating in the Fund and Plan pursuant to a collective bargaining agreement with Local 1181-1061. The Contractor shall withhold \$28.50 per week from each escort (matron-attendant), participating in said Fund and Plan and Fund for forty weeks each year for the term of the Contract, or such greater amount as may be required based on contributions of the majority of the escorts contributing to the Fund and Plan.

"In connection with employees who are on the Master Seniority List and who do not participate in the Local 1181-1061 Fund and Plan, they shall not be required to participate in the Plan but shall participate in the collective bargaining agreement, if any, of their employer.

The contractor shall pay all such amounts to the Fund and Plan within the time period as provided in any collective bargaining agreement to which the contractor is a party.

"5. Enforcement.

"In addition to any other remedies provided in the contract between the Board and the contractor, such as default and/or termination, if the contractor is found to be in violation of the foregoing Employee Protection Provisions regarding the payment of wages, welfare benefit contributions, pension contributions, or other aspects of compensation or benefits, then the Director of the Office of Pupil Transportation, within thirty (30) days of written notice, shall withhold the appropriate amounts from any payments due to the contractor and pay them directly to the applicable union for the benefit of the employees affected, to the Division 1181 A.T.U.-New York Employees Pension Fund or other applicable union pension fund for the benefit of the employees affected or to the appropriate Welfare Fund for the benefit of the employees affected. If the affected employees are not affiliated with any union, then the Board shall investigate on their behalf allegations of employee protection provision violations regarding the payment of wages, welfare benefit or health insurance contributions, pension or similar savings plan contributions, or other aspects of compensation or benefits. Upon a finding of any such violation(s), the OPT Director shall withhold the appropriate amounts from any payments due to the Contractor and pay them directly to the employees or to such health insurance companies or other institutions as appropriate.

"In the event any new contractor or existing contractor willfully fails to comply, the Board of Education shall act to cancel such contractor's contract, provided, however, that the Board shall not be required to act so as to cause a disruption of service.

"6. Contractors providing a total of five vehicles or fewer pursuant to all contracts with the Board for the transportation of pupils shall not be subject to the foregoing provisions with respect to operators (drivers), mechanics and dispatchers.

"Escorts (matron-attendants) shall not be included in the exclusion in this paragraph six (6).

"7. For the purposes of this section, corporate bidders who are subject to common control as determined by the Board based upon analysis of (a) ownership of the corporation's assets, (b) coincidence of corporate officers and directors, and (c) such other factors as the Board determines to be relevant, are deemed to be one bidder.

"8. The Board may in its sole and unfettered discretion change any date which determines employee protected status, employer status or any other status, which is contained in any employee protection provisions of the Contract. The Master Seniority Lists will be updated to June 30, 2010 as permitted in accordance with pre-existing collective bargaining agreements executed prior to the date of execution of this Contract. Furthermore, the rates quoted herein may not be reflective of current labor rates in effect. The Contractor should pay special attention to the fact that many employees on the Master Seniority Lists have been in the industry for many years and therefore may be entitled to substantial wages, pension and welfare benefits and wage accruals.

"The date for inclusion on the Master Seniority List is hereby updated to the last school day in June 2010 as permitted in accordance with pre-existing collective bargaining agreement executed prior to the date of this Extension Agreement and Amendment Agreement.

"9. By the end of each contract year and/or Extension Year, the Contractor must make all pension and welfare contributions and other required payments as required by an applicable collective

bargaining agreement or other legally binding commitment of the Contractor and which are attributable to each such contract year and/or Extension Year.¹¹ Upon the expiration or other termination of the Contract and/or this Extension and Amendment Agreement, the Contractor shall remain liable for any outstanding pension and/or welfare contributions still due and owing.”

(8) VINTAGE AND AIR-CONDITIONING REQUIREMENTS.

(A) **Age and Condition of Vehicles.** The vehicles affected by this provision include all originally contracted vehicles, (*i.e.*, “contract vehicles”) and all additional and spare vehicles. Except for the age of vehicles, nothing contained in this Paragraph (A) and/or any of its subparagraphs shall be deemed or construed in any manner or to any extent whatsoever to act and/or operate in abrogation or derogation of any other individual or cumulative provisions of the Contract, as heretofore amended and extended.

(1) The Contractor shall service, maintain and repair all vehicles used to perform this Contract in compliance with (i) all manufacturer’s guidelines for maintenance, service and repairs, (ii) all Federal, State of New York and City of New York statutes, regulations, rules, guidelines and policies applicable to service, maintenance and repair of school bus vehicles, (iii) all New York State Department of Transportation and New York State Department of Motor Vehicles policies, rules and regulations, (iv) Federal and State regulations applicable to maintenance and repair of school bus vehicles, and (v) all New York State Education Department, policies, rules and regulations applicable to service, maintenance and repair of school buses. The Contractor shall maintain and, upon demand, shall present to the Director contemporaneously kept, accurate, complete, orderly and written records of the school bus vehicle maintenance and repair activities performed in accordance with the foregoing.

(2) The Director shall have the right to disapprove any vehicles under this Contract and to require the Contractor to furnish acceptable replacement vehicles in the event that the Director determines in his/her judgment any such vehicle(s) to be unfit for service:

(3) During the life of this Extension and Amendment Agreement, Contractors who operate any Mini-Bus Station Wagons (*aka* Mini-Wagons) and/or Mini-Buses or Station Wagons Equipped with Ramps to Accommodated Wheelchairs (*aka* Ramp-Wagons) (collectively “Small School Buses”) must comply with the following with regard to the age of all Small School Buses they operate under this Contract:

(a) Except as provided in subparagraph (5), *infra*, by June 30, 2010 no Small School Buses operated by the Contractor under this Contract may be manufactured before 1994;

(b) Except as provided in subparagraph (5), *infra*, by June 30, 2011, no Small School Buses operated by the Contractor under this Contract may be manufactured before 1995;

¹¹ If an applicable collective bargaining agreement or other legally binding commitment by the Contractor calls for payments to be made within a certain period of time after such payments shall become due and owing, then that period shall be added to the end of each contract year and/or Extension Year for the deadline purposes of this sentence.

- (c) By June 30, 2012, no Small School Buses operated by the Contractor under this Contract may be manufactured prior to 1996;
 - (d) By June 30, 2013, no Small School Buses operated by the Contractor under this Contract may be manufactured prior to 1997;
 - (e) By June 30, 2014, no Small School Buses operated by the Contractor under this Contract may be manufactured prior to 1998; and,
 - (f) By June 30, 2015, no Small School Buses operated by the Contractor under this Contract may be manufactured prior to 1999.
- (4) During the term of this Extension Amendment Agreement, Contractors who operate any standard school buses, dual-door buses and/or hydraulic lift buses (collectively, "Large School Buses") must comply with the following with regard to the age of Large School Buses they operate under this Contract:
- (a) Except as provided in subparagraph (5), *infra*, by June 30, 2010, no Large School Buses operated by the Contractor under this Contract may be manufactured before 1994;
 - (b) Except as provided in subparagraph (5), *infra*, by June 30, 2011, no Large School Buses operated by the Contractor under this Contract may be manufactured before 1995;
 - (c) By June 30, 2012, no Large School Buses operated by the Contractor under this Contract may be manufactured before 1996;
 - (d) By June 30, 2013, no Large School Buses operated by the Contractor under this Contract may be manufactured prior to 1997;
 - (e) By June 30, 2014, no Large School Buses operated by a Contractor under this Contract may be manufactured prior to 1998; and,
 - (f) By June 30, 2015 no Large School Buses operated by the Contractor under to this Contract may be manufactured prior to 1999.
- (5) Any vehicles that shall be first placed into service during the term of this Extension Agreement shall be not more than five (5) years old at the time such vehicle is placed into service, *unless* the Director shall grant a waiver for any given particular vehicle(s) upon receipt of a written request from the Contractor. The continued use of any given contractor's vehicles that are in service in accordance with the terms hereof shall be authorized for use pursuant to the terms of this provision by a contract assignee, upon assignment of a contract with approval of the Board.
- (6) Vehicles ordered before the start of a given Extension Year and delivered before the end of August of an Extension Year shall qualify for purposes of determining the limitations set forth in subparagraphs (3) and (4), *supra*.

(7) In case an assignment of a Contract or an assignment of a separate item of a Contract, which shall have been approved by the BOE, vehicles transferred to the assignee by the assignor, which were in compliance with the assignor's vintage requirements, may be placed in service by the assignee, notwithstanding that such vehicles might otherwise result in non-compliance with the limitations of subparagraph (3) or (4), *supra*. The preceding sentence to the contrary notwithstanding, the assignee Contractor shall have twelve (12) months from the date of BOE approval of an assignment to bring all non-complying vehicles into full compliance with the limitations of subparagraphs (3) and/or (4), *supra*.

(8) For purposes of subparagraphs (3) and (4), *supra*, a manufacture date/placed in service date shall replace the manufacture date to allow a manufacture date one (1) year earlier than current allowance. For explanatory purposes, current BOE rules require that a new vehicle is one with a model year of "x" and a manufacture year of "x - 1." During the term of the Extension and Thirteenth Amendment Agreement, new vehicle shall be a model year of "x - 1" and a manufacture date of "x - 2."

(B) **List of Vehicles.** The Contractor must provide a list of all vehicles, including spare and maintenance vehicles, to be operated during each Extension Year. Each list must show for every vehicle the year, make, type, seating capacity, registration number, bus number, license plate number, owner, lessee (if applicable), and the expiration date of the New York State Department of Transportation approval sticker. The information required under this paragraph must be provided to a Web-Based Application, as supplied and updated by the BOE, and the Contractor must supply a copy of the title or certificate of registration for each listed vehicle. Whenever any changes occur in the list of vehicles as stated on the Web-Based Application, the Contractor must update the list within two (2) BOE Business Days. In addition, the Contractor must provide at the same time written assurance that all vehicles are equipped with two-way radios.

