



## Office for People With Developmental Disabilities

ANDREW M. CUOMO  
Governor

THEODORE KASTNER, MD, MS  
Commissioner

August 27, 2020

Ms. Aida Solomon  
Audit Manager  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> Floor  
Albany, NY 12236-0001

Dear Ms. Solomon:

Attached is the Office for People With Developmental Disabilities' comments on the Office of the State Comptroller's follow-up audit report 2020-F-1 entitled "Oversight of Passenger Safety."

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony J. Dolan". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony J. Dolan, CPA  
Principal Internal Auditor

**Office for People With Developmental Disabilities'**  
**Response to the Office of the State Comptroller's Follow-up**  
**Audit 2020-F-1: Oversight of Passenger Safety**

The New York State Office for People With Developmental Disabilities ("OPWDD") appreciates the opportunity to respond to the Office of the State Comptroller's ("OSC") follow-up audit report (2020-F-1) entitled "Oversight of Passenger Safety." OPWDD provides services and support to over 130,000 individuals with developmental disabilities throughout New York State. OPWDD staff use State-owned vehicles for a variety of purposes, including transporting individuals with developmental disabilities, bringing maintenance crews to OPWDD offices and residences, and assisting managerial staff in providing necessary oversight and supervision.

OSC's stated audit objective was to determine whether OPWDD ensures that its vehicles are being operated safely by employees with valid driver licenses. OPWDD has remained committed to this objective and recognizes that certain related controls over traffic violations and vehicle recalls should and will be enhanced. However, OPWDD disagrees with certain OSC recommendations and conclusions as discussed in the responses below.

**RESPONSE TO OSC'S RECOMMENDATIONS**

**Recommendation #1:** Analyze traffic violations and driving histories to identify whether employees need training or counseling, or if they should be reassigned.

**OPWDD Response:** OPWDD agrees with OSC's recommendation but disagrees with OSC's analysis in that the agency does, in fact, have an effective process to monitor and obtain prompt notification when employees' licenses are revoked or suspended. OPWDD receives daily email notifications from the License Event Notification Services (LENS) program – which is connected to the New York State Department of Motor Vehicles (DMV) – to monitor employees' driver's license status and ensure they are qualified to drive a State vehicle. LENS notifies OPWDD if an employee's license status has changed, including suspensions and expirations. OPWDD takes swift action to ensure that any employee who does not have an active or valid license will not be allowed to drive a State vehicle or transport individuals under the agency's care or supervision. Such an employee may also be terminated if driving is a minimum job qualification for their position.

The original OSC report specifically discusses the evaluation of employee traffic infractions incurred on personal time with personal vehicles. Administrative/disciplinary action against employees under such circumstances is unauthorized and contrary to collective bargaining agreements. Article 33 of the Collective Bargaining Agreement between OPWDD and CSEA permits OPWDD to pursue disciplinary action against employees only for on-the-job incompetency or misconduct. Further, the Classification Standards for OPWDD job titles issued by the Department of Civil Service outline minimum job qualifications. These qualifications require that employees in certain job titles maintain a valid driver's license, but they do not require that employees' licenses be free of infractions or accidents. OPWDD cannot unilaterally modify the Classification Standards.

OPWDD has improved its tracking of violations committed in OPWDD vehicles, where the vehicle committing an infraction is photographed and the notice of violation is sent to OPWDD as the vehicle registrant. OPWDD has developed a system to track the assignment locations of each vehicle, as well as the location, date and time any traffic infraction or violation occurs. OPWDD is developing a more robust policy to determine the identity of the driver of the vehicle at the time of an incident by

reviewing vehicle logs. OPWDD will also use this data to identify trends in violations and will consider disciplinary action and required training for employees with frequent violations while on the job.

**Recommendation #2:** Establish procedures to identify employees responsible for traffic violations so that fines are paid timely and/or can be recouped. Ensure that the fines, penalties, and interest identified in this report are collected from employees, as warranted.

**OPWDD Response:** OPWDD disagrees in part with this recommendation. Fines for violations committed by an employee, when engaged in normal work duties, cannot be deducted from an employee's wages, in accordance with the New York Labor Law. Thus, OPWDD cannot involuntarily obtain reimbursement for parking and camera fines. OPWDD, however, has established a centralized process for the collection of violation notices and payment for fines to ensure timeliness and mitigate penalties and interest. OPWDD makes efforts to collect reimbursement for fines from the responsible employee and may issue notices of discipline against those employees for outstanding payment. We note that the disciplinary process is costly and unpredictable.

**Recommendation #3:** Monitor LENS reports to ensure employees maintain valid driver licenses and strengthen the monitoring process to ensure employees with suspended licenses do not drive OPWDD vehicles.

**OPWDD Response:** As discussed above under Recommendation #1, OPWDD already receives and acts promptly on notifications from DMV when employees' licenses are revoked or suspended. This report found that two employees had been driving on the day OPWDD received notification of their suspensions, which were the result of failures to pay a fine. When OPWDD learned of these suspensions, the two employees were prohibited from driving on duty until their licenses were reinstated, approximately two days later. OPWDD has enhanced its process by adding a notification to employees, supervisors, and the transportation office when we learn through LENS that an employee's license is scheduled to be suspended due to non-payment of DMV fees and/or other driving infractions.

We believe that this added step, along with prior process improvements, such as implementing a signed acknowledgement of receipt of the Vehicle Use Policy and collecting more detailed driver information during onboarding, and more frequent post-auditing of employee's in the LENS system will represent meaningful and substantial efforts to ensure staff are not operating agency vehicles while their license is suspended.

**Recommendation #4:** Ensure recall repairs are done timely and maintain supporting documentation of the repairs.

**OPWDD Response:** OPWDD agrees with this recommendation but submits that the agency currently has in place an enhanced monitoring system for identifying and tracking recalls, with frequent periodic reporting, to more efficiently coordinate the response to, and repair of, identified recall-related repairs and modifications. OPWDD receives a regular report identifying all active recalls. This report is sent bi-weekly to the DDSOs to act upon the recalls. Additionally, OPWDD

is completing the process of centralizing vehicle registration to ensure any recall notification will be received centrally for timely action. OPWDD's transportation bureau conducts periodic meetings with the regional transportation coordinators to discuss existing policies and practices and to develop best practices. OPWDD will add a standing agenda item to these meetings to ensure that recalls are being timely processed. These additional tracking mechanisms and reporting processes help ensure that all vehicles with outstanding recalls are serviced as necessary and in a timely manner. Vehicles pending recall to due to significant safety concerns are not utilized until such time as the recall measures are taken. System-wide data reflects steadily increasing recall completion rates overall, reflective of the impact of new and effective procedures implemented after the audit period.