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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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# Oversight of Passenger Safety

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## Office for People With Developmental Disabilities

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Report 2017-S-50

October 2018

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# Executive Summary

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## Purpose

To determine whether the Office for People With Developmental Disabilities (OPWDD) ensures that its vehicles are being operated safely by employees with valid driver licenses. The audit covers New York City OPWDD facilities during the period of April 1, 2015 through June 26, 2018.

## Background

OPWDD works to help people with developmental disabilities live richer lives. Services provided by OPWDD include long-term care and residential supports and services, primarily in community settings. Regional Developmental Disabilities State Operations Offices (DDSOOs) administer and oversee State operations for OPWDD, including the direct delivery of services to people with developmental disabilities by State staff. These services include transporting clients from OPWDD-run residences to service providers or medical appointments. OPWDD staff use the agency's more than 3,000 State-owned vehicles as well as hired contractors to transport individuals who live in OPWDD-run residences.

In the New York City region, there are 115 such residences overseen by four local Developmental Disabilities Services Offices (DDSOs): Metro NY (Bronx and Manhattan), Brooklyn, Bernard M. Fineson (Queens), and Staten Island. According to OPWDD, about 450 vehicles are assigned to the four DDSOs, and residences are assigned one or two vehicles, depending on the number of clients.

OPWDD participates in the Department of Motor Vehicles License Event Notification Service (LENS), an automated reporting system that notifies organizations of driver-related events, such as the expiration and renewal of driver licenses; the suspension, revocation, and restoration of driver licenses; traffic convictions; and reportable accidents.

## Key Findings

Our review found many critical driving-related issues that place OPWDD clients, children, and the public at risk, as follows:

- Because OPWDD drivers repeatedly failed to obey traffic rules, many vehicles assigned to transport OPWDD's vulnerable clients were issued violations for serious traffic infractions, such as running red lights and speeding through school zones.
- OPWDD does not analyze traffic violations to identify whether employees need training or counseling, or if they should be reassigned.
- DDSOs are not properly monitoring LENS reports to identify drivers whose licenses have been suspended. We identified seven employees who continued to drive OPWDD vehicles assigned to transport clients, despite having suspended driver licenses.
- OPWDD has not provided the DDSOs with guidance on how to address the payment and recoupment of fines, penalties, and interest resulting from violations. As a result, fines are often not paid timely, while OPWDD continues to incur penalties and interest. Furthermore, most of the \$200,000 in fines, interest, and penalties paid by OPWDD for violations incurred by its

drivers had not been recouped from the employees responsible, leaving the State to bear the burden.

- Repairs related to manufacturer recalls are not being done timely, or at all.

### **Key Recommendations**

- Analyze traffic violations and driving histories to identify whether employees need training or counseling, or if they should be reassigned.
- 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.
- 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.
- Ensure recall repairs are done timely and maintain supporting documentation of the repairs.

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**State of New York  
Office of the State Comptroller**

**Division of State Government Accountability**

October 1, 2018

Ms. Kerry A. Delaney  
Acting Commissioner  
Office for People With Developmental Disabilities  
44 Holland Avenue  
Albany, NY 12207

Dear Ms. Delaney:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight of Passenger Safety*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*

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**State Government Accountability Contact Information:**

**Audit Director:** Kenrick Sifontes

**Phone:** (212) 417-5200

**Email:** [StateGovernmentAccountability@osc.ny.gov](mailto:StateGovernmentAccountability@osc.ny.gov)

**Address:**

Office of the State Comptroller  
 Division of State Government Accountability  
 110 State Street, 11th Floor  
 Albany, NY 12236

This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

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## Background

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The Office for People With Developmental Disabilities (OPWDD) works to help people with developmental disabilities live richer lives. OPWDD achieves this by providing supports and services and maximizing opportunities for the people it serves through collaboration with local and statewide entities. OPWDD is responsible for coordinating services for more than 130,000 New Yorkers with developmental disabilities, offering services directly and through a network of approximately 700 not-for-profit service-providing agencies. Private not-for-profits offer about 80 percent of services while the State furnishes the remaining 20 percent.