(C) **Air Conditioning/Climate Control Systems.** (1) Each vehicle that is required to have an Air Conditioning/Climate Control System must be equipped with an air conditioning system with sufficient power-train, electrical, and engine cooling support systems to maintain comfortable conditions throughout the entire interior of the vehicle during any warm weather periods at ambient temperatures not higher nor lower than necessary to meet the medical and comfort needs of each passenger. By June 30, 2010, one hundred percent (100%) of Small School Buses operated by the Contractor under this Contract must be equipped with air conditioning/climate control systems. For each vehicle required to have an Air Conditioning/Climate Control System pursuant to the preceding three (3) sentences, the Contractor must cause and permit each such Air Conditioning/Climate Control System to be operated during any and all warm weather periods and/or at any time as necessary for the medical needs of any passengers. The Contractor shall cause the Air Conditioning/Climate Control System on each vehicle to be properly operated, maintained, services and repaired in good working order pursuant to all manufacturer's guidelines for operation, maintenance, service and repairs. Subject to prior approval by the Board, Contractors shall receive a one-time equipment fee for each Large School Bus equipped with air-conditioning/climate control systems, which the Contractor shall place into service during the term of this Extension Agreement. Such equipment fee shall equal the lesser of \$4,000 or one-half of the cost of the Contractor's cost for such air-conditioning system. The Board's prior approval shall not be withheld in instances where the Contractor is required by law to provide air conditioned Large School Buses in order to transport New York City school children. The Board shall pay the cost of

the air-conditioning equipment fee directly to the Contractor. Each air-conditioned vehicle, for which the Board shall pay an equipment fee in accordance with this Paragraph (5)(C), shall be made available for service to the Board on a priority basis. If the Contractor shall accelerate the timing for the purchase of air-conditioned vehicles beyond the timing needed to comply with the vintage requirements under Paragraph (5)(A), *supra*, the Contractor shall be entitled to the air conditioning equipment fee for such air-conditioned vehicles for which the purchase or retrofit thereof shall have been accelerated, *provided*, that the Contractor shall have obtained advance approval for such acceleration from the Director. In cases where the Contractor already shall have met the minimum requirement for the number and/or percentage of vehicles with air-conditioning at the outset of this Extension and Eleventh Amendment Agreement, however, the Contractor shall not be entitled to any reimbursement of any past costs and expenses for the installation, upgrade, retro-fitting, repair and/or maintenance of air-conditioning equipment.

(9) MISCELLANEOUS VEHICLE, OPERATIONAL AND FINANCIAL AMENDMENTS.

(A) Computer Systems. The Contractor shall be required to maintain a computer system sufficient to run applications developed by the BOE Office of Pupil Transportation. The Contractor shall maintain the following: (i) online route establishment, deletion and modification capability; (ii) high speed internet connectivity for electronic routing and other applications; (iii) a website which shall include updated (on a basis as specified by the Director) pick up and drop off times for the routes serviced by the Contractor; and, (iv) such other systems and applications as the Director shall specify with written notice to the Contractor. During the life of this Extension Agreement, the Contractor will be required to update the computer system as required by the Director.

(B) New Laws, Rules, Regulations, Bylaws or School Bus Safety Features. If, starting July 1, 2010, any Federal, State or local laws, rules and/or regulations are enacted, updated, revised, amended or otherwise changed in any manner that shall require the Contractor to undertake any new or revised procedures affecting school bus personnel or operations (*e.g.*, school bus personnel drug or alcohol testing, driver licensing or training procedures, *etc.*) or the introduction onto vehicles of new safety features or any other equipment (*e.g.*, increased seat-back padding, back-up beepers, stop arms, safety sensors, seat belts, *etc.*), the Contractor must comply promptly, and the BOE shall not be liable to pay any additional compensation to the Contractor for such compliance.

(C) Customer Liaison. In each garage maintained to provide services under this Contract the Contractor shall employ personnel dedicated to customer telephone response at the rate of one customer liaison for every 100 buses (to a maximum of three customer liaisons per garage) *except* during the first three weeks of school opening when the ratio shall be one liaison per fifty buses.

(D) Replacement Buses. Replacement buses must be dispatched immediately following a determination that more than thirty minutes will be required for a repair truck to reach a breakdown site.

(E) Safety Kit. Each bus must contain a safety kit including fire blanket, seat belt, cutter, flashlight and liquid clean up kit.

(F) Special Training. Drivers will be made available for not less than two (2) days each BOE School Year for specialized training, *provided*, that the cost of overtime or additional labor costs incurred as a result thereof, if any, will be paid by the BOE to the Contractor.

(G) Geographic Positioning Systems. At the Director's sole discretion, all or any portion of the vehicles and dispatch operations under this Contract may be equipped with a telematics system including, but not limited to, global positioning system ("GPS") hardware and software, automatic vehicle location ("AVL") functionality, and back up cellular emergency communications, including monthly service and maintenance fees. To the extent that the Director requires that telematics system units be added to any vehicles and dispatch stations, DOE will bear all costs including, but not limited to, those units installed on replacement vehicles placed into service pursuant to the provisions of Paragraph J, *supra*. Notwithstanding anything to the contrary in the preceding sentence, the Contractor agrees to incur all costs related to the installation and use of GPS units on at least fifty percent (50%) of its vehicles covered by this Contract by July 1, 2010 and on at least eighty-five percent (85%) of its vehicles covered by this Contract by June 30, 2012. Such costs shall include, but shall not necessarily be limited to, the costs for installation, monthly service, maintenance, operation, repair, and, if necessary, replacement of said GPS Units. All GPS units where Contractor incurs the costs shall be of comparable quality and kind as, the GPS units currently used on the Contractor's vehicles. The Contractor does hereby stipulate, consent and agree that all claims and causes of action asserted by the Contractor in New York Supreme Court, County of New York, under Index Number 603267/08, are waived by the Contractor, and the Contractor, within thirty (30) days of the execution of this Extension and Eleventh Amendment Agreement, will (1) withdraw as a plaintiff or discontinue its claims in the action pursuant to New York Civil Practice Law and Rules Section 3217 with prejudice and without costs, disbursements and/or fees, and (2) execute and deliver to the BOE a general release of its claims against the BOE. With reference to the preceding sentence, the BOE and the Contractor shall execute a Stipulation of Discontinuance for each of the referenced actions, in each of which the BOE and the City of New York, on the one hand, and the Contractor, on the other hand, shall agree to waive and relinquish any and all claims for costs, fees and/or disbursements as against each other arising from referenced actions. The preceding two (2) sentences shall apply to the Contractor *only* to the extent that the Contractor is a plaintiff, petitioner and/or claimant against the BOE in the subject action. Furthermore, if the Contractor is not a plaintiff, petitioner and/or claimant against the BOE and/or the City of New York in the actions described in this paragraph, the Contractor does hereby stipulate, consent and agree that it shall not seek to become a plaintiff, petitioner and/or claimant against the BOE and/or the City of New York in the said actions.

(H) Ramp Wagons. Ramp Wagons, which under current Department of Transportation regulations can only accommodate three (3) wheelchair passengers, shall continue to qualify as Ramp Wagons under the specifications of this Contract, provided, the Board shall have the right to designate certain routes for four wheelchair passengers Ramp Wagons on an as needed basis and to offer such designated routes according to the Pick Order, first to those Contractors with Ramp Wagons having capacity for four wheelchairs and then to those Contractors with Ramp Wagons having capacity for three wheelchairs. Contractors with four wheelchair capacity vehicles shall not be required to accept any such designated routes.

(I) Sales, Excise and Use Taxes. If and to the extent that the New York State Department of Taxation & Finance, the New York State Office of Attorney General, and/or a judicial and/or administrative tribunal with applicable jurisdiction shall require the following provisions to be revised to conform to applicable laws, rules and regulations, the BOE and the Contractor hereby stipulate and agree that, upon the issuance of a ruling making such a revision requirement, the following provisions in this Paragraph (6)(J) shall be deemed so revised automatically and without the need for any further action by the Board and/or the Contractor. ARTICLE (15) of the Extension

and Eighth Amendment Agreement entitled, "Sales, Excise and Use Taxes," is hereby amended to read as follows:

"15. ELIMINATION OF FEDERAL, STATE AND LOCAL TAXES.

"The BOE represents that it is a municipal corporation and school district as defined in the Education Law and the General Construction Law of the State of New York, and as such is exempt from the payment of Federal, State or local sales, excise, compensating use, gross receipts and other applicable taxes, as provided under the U.S. Internal Revenue Code and the Tax Law of the State of New York. The Contractor shall use commercially reasonable efforts to comply with the provisions set forth herein for the elimination of payments of such taxes for otherwise taxable goods, supplies, equipment, services, *etc.*, that the Contractor shall purchase in the provision of the services under this Contract for purposes of resale to the BOE, and the Contractor shall pass along the benefits of related savings to the BOE.

"15.1. CONTRACTOR AS A PURCHASING AGENT.

"15.1.1. The BOE hereby appoints, designates and approves the Contractor to be and to act as the Board's official purchasing agent for purposes of this Contract, to purchase or otherwise lawfully acquire third party services, third party goods, *etc.*, that the Contractor shall reasonably and ordinarily need for purposes of resale to the BOE and otherwise to furnish the services under this Contract. The Contractor hereby accepts the BOE appointment to be and to act as the Board's official purchasing agent as set forth in the preceding sentence. This agency appointment is limited strictly to the purposes of the Contractor's provision of third party services, third party goods, *etc.*, under this Contract and for no other purposes. In furtherance thereof, the BOE shall furnish to the Contractor an agency appointment letter on official NYCDOE letterhead stationery (hereinafter expressed as "Purchasing Agency Letter") that the Contractor shall utilize in all of its purchases or other forms of lawful acquisition from the Contractor's suppliers, sellers, subcontractors or other sources.

"15.1.2. The Contractor shall present a copy of the Purchasing Agency Letter and such other necessary documentation, as provided by the BOE, to each supplier, seller, subcontractor or other source from or with whom the Contractor purchases or otherwise lawfully acquires consumable goods, commodities, materials, supplies, hardware, software, services, *etc.*, for purposes of resale to the BOE in performing this Contract. For each such transaction, the Contractor shall use commercially reasonable efforts to obtain full exemptions from all applicable Federal, State and local sales, excise, compensating use, gross receipts and other applicable taxes. This agency appointment and tax exemption does *not* apply to the purchase or other acquisition of durable goods and equipment such as, but not limited to, school buses, maintenance vehicles, automobiles, durable equipment, durable tools, capital fixtures, *etc.*, that are not for purposes of resale to the BOE or shall otherwise not be consumed in the performance of school bus services and other services under this Contract.

"15.1.3. To the extent legally possible, the Contractor's invoices to the BOE for services purchased from the Contractor shall not include any sales, excise, compensating use, gross receipts and/or other applicable taxes. The Contractor shall use commercially reasonable efforts to cooperate with the BOE and with any third party to ensure that no sales, excise, compensating use, gross receipts and/or other applicable taxes shall be payable by the Contractor or by the BOE with respect to third party goods and third party services that are purchased from third parties by the Contractor on behalf of the BOE.

"15.1.4. The Contractor's agreements with, and purchase orders to, any third party manufacturers, sellers, suppliers and/or service providers as well as all subcontractors in connection with the services performed under this Contract shall specify that the Contractor is a purchasing agent for the BOE. All checks that the Contractor issues for payment to third party manufacturers, sellers, suppliers and/or service providers as well as all subcontractors in connection with the services delivered and performed hereunder shall specify that the Contractor is a purchasing agent for the BOE.

"15.1.5. If any subcontractors or subcontractor's employees shall make any purchases or other forms of lawful acquisition on the Contractor's behalf pursuant to this Contract for purposes of resale to the BOE, the Contractor shall require such subcontractors or subcontractor employees, as the case may be, to use all commercially reasonable efforts to seek and obtain the appropriate sales, excise, use and other tax exemptions on the Board's behalf. In furtherance thereof, the BOE shall furnish to the Contractor, upon written request, a letter on official NYCDOE letterhead stationery of the purchasing agency appointment of each such subcontractor or subcontractor's employee that the said person or entity shall utilize in all of his/her/its purchases or other forms of lawful acquisition from any affected suppliers, sellers, and other sources.

"15.1.6. If the Contractor needs any assistance, advice or modification(s) regarding its agency appointment letter(s), the Contractor shall give written notice of such request to Michael P. Coneys, Esq., Attorney (or his successor), NYC Department of Education, Office of Legal Services, Tweed Courthouse, 52 Chambers St., Room 308, New York, NY 10007-1222; telephone: (212) 374-3442; fax (212) 374-5596; e-mail address mconeys@schools.nyc.gov."

(K) Limitation on Payments for Days When Vehicles Are Not Operated. All provisions of contracts under Serial No. 7164 prescribing no payments for days when vehicles are not operated shall remain unchanged. ARTICLE 28, Paragraph A. of contracts under Serial Nos. 4515, 4516, 4894 and 4952 is hereby amended by the addition of the following language between the existing third and fourth sentences:

"The preceding sentence to the contrary notwithstanding, the Contractor shall be entitled to receive eighty-five percent (85%) of its daily rate(s) per vehicle for 'regularly scheduled school days' on which the Chancellor or his/her designee(s) shall order schools to be closed and/or pupils not to be in attendance for any reason, which per-

centage shall be deemed to represent costs that the Contractor shall be unable to avoid even when service is not furnished. The term 'regularly scheduled school days' is defined as days on which schools are scheduled to be open in accordance with the official BOE Calendar as adopted and published annually with any amendments thereof up to the first day of school in September of each Extension Year."

(L) With respect to Paragraph (9)(K), *supra*, the Contractor does hereby stipulate, consent and agree that all claims and causes of action asserted by the Contractor in New York Supreme Court, County of New York, under Index Numbers 100604/2010 are waived by the Contractor, and the Contractor, within thirty (30) days of the execution of this Extension and Eleventh Amendment Agreement, will (i) withdraw as a plaintiff or discontinue its claims in the action pursuant to New York Civil Practice Law and Rules Section 3217 with prejudice and without costs, disbursements and/or fees, and (ii) execute and deliver to the BOE a general release of its claims against the BOE and the City of New York. With reference to the preceding sentence, the BOE and the Contractor shall execute a Stipulation of Discontinuance for each of the referenced actions, in each of which the BOE and the City of New York, on the one hand, and the Contractor, on the other hand, shall agree to waive and relinquish any and all claims for costs, fees and/or disbursements as against each other arising from referenced actions. The preceding two (2) sentences shall apply to the Contractor *only* to the extent that the Contractor is a plaintiff, petitioner and/or claimant against the BOE and/or the City of New York in the subject action. Furthermore, if the Contractor is not a plaintiff, petitioner and/or claimant against the BOE and/or the City of New York in the action described in this paragraph, the Contractor does hereby stipulate, consent and agree that it shall not seek to become a plaintiff, petitioner and/or claimant against the BOE and/or the City of New York in the said actions.

(M) Pick Order during Periods of Extension. Article 36 of all contracts under Serial Nos. 4515, 4516, 4894, 4952 and 7164 is hereby amended by the addition of a new Paragraph E entitled, "Pick Order during Periods of Extension," to read as follows: "During periods of extension of this Contract, the Director shall offer any 'additional' vehicle(s) to contractors in the relevant contractual item(s) as determined by the price order of contractors (i.e., from lowest to highest) established as of June 1st of each Extension Year (herein expressed as "Pick Order"), pursuant to the procedures specified above in Paragraph C."

(10) GENERAL MISCELLANEOUS AMENDMENTS.

All else to the contrary notwithstanding, the Contract is hereby amended as follows:

(A) Changes Affecting Contractor. The Contractor shall provide written notice to the BOE on forms prescribed by the Director of each change affecting the following: partners, sole proprietors, management control, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, or the organization of ownership of the Contractor, *i.e.*, the corporation, partnership or sole proprietorship. Changes in the Contractor include, but are not limited to, the following: corporate or partner voting power; sale, transfer or other alienation of corporate, partnership or sole proprietorship assets; sale or transfer of corporate stock or partnership interest over five percent (5%); or, any other action that may affect BOE interests. Without the prior approval of the Director, which approval shall not be unreasonably withheld, (i) the Contractor shall not change its chief executive

officer (with the exception of a person who has held an executive position with a Board school bus transportation Contractor for at least five years), and (ii) the Contractor shall not be subject to a change of control (with the exception of a transfer of ownership interests among family members).

(B) Unlawful or Unenforceable Provisions Void. Whereupon this Extension and Amendment Agreement shall be found to contain any unlawful or unenforceable provision(s), such provision(s) shall be deemed of no effect and will, upon application of either party, be stricken from this document without thereafter affecting the binding force of the remainder of this Extension and Eleventh Amendment Agreement.

(C) Approval and Execution. This Extension and Amendment Agreement will not become binding or effective upon the Board of Education until the following series of events will have transpired: (1) approval as to legal sufficiency by the BOE Office of Legal Services; (2) approval of a Request for Authorization (herein expressed as "RA") by the Chancellor; (3) approval of the contract award by the Board's Panel on Educational Policy; (4) execution on behalf of the Board of Education by the Chancellor or his/her designee; (5) approval by the New York State Commissioner of Education; (6) registration by the Comptroller; and, (7) initial approval and subsequent annual re-approval by the New York State Financial Control Board pursuant to the New York State Emergency Act for the City of New York, as the rules and regulations of said Board so require.

(D) Implementation of the State Education Law. This Extension and Eleventh Amendment Agreement is intended to implement the provisions of Education Law §305(14) and the attendant regulations of the State Commissioner of Education. Whereupon there shall exist any inconsistency between the BOE and the SED concerning this statutory provision, the attendant regulations of the Commissioner of Education and/or any formula(e) for reimbursement of funds, this Extension and Amendment Agreement shall be deemed amended automatically to conform to the interpretation of the SED but only for the protection of BOE interests and only at the Board's option.

(E) Comptroller. The Comptroller shall endorse hereon during the term of this Contract his/her certificates that there are appropriations or funds applicable thereto sufficient to pay the estimated expense to execute and operate this Contract during the respective fiscal periods.

(F) Construction. As used herein, the singular shall include the plural and *vice versa*. As used herein, all masculine, feminine and neuter pronouns and other gender descriptions shall be deemed synonymous and interchangeable.

(G) Performance Bond Requirements. The Contract is amended so that Contractors with senior management with at least ten years of continual contract performance with the Board will have the option to either (a) post an annual performance bond in the amount required hereunder, or (b) pay to the Board an annual security fee equal to one half of one percent of such bond amount.

(H) Assignment. Contractors may assign their Contracts subject to the prior approval of the Board. Contractors shall not be permitted to assign a portion of a specific item of service without the prior approval of the Board which approval shall only be granted when it is determined to be in the best interests of the Board in order to maintain service. In the event a Contract Item is split, the

Contractor to whom part of an item is assigned shall be placed immediately behind the assignor in the Pick Order.

(I) **Billing Liaison.** The Board shall designate a Board employee who shall serve as billing liaison to contractors, who shall promptly address inquires regarding contract billing and who shall have authority to resolve billing errors.

(J) **Route Changes and Use of Toll Roads.** A Contractor may request the Board's approval for an alternative vehicle route, which approval shall not be unreasonably withheld. Approval shall not be withheld for any such route change which (a) results in a reduction of travel time, or (b) results in a non toll road route that is within fifteen (15) minutes in duration of the toll road route, unless a restricted time student is on such route and the additional time for the non-toll road route will exceed the time that the affected child shall be permitted to be on the bus, unless the bus shall not arrive at the school on time for the start of its regular session, and provided, that there shall be no additional cost to the BOE.

(K) **Liquidated Damages.** The text of Article 44 entitled, "Liquidated Damages," of Contract Serial Numbers 4515, 4516, 4894, 4952 and 7164, as heretofore amended, is deleted in its entirety and is replaced with entirely new text expressed in Attachment C as incorporated into this Extension and Eleventh Amendment Agreement in Paragraph (2)(d), *supra*.

(L) **Compensation for After School Programs.** Contractors shall receive compensation for forty-five (45) minutes of service after the scheduled discharge time for after-school programs designated by the Director. For example, if a program shall have a 5:30 P.M. dismissal, the Contractor shall receive payment from 3:30 P.M. through 6:15 P.M.

(M) **Volume Automotive Fuel Purchasing and Administration Program.** The Volume Automotive Fuel Purchasing and Administration (also known as "VAFPA") Program, designated as Article 38-A, is hereby amended to the extent that the first sentence of Paragraph (A)(5) thereof shall read as follows:

"Commencing on the date on which each ULSDF Contractor started to purchase ultra low sulfur diesel fuel from the VAF Supplier and until June 30, 2006, each such ULSDF Contractor shall use only ultra low sulfur diesel fuel in its diesel engine school buses, as made available by the VAF Supplier."

(N) **Prompt Payment Discount.** Effective until August 31, 2012, the BOE and the Contractor agree that the Contract is hereby amended by the deletion of all references to a two percent (2%) prompt payment discount, expressed in Article 28 entitled, "Payment."

(O) **Billing Procedure; Deductions From Contractor Payments.** No deductions or offsets from payments due to the Contractor under the Contract shall be made unless the Board shall contemporaneously provide the Contractor with a statement detailing the amount of the deduction and the basis therefor. Revisions to the Contractor's billing work sheets and payment authorization for charter services shall be made available to the Contractor online within 24 hours of such revision or authorization.

(P) **Field Trip Notices.** The BOE shall advise all Contractors of all assignments of field trips after such assignments shall be made by posting such information on the BOE website.

(Q) **Attachment of Contractor's Contract Numbers and Items.** To each of the previous extension and amendment agreements, the BOE had attached a listing of the Contractor's contract serial numbers and item designations within each of such serial numbers. For purposes of this Extension and Eleventh Amendment Agreement, such listing shall be made part of "Attachment B," as heretofore incorporated by reference.

(R) All references in the Contract, as heretofore amended and extended, to the "Chancellor's Board of Review" and/or "Board of Review," are hereby deleted and replaced with the phrase "BOE Chief Executive for School Support Services, his/her successor, and/or such other person(s) designated in writing by the Chancellor or his/her designee." All references in the Contract, as heretofore amended and extended, to the terms "Director," "OPT Director," "Director of the Office of Pupil Transportation" and similar designations with the same meaning are deemed to include "Executive Director of the BOE Office of Pupil Transportation," "BOE Chief Executive for School Support Services," "BOE Chief Executive—Nutrition and Transportation, and/or such other person(s) as may be designated in writing by the Chancellor or his/her designee." All references by whatever language in the Contract, as heretofore amended and extended, to "Article 8," "Article VIII" or "Section 8.3" of the BOE "By-laws," "By-Laws" or "Bylaws," are hereby deleted.

(S) ARTICLE 25 entitled, "Period of Contract," is amended so that the period for the performance of transportation scheduled is for the period beginning July 1, 2010 and ending August 31, 2012, unless notified by the Director or his/her designee that the date of termination is earlier or later, in accordance with Subparagraph 25B.

(T) This Extension is intended to implement Education Law §305(14). In the event of any inconsistency in interpretation of that Section, the Regulations of the Commissioner and formulas for reimbursement, between the Board and the State Education Department, this Agreement shall be deemed amended to conform to the interpretation of the State Education Department but only for the protection of the interests of, and at the option of, the Board.

(U) **Most Favored Nation Provisions Deleted.** The Contract, as previously amended and extended, is hereby amended for the period of the Extension and Eleventh Amendment Agreement by the deletion of any and all provisions that provide favorable and/or more favorable terms, conditions and/or specifications to the Contractor in the event such more favorable terms, conditions and/or specifications are offered in other extension/amendment agreements and/or in other Requests For Bids for special education services, general education services or other transportation services.

(V) **Late Invoices.** Invoices from the Contractor received any more than sixty (60) calendar days after the end of the month in which the service shall have been rendered will be returned unpaid, and the BOE shall not be liable to the Contractor for any such payment. Anything in the preceding sentence to the contrary notwithstanding, invoices from the Contractor received more than sixty (60) calendar days after the end of the month in which the service shall have been rendered, will be accepted for by the BOE for processing, when payments were required under the following

circumstances: (1) a retroactive change in unemployment insurance rates; (2) a court order or judgment; (3) a BOE audit report; or, (4) a BOE error, e.g., recovery of disputed BOE deductions.

(W) Audit of Financial Statements and Information. The Contractor hereby consents to an audit of any and all financial records related to this Contract by the BOE and/or its agents or designees, the New York City Comptroller, and/or the New York State Department of Audit and Control. Each year of the Contract as extended and/or upon the request of the New York State Department of Audit and Control, the BOE Office of the Auditor General, the New York City Comptroller and/or the New York City Department of Investigation, the Contractor shall furnish information and documents as specified by any of these agencies including, but not limited to, the Contractor's income tax forms filed with the City, State and Federal government for the term of this Contract, Balance Sheets, cash flow statements, and so forth.

(X) Annual Financial Statements. Within one hundred eighty (180) days after the end of the Contractor fiscal year, the Contractor shall provide annually to the Director full and accurate copies of its annualized balance sheets, cash flow statements, statements of income and expenses and such other similar documents as the Director may reasonably request. All of the documents expressed in the preceding sentence must be prepared by a Certified Public Accountant (herein expressed as "CPA") licensed by the State of New York. All such documents must be accompanied by a written review report stating that a review shall have been performed in accordance with AU623, *et seq.*, as established and periodically updated by the American Institute of Certified Public Accountants (herein expressed as "AICPA") as of the date of a given review report, and that the information in each such document shall have been based upon the representations of the Contractor's management. Each review report shall describe the nature of a review as distinct from an audit and shall describe the standard procedures that the CPA shall have performed, e.g., an inquiry and an analytical review. Each review report shall give the limited assurance that, based upon the review, the CPA shall not have been aware of any material modifications that should be made to each such document for it to be in conformity with AU623, *et seq.*, as established and periodically updated by the AICPA. A compilation report is insufficient to meet the requirements of this Subparagraph (X). The CPA/PA who shall prepare each of the aforementioned documents must have no interest in this Contract, the Contractor and/or any entity affiliated in any manner with the Contractor and must so certify in writing in each review report.

(1) Confidentiality of Annual Financial Statements. To the extent permissible by law, the copies of Contractor's and any subsidiary's and/or other affiliated business entity's annualized balance sheets, cash flow statements, statements of income and expenses and such other similar documents as the Director may reasonably request, which are submitted by the Contractor to the BOE and/or its employees agents and/or designees, shall be withheld from public access under the provisions of Federal Freedom of Information Act ("FOIA") and/or the New York State Public Officers Law, Article 6, Section 84-90 *et seq.* (Freedom Of Information Law) ("FOIL"), in accordance with the provisions of Section 87 (2)(d) of such law, which provides that information submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed would cause substantial injury to the competitive position of the subject enterprise, may be withheld from public access. The Contractor has requested that the aforementioned documents be treated as such in accordance with the provisions of FOIL Section 87 (2)(d) and, accordingly, BOE shall not grant public access to the information

that the Contractor is required to submit to the BOE and/or its employees agents and/or designees in accordance with Paragraph (10)(X), *supra*. If the BOE shall decide in the case of a request for public access to any of the aforementioned documents that FOIA and/or FOIL, as applicable, would not permit the denial of such a request for access, the BOE shall provide at least five (5) business days advance written notice to the Contractor of each such decision to grant public access, *provided and to the extent* such advance written notice shall be permissible under the applicable law.

(Y) On at least an annual basis, the Contractor must submit to the OPT Director written confirmation that its pension fund and health/welfare fund liabilities have been audited and that there are no outstanding balances. If the Contractor is not subject to any requirements for pension fund and/or health/welfare fund contributions, the Contractor must submit to the OPT Director a written certification to that effect not later than September 30th of each Extension Year.

(Z) Cancellation.

General Terms and Conditions Section 25 entitled, "Cancellation," of Contract Serial No. 7164 is hereby adopted as the cancellation provision for all contract serial numbers under this Extension and Eleventh Amendment Agreement. General Terms and Conditions Section 25 entitled, "Cancellation," is amended by the addition of new paragraphs "I," "J," "K," "L," "M" and "N" to read as follows:

"(I) In addition to those instances specifically referred to in other articles, sections, paragraphs and/or subparagraphs in the Contract (including heretofore in this Section 25) as heretofore amended and extended, the Chancellor or a person(s) designated by the Chancellor shall have the right to declare the Contractor in default of this Contract if:

- "(1) The Contractor shall substantially cease and/or abandon its performance of the one or more items of the Contract; or if
- "(2) The Contractor shall, without just cause, reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the Chancellor, to perform the work and/or services of the Contract; or if
- "(3) The Contractor shall sublet, assign, transfer, convert or otherwise dispose of this Contract other than as herein specified; or sell or assign a majority interest in the Contractor other than as herein specified; or if
- "(4) The Contractor fails to secure and maintain all required insurance; or if
- "(5) A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or if
- "(6) The Chancellor or a person(s) designated by the Chancellor shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if
- "(7) Any statement or representation of the Contractor in the Contract or in any document submitted by the Contractor with respect to the work and/or services under the Contract or the Contract (or for purposes of securing the Contract) was untrue or incorrect when made.

“(8) “Violation of material provisions of the Contract including, but not limited to, those set forth below:

“(a) The Contractor’s failure without good cause to perform in accordance with the material terms, conditions and specifications provided in the Contract such as, but not limited to, late school bus service, unclean school buses, vehicular breakdowns, vehicular accidents caused by the vehicle operator, moving violations, corporal punishment incidents, controlled substance/alcohol abuse incidents, and/or other service oriented issues;¹² or,

“(b) Use of unauthorized subcontractors; or,

“(c) Refusal to cooperate with reasonable requests of BOE inspectors and representatives with respect to work under this Contract.

“(9) The Contractor or any of its officers, directors, partners, five (5%) percent shareholders, principals, or other persons substantially involved in its activities, commits any of the following acts or omissions:

“(a) indictment or conviction under any state or federal law of any of the following:

“(1) a criminal offense incident to obtaining or attempting to obtain or performing a public contract; or,

“(2) an offense indicating a lack of business integrity that seriously and directly affects responsibility as a BOE contractor;

“(b) judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

“(c) arrears for taxes owed to the Federal, State or City governments, unemployment insurance payments to the State, and/or Worker’s Compensation Insurance premiums;

“(d) making or causing to be made any false, deceptive, or fraudulent material statement in any bid, proposal, or application for BOE or other government work;

“(e) improper conduct, including but not limited to, intentional or grossly negligent billing irregularities, submitting false or exaggerated claims, falsification of documents or records, willful destruction of documents or records the Contractor had an obligation to maintain, bribery, use of false or deceptive statements to obtain some benefit, causing competition to be restrained or limited, misrepresentation, violation of ethical standards established by the BOE, and other dishonesty incident to obtaining, pre-qualifying for, or performing any contract or modification thereof; or

“(f) any other cause sufficiently serious and compelling that a reasonable person would seriously doubt the capability of the Contractor to perform its obligations under this Contract.

¹² For late school bus service, unclean school buses, vehicular breakdowns, vehicular accidents caused by the vehicle operator, moving violations, corporal punishment incidents, controlled substance/alcohol abuse incidents, and/or other service oriented issues, there must be a pattern of repeated incidents for which the Contractor shall have taken insufficient corrective and/or disciplinary action as reasonably deemed appropriate by the BOE.

“(g) Imputed Conduct.

“(1) The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, management employee, or other individual who controls the Contractor may be imputed to that Contractor when the conduct occurred in connection with the individual’s performance of duties for or on behalf of the Contractor or with the Contractor’s knowledge, approval, or acquiescence. The Contractor’s acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

“(2) The fraudulent, criminal, or other improper conduct of the Contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the Contractor who participated in, knew of, or had reason to know of the Contractor’s conduct and that such conduct was fraudulent, criminal or otherwise improper.

“(3) The fraudulent, criminal, or other seriously improper conduct of a Contractor’s subcontractor(s) may be imputed to the Contractor if the conduct occurred for or on behalf of the Contractor, or with the knowledge, approval, or acquiescence of the Contractor. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

“(J) *Except* for Section 25, Paragraphs (F)-(G), *supra*, before the Chancellor or a person(s) designated by the Chancellor shall exercise his/her right to declare the Contractor in default, the Chancellor or a person(s) designated by the Chancellor shall give the Contractor (1) an opportunity to be heard, upon not less than seven (7) business days notice, and (2) with respect to the grounds for default enumerated in Section 25, Paragraphs (I)(2), (I)(4) and (I)(8), *supra*, ten (10) days within which to cure the default alleged in the notice. Anything in the preceding sentence to the contrary notwithstanding, the Contractor shall *not* be entitled to cure a default(s) with respect to the grounds for default enumerated in Section 25, Paragraphs (I)(2), (I)(4) and (I)(8), *supra*, if (1) the Contractor shall have received a Notice of Default previously with respect to the same and/or similar type(s) of ground(s) for default, or (2) the ground(s) for default shall be susceptible to repetition after the period of cure such as, but not necessarily limited to, late school bus service, unclean school buses, vehicular breakdowns, vehicular accidents, moving violations, corporal punishment incidents, controlled substance/alcohol abuse incidents, and/or other service oriented issues that evince severe financial distress of the Contractor an/or a serious inattention to the quality of pupil transportation service.

“(K) The right to declare in default for any of the grounds specified or referred to in this Section 25 (*except* Section 25, Paragraphs (F)-(G)) shall be exercised by sending the Contractor a notice, signed by the Chancellor or a person(s) designated by the Chancellor, setting forth the ground(s) upon which such default is declared (herein expressed as “Notice of Default”), subject to the Contractor’s right cure and/or be heard with respect to the violation(s) alleged.

“(L) The determination of the Chancellor or a person(s) designated by the Chancellor that the Contractor is in default shall be conclusive, final and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract. If the Contractor protests the determination of the Chancellor or a person designated by the Chancellor, the Contractor may commence a lawsuit in a court of competent jurisdiction of the State of New York, County of New York under Article 78 of the New York Civil Practice Law and Rules. However, nothing expressed herein shall deprive the Contractor of its right to such payments to which it may be entitled for work performed under the Contract not subject to, and/or associated with, the ground(s) expressed in the Notice of Default.

“(M) The Board may terminate and/or suspend the Contract immediately without notice and/or an opportunity to cure in cases in which the Board has reason to believe that the Contractor is performing in a manner which would endanger the health, safety and/or welfare of pupils and/or their families. In such case, the Board shall administer the opportunity to be heard expressed in Section 25, Paragraph (J) in a post-termination manner.

“(N) The foregoing provisions of Section 25(I)-(M) shall be in addition to, and not in derogation of, the pre-existing provisions governing cancellation of the Contract for reasons of default.”

(AA) All other provisions of the Contract(s) and all previous Extension and Amendment Agreements except those herein noted and revised, shall remain in full force and effect.

(AB) The Contractor does hereby stipulate, consent and agree that all claims and causes of action asserted by the Contractor in New York Supreme Court, County of New York, under Index Numbers 117760/2009, 101622/2010, 104990/2010, 123850/1993 and 105004/2010 are waived by the Contractor, and the Contractor, within thirty (30) days of the execution of this Extension and Eleventh Amendment Agreement, will (i) withdraw as a plaintiff or discontinue its claims in both of the actions pursuant to New York Civil Practice Law and Rules Section 3217 with prejudice and without costs, disbursements and/or fees, and (ii) execute and deliver to the BOE a general release of its claims against the BOE and the City of New York in each of the actions. With reference to the preceding sentence, the BOE and the Contractor shall execute a Stipulation of Discontinuance for each of the referenced actions, in each of which the BOE and the City of New York, on the one hand, and the Contractor, on the other hand, shall agree to waive and relinquish any and all claims for costs, fees and/or disbursements as against each other arising from referenced actions. The preceding two (2) sentences shall apply to the Contractor *only* to the extent that the Contractor is a plaintiff, petitioner and/or claimant against the BOE and/or the City of New York in the subject actions. Furthermore, if the Contractor is not a plaintiff, petitioner and/or claimant against the BOE and/or the City of New York in the actions described in this paragraph, the Contractor does hereby stipulate, consent and agree that it shall not seek to become a plaintiff, petitioner and/or claimant against the BOE and/or the City of New York in the said actions.

(AC) Notwithstanding anything to the contrary in the Contract, the Contractor agrees to incur all costs related to the installation and use of video cameras on at least five percent (5%) of its vehicles covered by this Contract by June 30, 2011, and on at least thirty five percent (35%) of its ve-

hicles covered by this Contract by the June 30, 2014 (the "Additional Video Cameras"). The Additional Video Cameras shall be over and above the video cameras that the BOE may opt to have installed on the Contractor's vehicles, if any. Such costs incurred by the Contractor shall include, but shall not necessarily be limited to, the costs for installation, monthly service, maintenance, operation, repair, and, if necessary, replacement of the said Additional Video Cameras. The Additional Video Cameras shall be in addition to, and of comparable quality and kind as, the video cameras currently used on the Contractor's vehicles, if any.

(AD) The Contractor agrees to incur all costs related to the installation and use of sleeping child alarm units on at least seventy five percent (75%) of its vehicles covered by this Contract by June 30, 2012 and on all of its vehicles covered by this Contract by June 30, 2014. Such costs shall include, but shall not necessarily be limited to, the costs for installation, monthly service, maintenance, operation, repair, and, if necessary, replacement of said child sleeping alarms.

(AE) The Contractor agrees to continue using and to incur all costs related to the use of Bio-Diesel blended fuel in all of its diesel vehicles unless Bio-Diesel fuel becomes unavailable or price prohibitive. The BOE and the Contractor agree that for the purposes of this provision *only*, twenty cents per gallon above standard diesel prices within the five boroughs of the City of New York will be deemed price prohibitive. For the avoidance of doubt, the foregoing shall not affect Contractor's obligations under any other provision in this Contract.

(11) CONFIDENTIALITY OF RECORDS.

All personally identifiable student and BOE staff information obtained by or furnished to the Contractor by the BOE, and all reports and studies containing such information prepared or assembled by the Contractor, are to be kept strictly confidential by the Contractor and shall not be provided or disclosed to any third party without the express written permission of the Director. The Contractor shall limit access to such material in its control to those of its employees performing services pursuant to this Contract strictly on a need to know basis. The Contractor shall restrict its use of the information to its performance under this Contract and shall return all such material to the Board upon the completion of the services herein.

(12) AFFIRMATION OF RESPONSIBILITY AND PAID TAXES.

The Contractor hereby affirms and declares that the Contractor is not in arrears to the City of New York upon any debt, contract and/or taxes and is not a defaulter, as a surety or otherwise, upon any obligation to the City of New York, and has not been declared not responsible, or disqualified, by any City of New York agency, nor is there any proceeding pending regarding the responsibility or qualification of the Contractor to receive public contracts except as stated in the affirmation pertaining to the foregoing which has been furnished to the BOE.

(13) DUTY TO REPORT.

The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners, employees and/or Affiliates, has any interest nor shall any of them acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services under this Agreement. The Contractor further represents and warrants that, in the performance of this Agreement, no Person having such interest or possible interest shall be employed or other-

wise engaged by it. The Contractor and its directors, officers, members, partners, employees and Affiliates must report to the Office of the Special Commissioner of Investigation for the New York City School District ("SCI"), 80 Maiden Lane, 20th Floor, New York, NY 10038, (212) 510-1500, (877) 888-8355, any such interest or possible interest. The Contractor and its directors, officers, members, partners, employees and Affiliates must report to the SCI any criminal activity of which they have knowledge concerning the execution or performance of this Agreement. The Contractor must inform in writing each of its directors, officers, members, partners, employees and Affiliates of his/her duty to report.

(14) INVESTIGATIONS.

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York ("State") or City of New York ("City") governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or,

(2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then:

C. (1) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license may convene a hearing, upon not less than (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(2) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph (14)E, *infra*, without the City and Board incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City and Board; and/or,

(2) The cancellation or termination of any and all such existing City and Board contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City and Board incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Board.

E. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subparagraphs (1) and (2), *infra*. He or she may also consider, if relevant and appropriate, the criteria established in subparagraphs (3) and (4), *infra*, in addition to any other information which may be relevant and appropriate:

(1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit including, but not limited to, the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought;

(2) The relationship of the person who refused to testify to any entity that is a party to the hearing including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity;

(3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City and the Board; and/or,

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph (14)D, *supra*, provided, the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Paragraph (14)C(1), *supra*, gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. (1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, licenses, leases, or permits from or through the City or Board or otherwise transacts business with the City or Board.

(4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

G. In addition to and notwithstanding any other provisions of this agreement, the commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or Board, or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Contractor or affecting the performance of this agreement.

(15) CONFLICTS OF INTEREST.

A. Except as stated in Paragraph (15)B, *infra*, no non-governmental Contractor may have on its Board of Directors (or comparable body), employ or have under contract for services (1) any present full-time officer or employee of the City of New York or the Board of Education or any part-time officer or employee of the Board, or (2) any present full-time officer or employee of the City on leave from the City or the Board or any part-time officer or employee of the Board currently on leave from the Board. Generally, the Conflicts of Interest Board may grant waivers of this provision, if an employee or officer is not involved in the Contractor's business with the City or the Board. Said waivers are discretionary and must be approved prior to the commencement of services by that individual. The Board of Education's Ethics Officer must be contacted if an officer or employee wishes to request a waiver.

B. No Board of Education officer or employee may serve as an unpaid member of a Board of Directors (or comparable body) of a non-governmental not-for-profit Contractor without the permission of the Chancellor. To obtain this permission, the officer or employee must contact the Board of Education's Ethics Officer. All other City officers or employees may serve as unpaid members of Boards of Directors (or comparable body) of a non-governmental not-for-profit Contractor, if the officer or employee has no involvement with the Contractor's business with the City or the Board.

C. No officer or employee of the Board of Education, or the officer or employee's spouse/domestic partner or unemancipated child(ren) may have an ownership interest in the Contractor, defined as an interest which exceeds five percent of the firm or an investment of \$32,000 in cash or other form of commitment, whichever is less, and any lesser interest when the officer or employee or spouse, unemancipated child(ren), or domestic partner exercises managerial control or responsibility regarding any such firm. For Contractors with stock that is publicly traded, compliance with this Paragraph (15)C is the obligation of Board of Education employees and officers.

D. No former BOE officer or employee may appear before the Board on behalf of a non-governmental Contractor within one year of the former officer or employee's termination of service with the Board. An appearance before the Board includes all communications with the Board. However, a former employee of the Board is not prohibited from serving on a non-governmental Contractor's Board of Directors (or compa-

rable body), or from employment or contracting for services with the Contractor, provided, the former employee does not appear before the Board within one year of the termination of service with the Board.

E. No former officer or employee of the City (including the Board) may have any involvement on behalf of a non-governmental Contractor with any aspect of a contract, including services under that contract, if that former officer or employee was involved substantially and personally with any aspect of that contract while employed by the City. Any former City employee whose duties for the City or the Board involved a contract shall contact the New York City Conflicts of Interest Board for clarification before having any involvement with the contract on behalf of a non-governmental Contractor or any other private interest.

F. The Contractor warrants that, other than a *bona fide* employee or contractor regularly working as a sales representative for the Contractor, no person, selling agency, or other entity has solicited or secured this Agreement, or has been employed or retained to do so, for a commission, percentage, brokerage fee or contingent fee.

G. The Contractor shall not give, and warrants that it has not given or promised to give, any gift to a community school board member, school leadership team member or to any officer, employee or other person whose salary is payable in whole or part from Board or City funds, or other funds under this Agreement. The word "gift" shall include, without limitation, money, tangible goods, services, loans, promises or negotiable instruments. (2/13/01)

H. If the Contractor violates any provision of this Paragraph (15), the Board may, at its option: (1) cancel and terminate this Agreement and be relieved of all liability hereunder; (2) deduct all amounts paid by the Contractor or other value given by the Contractor in violation of this Paragraph (15) from payments made or to be made to the Contractor under this or any other Agreement at any time; (3) require the refund of any funds paid hereunder; (4) any combination of the foregoing; or, (5) any other action the Board deems necessary and appropriate as permitted by law. Any breach of the warranties or violation of the provisions of this Paragraph (15) shall be grounds to find the Contractor or its principals as not a responsible bidder on other Board or City contracts.

I. The Contractor shall adhere to the Central Board of Education policy on Conflicts of Interest, the Chancellor's Regulations on Conflicts of Interest C-110, and the New York City Charter provisions on Conflicts of Interest which are hereby incorporated by reference as if fully attached hereto.

[NO FURTHER TEXT APPEARS ON THIS PAGE.]

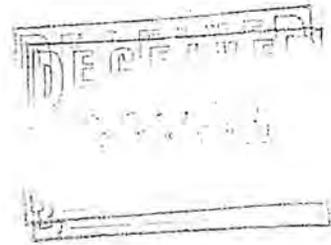
EXHIBIT 4



**Department of
Education**

Carmen Fariña, Chancellor

Kathleen Grimm
Deputy Chancellor



September 9, 2014

Honorable Letitia James
Public Advocate for the City of New York
1 Centre Street, 15th Floor
New York, NY 10007

Dear Public Advocate James:

Thank you for sharing your concerns regarding our students with disabilities, specifically those students in our District 75 program who were provided busing during summer school.

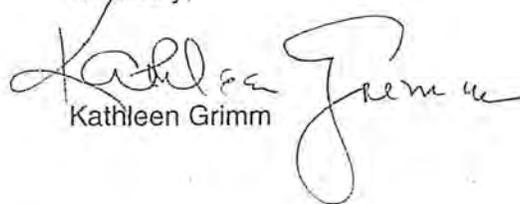
The Department of Education's Office of Pupil Transportation (OPT) takes great pride in providing safe and reliable service to and from school for almost 36,000 students during the summer session. As you note in your letter, not all school buses used by Department of Education (DOE) contractors are equipped with climate-control systems. However, under the current contract specifications the vast majority, approximately 89 percent of the buses used this summer, were equipped with air conditioning.

When a concern is brought to OPT's attention (such as the example illustrated in your letter), it is OPT's policy to investigate immediately, have the vehicle inspected, and require the bus company to remedy the situation. In the example you reference, OPT replaced the vehicle in question with an alternate vehicle.

Going forward, all DOE bus contract bids will require air conditioning on all vehicles. With that said, please keep in mind that because of the engineering and design of school buses (i.e., their use of reinforced steel) air conditioning units only cool to about 15 degrees below the exterior temperature.

I hope this information is helpful. I would welcome the opportunity to further discuss this matter should you have any additional questions or concerns.

Sincerely,


Kathleen Grimm

Cc: Council Member Ydani Rodriguez
Council Member Daniel Dromm
Eric Goldstein, CEO, Office of School Support Services
Jahmila Joseph, Executive Director, Office of Public Affairs

8. My child has an Individualized Education Plan (IEP) for this year, dated April 17, 2015 which requires that his bus ride be air-conditioned for health reasons. See Exhibit 1, IEP.

9. C.P. has had both aggressive and self-injurious behaviors on the bus, and suffers from anxiety. A hot environment is an additional stressor on him which triggers behaviors which cause him harm.

10. He has limited verbal ability to express himself. He does not verbally complain about his needs, such as a need for a reasonably cool environment, rather he tends to act out.

11. His self-injurious behavior has included hitting himself in the head, screaming loudly, crying, throwing things, and biting his arm until it bleeds.

12. Due to the importance of having air-conditioning to my child's health and well-being, and the fact that each summer this is a problem, I decided to take action to protect my child. This summer, I put a thermometer in C.P.'s backpack.

13. The thermometer has a probe which would stick out of the back pack to measure the air temperature near my child. His bus aide would check the thermometer's digital read upon my request. He would text me the numbers and I wrote them down on my logs.

14. On several days this summer the temperature was in the 80s.

15. On Tuesday, August 4, 2015, C.P. rode a bus on the way home from school that was 83 degrees. See Exhibit 2, bus temperature logs.

16. His bus pulled up to my house, and I walked out to meet C.P. His one-to-one aide had texted me that the bus was 83 degrees, and he had just prevented C.P. from hitting another child and offered to stay to help me deal with the child.

17. C.P. was agitated and upset for 20 – 40 minutes after he got off the bus. He groaned and yelled and swore. He was so upset that he bit through his arm until it bled. See Exhibit 3, photograph of arm injury.

18. I took a video recording of his reaction shortly after he arrived at home because this has been a recurring and upsetting problem. See Exhibit 4, video.

19. On August 4, 2015, there were approximately eight or nine other children with disabilities on my child's bus.

20. Generally, there are ten children on his bus, all of whom have disabilities and some of them are smaller than him, as they go to different schools before they drop C.P. off at school.

21. I have complained to the Department of Education (DOE) Office of Pupil Transportation (OPT) about the temperature of the buses. See Exhibit 5, email correspondence.

22. When I complain to the OPT, they give me a complaint number. They do not generally contact parents to tell them how the matter was resolved. I have aggressively pursued complaints via email and so occasionally I do receive a response.

23. The OPT complaint system is reactive, and to my knowledge DOE and OPT do not monitor the temperatures on the buses, nor do they affirmatively monitor whether the air conditioning is working.

24. To my knowledge, the OPT only ever switches buses after complaints. I have never seen or heard of a bus company fixing a broken air conditioner.

25. I complained on July 22, 2014, about the hot bus issue repeatedly, OPT and DOE did not ensure the bus air-conditioning was fixed. Instead they switched buses, presumably giving some other children the bus with no air-conditioning.

26. Although my child was able to change buses because of the lack of air-conditioning and my repeated complaints last summer, in the fall, the bus company switched again. And this summer we had yet another bus company.

27. Over the years, my child has repeatedly had problems with hot buses, and different bus companies.

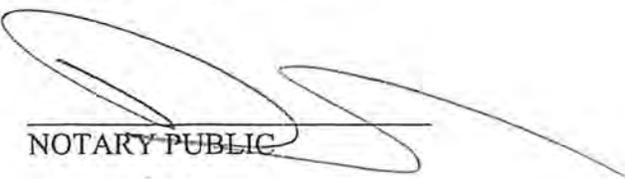
28. Parents tell me that many of the bus companies have buses that are not in good repair and do not reliably have air conditioning.

29. I am aware this problem affects many children because I speak with other parents of children with disabilities frequently.

30. On behalf of my child and others, I ask the Court to order the Department of Education to immediately provide air conditioning and a safe bus ride to and from school for my child and establish a system for ensuring this does not happen in the future.


ROBIN PONSOLLE

Sworn to before me this
11th day of August 2015


NOTARY PUBLIC

DAVID B. RANKIN
Notary Public, State of New York
No. 02RA6314597
Qualified in Kings County
Commission Expires Nov. 10, 2018

EXHIBIT 1

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

STUDENT NAME: [REDACTED]	DISABILITY CLASSIFICATION: [REDACTED]
DATE OF BIRTH: [REDACTED] LOCAL ID #: [REDACTED]	
PROJECTED DATE IEP IS TO BE IMPLEMENTED: [REDACTED]	PROJECTED DATE OF ANNUAL REVIEW [REDACTED]

STUDENT NAME: [REDACTED] NYC ID: [REDACTED]

<p align="center">PRESENT LEVELS OF PERFORMANCE AND INDIVIDUAL NEEDS</p> <p>DOCUMENTATION OF STUDENT'S CURRENT PERFORMANCE AND ACADEMIC, DEVELOPMENTAL AND FUNCTIONAL NEEDS</p>
<p>EVALUATION RESULTS (INCLUDING FOR SCHOOL-AGE STUDENTS, PERFORMANCE ON STATE AND DISTRICT-WIDE ASSESSMENTS)</p> <p>[REDACTED]</p>
<p>ACADEMIC ACHIEVEMENT, FUNCTIONAL PERFORMANCE AND LEARNING CHARACTERISTICS</p> <p>LEVELS OF KNOWLEDGE AND DEVELOPMENT IN SUBJECT AND SKILL AREAS INCLUDING ACTIVITIES OF DAILY LIVING, LEVEL OF INTELLECTUAL FUNCTIONING, ADAPTIVE BEHAVIOR, EXPECTED RATE OF PROGRESS IN ACQUIRING SKILLS AND INFORMATION, AND LEARNING STYLE:</p> <p>[REDACTED]</p>

STUDENT NAME: [REDACTED] [REDACTED]

NYC ID: [REDACTED]

PARTICIPATION WITH STUDENTS WITHOUT DISABILITIES

REMOVAL FROM THE GENERAL EDUCATION ENVIRONMENT OCCURS ONLY WHEN THE NATURE OR SEVERITY OF THE DISABILITY IS SUCH THAT, EVEN WITH THE USE OF SUPPLEMENTARY AIDS AND SERVICES, EDUCATION CANNOT BE SATISFACTORILY ACHIEVED.

FOR THE PRESCHOOL STUDENT:

Explain the extent, if any, to which the student will not participate in appropriate activities with age-appropriate nondisabled peers (e.g., percent of the school day and/or specify particular activities):

FOR THE SCHOOL-AGE STUDENT:

[REDACTED]

[REDACTED]

EXEMPTION FROM LANGUAGE OTHER THAN ENGLISH DIPLOMA REQUIREMENT:

[REDACTED]

STUDENT NAME: [REDACTED] [REDACTED]

NYC ID: [REDACTED]

SPECIAL TRANSPORTATION

TRANSPORTATION RECOMMENDATION TO ADDRESS NEEDS OF THE STUDENT RELATING TO HIS/HER DISABILITY

- None.
- Student needs special transportation accommodations/services as follows:
Adult Supervision - Paraprofessional

Vehicle and/or Equipment Needs - Air Conditioning
Other Accommodations - Limited Travel Time: not more than 60 min
Other accommodations: Door to Door Busing

Student needs transportation to and from special classes or programs at another site:

PLACEMENT RECOMMENDATION

NYC DOE Specialized School

SUMMARY

STUDENT INFORMATION

Student Name: [REDACTED]

NYC ID: [REDACTED]

DOB: [REDACTED]

Gender: [REDACTED]

Parents Language(s) Spoken/Mode Communication: [REDACTED]

IEP INFORMATION

Date of IEP Meeting: [REDACTED]

IEP Amendment: [REDACTED]

Reconvene of IEP Meeting: [REDACTED]

INSTRUCTIONAL/FUNCTIONAL LEVELS

Reading: [REDACTED]

Math: [REDACTED]

SUMMARY OF RECOMMENDATIONS

Classification of Disability: [REDACTED]

EXHIBIT 2

Your name: _____

Where on the bus does your child sit? Back row

Where did you affix the thermometer? In his book bag The sensor hangs out

Temperature Log:

Date:	High Temp logged:	Time of High Temp:	Time recorded:
Tues Aug 4	83.2 (pm)	Between 2:30+ 3 pm	
Wed Aug 5	77.6 (pm)	"	
Thurs Aug 6	83.5	"	
Fri August 7	out	—————>	

Tue August 4 Complaint # 2690108 - [redacted] had a big meltdown & hurt himself

Thurs Aug 6 Complaint # 2690692 - Outside temp was only about 80 this day, the one but bus hotter than outside air??

Your name: _____

Where on the bus does your child sit? Back row

Where did you affix the thermometer? In his book bag, sensor hangs out

Temperature Log:

Date:	High Temp logged:	Time of High Temp:	Time recorded:
Wed, July 29	88 (pm)	between 2:30 & 3pm	
Thurs July 30	78.4 (pm)		
Fri July 31	78.5 (am)		

Your name: _____

Where on the bus does your child sit? Back row

Where did you affix the thermometer? in his book bag - the sensor hangs out

Temperature Log:

Date:	High Temp logged:	Time of High Temp:	Time recorded:
Mon Aug 10	78.4 cpm	2:30-3pm	
Tues Aug 11			

EXHIBIT 3



EXHIBIT 4

A CD-R will be provided under separate cover containing the referenced video clips.
Please contact Rankin & Taylor, PLLC for a copy of the video.

EXHIBIT 5

Subject: RE: No AC again
From: Robinson Alexandra (OPT) (ARobinson22@schools.nyc.gov)
To: robinponsolle@yahoo.com;
Cc: NBowrey@schools.nyc.gov; FJackson@schools.nyc.gov; GConquest@schools.nyc.gov;
KSanchez9@schools.nyc.gov;
Date: Tuesday, July 22, 2014 8:35 AM

Good morning Ms. Ponsolle -

We routinely inspect buses but if a specific complaint has come in on a company or route more than once then we do a further investigation of the company's fleet compliance, driver and attendant policy adherence and in some cases even maintenance records. Also - if something has been reported and the customer has not seen improvement OR experiences the problem again after being told things are "fixed", we further investigate those issues as well. Once you log a complaint it goes to the bus company AND the borough in which the route is running (Queens/Neil in this case) then, before we "close" the complaint, we have the borough research the issues (s), send an inspector to the bus if necessary and look into the complaint further (investigate) - during this time our Customer Service agents will see that the complaint in the system as "under investigation".

Having said all that, I will make sure that somebody gives you a call back today to give you an update. The company is held accountable for any service that is less than acceptable but the goal of course is to make sure that your child and others have a safe and comfortable ride to school.

Thank you for your patience as we look into your concerns.
Alex Robinson

Alexandra Robinson, M.Ed., CDPF
Executive Director, Office of Pupil Transportation (OPT)
New York City Department of Education (NYCDOE)
718.482.5728
ARobinson22@schools.nyc.gov

-----Original Message-----

From: robinponsolle@yahoo.com [mailto:robinponsolle@yahoo.com]
Sent: Tuesday, July 22, 2014 8:20 AM
To: Robinson Alexandra (OPT)
Subject: Fw: No AC again

Dear Ms. Robinson:

Neil has been very helpful. There was no AC again on my son's bus. I logged another complaint and am told bus is "under investigation.". What does this mean.

Did want to make you aware that your operators are transferring parents to bus company without first giving complaint #. This will sidetrack them and is a waste of time. Process is arduous enough.

I am perplexed why my driver was assigned a bus with no AC, when he had one with.

Robin Ponsolle

PS255 PTA
Sent via BlackBerry from T-Mobile

-----Original Message-----

From: Bowrey Neil <NBowrey@schools.nyc.gov>
Date: Tue, 22 Jul 2014 11:28:29
To: 'robinponsolle@yahoo.com' <robinponsolle@yahoo.com>
Subject: RE: No AC again

Good morning,

I hope you are choosing option/queue #4 when you contact OPT (718-392-8855). When you speak to a Customer Service Agent they should not connect you to the bus company unless you request be connected. Have a great day!

NB.

-----Original Message-----

From: robinponsolle@yahoo.com [<mailto:robinponsolle@yahoo.com>]
Sent: Monday, July 21, 2014 3:23 PM
To: Bowrey Neil
Subject: No AC again

Hi Neil:

Hope all is well with you. The new route you put [REDACTED] on is working out well, however, this afternoon, little richie sent our kids in an old bus with no air conditioning. I put my complaint, #2443516 (maybe 2443576?). Can't read my writing.

I do not want the route changed again because hard to coordinate with the para etc. Also, question, when I call OPT operator, why do they say, hold on, I'll connect you with the bus company?". I told her no, just want to make a complaint.

What can we do?

Robin Ponsolle
PS255Q
Sent via BlackBerry from T-Mobile

Subject: Fw: Air Conditioning on District 75 School Buses
From: Robin Ponsolle (robinponsolle@yahoo.com)
To: robinponsolle@yahoo.com;
Date: Thursday, January 15, 2015 9:55 PM

-- On Tue, 7/15/14, robinponsolle@yahoo.com <robinponsolle@yahoo.com> wrote:

> From: robinponsolle@yahoo.com <robinponsolle@yahoo.com>
> Subject: Fw: Air Conditioning on District 75 School Buses
> To: "Jeannie Graham" <j.rikabi@hollyhunt.com>
> Date: Tuesday, July 15, 2014, 10:12 PM
> Fyi. Her reply sandwiched between my
> 2 emails.
> Sent via BlackBerry from T-Mobile

> -----Original Message-----

> From: robinponsolle@yahoo.com
> Date: Sun, 13 Jul 2014 20:27:48
> To: Fariãa Carmen <CFarina@schools.nyc.gov>
> Reply-To: robinponsolle@yahoo.com
> Subject: Re: Air Conditioning on District 75 School Buses

> Dear Ms. Farina:

> I appreciate your prompt response to my email. In all due
> respect, I hope you can and will resolve these issues. I
> think it would mean a lot if you could reach out to some of
> our parents and administrators to share ideas and solutions.
> This situation has been going on for years and I am told by
> some this seems to be the worst year ever. Of course
> you cannot fix the past, but it would mean a lot to our
> parents if they could believe you are with us on this.
> There are other situations (co-locations, for example) where
> our students are not treated well. A message from the top
> can perhaps start to change a "culture" which needs
> changing. All students and families need to feel valued and
> accepted.

> I look forward to better days ahead.

> Robin Ponsolle
> Sent via BlackBerry from T-Mobile

- >
- > It is also common knowledge that extreme heat can cause
- > dehydration, heat exhaustion, cramps, heat stroke, headache,
- > faintness, extreme tiredness, vomiting and death.
- > Would you buy a brand new car with no air conditioning to
- > commute 2-4 hours daily in the middle of summer? I
- > think not. Would you subject your grandchildren to this on a
- > daily basis?
- >
- > Our children already come loaded with their own issues, and
- > most without the ability to communicate their stress.
- > Some will act out, hurting others or hurting
- > themselves. Imagine being in their situation and
- > feeling so powerless.
- >
- > Besides all of this, taxpayer dollars pay bus companies
- > lucrative contracts, and their is minimal accountability.
- > You are in fact, giving these companies permission to hurt
- > our children. At one of our school's sites OPT came to
- > inspect after 4 of the buses had no air the first day of
- > school. When inspected on Monday the 7th, the company
- > (Little Richie, I believe), sent buses with AC. On Tuesday
- > (inspectors gone), the buses without AC were sent once
- > again. This is blatant disregard for our kids. It is
- > criminal for them to not be held accountable with
- > consequences that will change this type of behavior. Just so
- > you know, this is not particular to my school in Queens. I
- > have spoke to colleagues in 2 other large programs as well.
- >
- > Ms Farina, I hope you will take some real action against
- > what is clearly a travesty. Prisons have air
- > conditioning, and those where they don't sue that their 8th
- > Amendment rights are being violated (cruel and unusual
- > punishment). Sadly our children cannot advocate for
- > themselves and are victims of a system that does not value
- > their humanity.
- >
- > I am asking you to please insist that the bus companies that
- > transport our children provide air conditioning throughout
- > the hot weather. If we do not address this, we are
- > tempting fate. I would not want to see (another) District 75
- > child die because we did not have the common sense to
- > address this issue.
- >
- > Respectfully,
- > Robin Ponsolle
- > [REDACTED]'s Mom
- > PS255Q
- > Sent via BlackBerry from T-Mobile

Subject: Route Q734. Osis 205-856-479
From: robinponsolle@yahoo.com (robinponsolle@yahoo.com)
To: penglish@schools.nyc.gov;
Cc: JArenas@schools.nyc.gov; KPosa@schools.nyc.gov;
Date: Wednesday, August 5, 2015 8:20 AM

Dear Mr. English:

Hope all is well with you. I am writing to regarding 2 complaints I have logged with OPT in the past 24 hours.

The first: 26901018 is regarding air-conditioning. Yesterday afternoon my son's bus was 83.2 degrees. He became agitated on the bus and my son's para was able to intervene before he hit another child. Once in the house, he was flush from the heat, tantrumed on and off for 45 minutes and bit through his arm. I have both a photo of his forearm and a couple of minutes of video which gives a clear picture of what can happen when a child with autism is put under duress. Kids like [REDACTED] are very sensitive to their environment. They struggle every day, all day long. A very uncomfortable trip can become the "tipping point" setting off behaviors in the child which can make him dangerous to himself and others.

The second complaint #2690202 is for arriving to school at 7:40, 20 minutes before start time. John Erik has worked very hard on this one and about a week ago they changed our driver and it started again (too early) and I thought it was resolved. Dropping off before school opens is not safe. [REDACTED]'s para is very capable, but 20 minutes is just too much down time. The OPT operator was very nice and called the bus company. She also instructed me not to put [REDACTED] on the bus before 7:25. That doesn't really seem fair to the other 10 kids waiting.

Thanks for your attention. Complaints are logged, but I just wanted to follow up with you as you had mentioned when we spoke a week or so ago. Have a good day.

Sincerely,
Robin Ponsolle
[REDACTED]'s mom
Sent via BlackBerry from T-Mobile

STATE OF NEW YORK.....)

: ss.:

COUNTY OF QUEENS)

I, CATHERINE BOWARD-SIMONE, being duly sworn, deposes and says:

1. I am the parent of R. S., a ten-year old child with a disability who attends PS 177Q in New York City.
2. I presently live at 83-41 253rd Street, Bellerose, NY 11426.
3. My child R. S. has autism and attends a District 75 school.
4. District 75 is a city-wide district educating over 20,000 children with moderate to severe disabilities. District 75 consists of 56 school organizations, some of which have multiple sites. District 75's schools and programs are located at more than 310 sites in the Bronx, Brooklyn, Manhattan, Queens, Staten Island and Syosset, New York.
5. Due to the specific educational needs of District 75 students, the bus routes tend to be longer than for other public school districts as the children's educational needs are met at schools not based upon their proximity to the child's residence.
6. The temperature has been higher than 70 degrees Fahrenheit in New York City on every day in July and August of 2015.
7. My child has an Individualized Education Plan (IEP) for this year, dated June 11, 2015 which requires that his bus ride be air-conditioned for health reasons. See Exhibit 1, IEP.
8. R. S. has limited ability to express himself. He does not verbally complain about his needs, such as a need for a reasonably cool environment.
9. I have met the bus and R. S. every morning and afternoon during the summer session of 2015 and at no time have I observed a bus equipped with air conditioning.
10. Students are not allowed to have water with them on the bus. The combination of the lack of air conditioning and water has caused R. S. visible distress.
11. On July 15, 2015, I called the bus company and complained about the lack of air conditioning on R. S.'s bus.
12. On July 17, 2015, I called the bus company and complained about the lack of air conditioning on R. S.'s bus.
13. On July 21, 2015, I called the bus company and complained about the lack of air conditioning on R. S.'s bus.

14. On July 28, 2015, I called the bus company and complained about the lack of air conditioning on R. S.'s bus.
15. On July 30, 2015, I called the bus company and complained about the lack of air conditioning on R. S.'s bus.
16. On August 4, 2015, I called the bus company and complained about the lack of air conditioning on R. S.'s bus.
17. On August 7, 2015, I called the bus company and complained about the lack of air conditioning on R. S.'s bus.
18. On August 10, 2015, I called the Office of Pupil Transportation (OPT) to complain about the lack of air conditioning and received complaint number 2691431.
19. On August 11, 2015, I called the Office of OPT to complain about the lack of air conditioning and again received complaint number 2691431.
20. On August 12, 2015, I called the Office of OPT to complain about the lack of air conditioning and received complaint number 2691952.
21. At no time have I received a response to my complaints.
22. Over the years, my child has repeatedly had problems with the temperatures on the buses.
23. Parents tell me that many of the bus companies have buses that are not in good repair and do not reliably have air conditioning.
24. I am aware this problem affects many children because I speak with other parents of children with disabilities frequently.
25. On behalf of my child and others, I ask the Court to order the Department of Education to immediately provide air conditioning and a safe bus ride to and from school for my child and establish a system for ensuring my child nor any child is harmed by excessive heat.

Dated: Queens, New York
August 17, 2015

Catherine Boward-Simone
CATHERINE BOWARD-SIMONE

Sworn to before me this 17th
day of Aug, 2015

Randee Patel
Notary Public

POULOMI B PATEL
NOTARY PUBLIC STATE OF NEW YORK
QUEENS COUNTY
LIC. #01PA6056589
COMM. EXP. 03/26/2019

EXHIBIT 1

STUDENT NAME: [REDACTED]

NYC ID: [REDACTED]

PARTICIPATION WITH STUDENTS WITHOUT DISABILITIES

REMOVAL FROM THE GENERAL EDUCATION ENVIRONMENT OCCURS ONLY WHEN THE NATURE OR SEVERITY OF THE DISABILITY IS SUCH THAT, EVEN WITH THE USE OF SUPPLEMENTARY AIDS AND SERVICES, EDUCATION CANNOT BE SATISFACTORILY ACHIEVED.

FOR THE PRESCHOOL STUDENT:

Explain the extent, if any, to which the student will not participate in appropriate activities with age-appropriate nondisabled peers (e.g., percent of the school day and/or specify particular activities):

FOR THE SCHOOL-AGE STUDENT:

Explain the extent, if any, to which the student will not participate in regular class, extracurricular and other nonacademic activities (e.g., percent of the school day and/or specify particular activities):

Student attends a self-contained special education setting within District 75 for the entire school day. [REDACTED]

If the student is not participating in a regular physical education program, identify the extent to which the student will participate in specially-designed instruction in physical education, including adapted physical education:

EXEMPTION FROM LANGUAGE OTHER THAN ENGLISH DIPLOMA REQUIREMENT:

[REDACTED] a Committee has determined that the student's disability adversely affects his/her ability to learn a language and recommends the student be exempt from the language other than English requirement.

STUDENT NAME: [REDACTED]

NYC ID: [REDACTED]

SPECIAL TRANSPORTATION

TRANSPORTATION RECOMMENDATION TO ADDRESS NEEDS OF THE STUDENT RELATING TO HIS/HER DISABILITY

None.

Student needs special transportation accommodations/services as follows:

- Vehicle and/or Equipment Needs - Air Conditioning
- Other Accommodations - Limited Travel Time: not more than 60 min
- Other accommodations: Door to Door

Student needs transportation to and from special classes or programs at another site:

PLACEMENT RECOMMENDATION

school at PS. 1102

[Redacted] is under my care for [Redacted]
(Student's Name) (Diagnosis)

What limitations does this diagnosis cause? (e.g. severely limits ambulation)
[Redacted]

How does this limitation affect the student's ability to attend and participate in class?
(e.g. requires constant medical attention)
[Redacted]

How does this limitation affect the student's ability to take transportation?
(e.g. increases risk for fractures)
[Redacted]

Expected duration of the limitation [Redacted]

Please provide any recommendations to accommodate the student's needs in the classroom and/or during school transportation (please attach additional sheets as needed):

see conditions
no more than 1 hr and 15 mins on bus

I request transportation accommodations to be provided for: _____ weeks

I can be reached at: Tel# _____ and/or Beeper _____ on:
Mon _____ (hrs) Tue _____ (hrs) Wed _____ (hrs) Thu _____ (hrs) Fri _____ (hrs)

Provider's Original Signature [Signature] License # 170523

Print Name / Degree Robert Katz, MD
410 Lakeville Road - Suite #108
New Hyde Park, NY 11042
(516) 465-4377 Date 6/3/15

PARENT CONSENT FOR RELEASE OF MEDICAL INFORMATION

Please complete the attached Authorization for Release of Health Information Pursuant to HIPAA. This form is necessary in the event additional information is required from your physician to approve the request for medical accommodations.

FOR SCHOOL USE ONLY

Student's Name _____ DOB _____ ID # _____

Address _____

PLEASE PLACE PHYSICIAN STAMP HERE