Services provided by OPWDD include long-term care and residential supports and services, primarily in community settings. Approximately 1,200 people with more intense needs reside in institutional settings, such as developmental centers, secure facilities, and residential schools for children. These schools are jointly operated by OPWDD and the State Education Department.

OPWDD also provides State-funded family support services to assist families in providing care for loved ones who live full time in their family homes, as well as employment support, which includes ongoing job coaching, job matching, and vocational training.

Regional Developmental Disabilities State Operations Offices (DDSOS) administer and oversee State operations for OPWDD, including the direct delivery of services to people with developmental disabilities by State staff. These services include transporting clients from OPWDD-run residences to service providers or medical appointments. OPWDD staff use the agency's more than 3,000 State-owned vehicles as well as hired contractors to transport individuals who live in OPWDD-run residences.

In the New York City (NYC) region, there are 115 such residences overseen by four local Developmental Disabilities Services Offices (DDSOS): Metro NY (Bronx and Manhattan), Brooklyn, Bernard M. Fineson (Queens), and Staten Island. Each DDSO has a business office, a human resource (HR) office, and a transportation office. According to OPWDD, about 450 vehicles are assigned to the four NYC DDSOS. Residences are assigned one or two vehicles, depending on the number of clients. Generally, employees in the titles of Direct Support Assistant or Developmental Assistant are responsible for driving OPWDD clients. There were 4,514 employees in these two titles during the period of April 1, 2015 through February 28, 2018.

OPWDD participates in the Department of Motor Vehicles (DMV) License Event Notification Service (LENS), an automated reporting system that notifies organizations of driver-related events, such as the expiration and renewal of driver licenses; the suspension, revocation, and restoration of driver licenses; traffic convictions; and reportable accidents.

OPWDD's rules and regulations have specific requirements addressing the safety and well-being of individuals receiving services from OPWDD or its providers. Regional offices and providers must have policies and procedures in place to ensure that individuals are transported safely and that vehicle operators are properly trained and comply with all State licensing and traffic laws.

## Audit Findings and Recommendations

### Employees Not Obeying Traffic Rules

According to OPWDD's Fleet Management Policy, drivers must comply with all traffic rules, and drivers of State vehicles are personally responsible for all parking, moving, and other violations they incur. OPWDD maintains vehicle information in the Office of General Services (OGS) Fleetwave Centralized Inventory Management System; we obtained such information from OGS.

Using the listing of OPWDD vehicles and plate numbers assigned to the four NYC DDSOs, we searched the NYC Parking Violations Bureau database to identify outstanding violations associated with OPWDD vehicles. Our search, conducted in October 2017, found 467 unpaid violations, incurring \$43,000 in fines, penalties, and interest, issued to 144 vehicles assigned to these DDSOs (see Table 1). Of the 467 unpaid violations, 273 were for speeding in school zones, with Brooklyn DDSO vehicles incurring 203 (74 percent) of the 273 violations.

**Table 1 - Outstanding Violations Issued to OPWDD Vehicles**

Violation	Bernard M. Fineson	Brooklyn	Metro NY	Staten Island	Totals
Photo School Zone Speed Violation	52	203	14	4	273
Failure to Stop at Red Light	5	13	1	1	20
Inspection/Registration Expired	0	3	0	5	8
Bus Lane Violations	1	28	0	0	29
Fire Hydrant	5	10	1	0	16
No Parking (Street Clean)	5	35	2	0	42
No Parking (Non-Compliance With Sign)	3	11	0	0	14
Double Parking	3	3	5	0	11
No Standing	4	7	2	0	13
Failure to Display Meter Receipt	5	15	3	2	25
Other	4	10	2	0	16
<b>Totals</b>	<b>87</b>	<b>338</b>	<b>30</b>	<b>12</b>	<b>467</b>

OPWDD officials agreed that 452 of the 467 violations were unpaid at the time of our review. They took exception to the status of the remaining 15 violations, including 11 that they assert were paid as of October 2017. However, these 11 violations had outstanding balances at the time of our review, which could have been related to penalties and interest. Staten Island is the only DDSO that maintained information for paid violations indicating the type of violation incurred, so we analyzed this information. According to these records, for the period June 29, 2015 to February 7, 2018, the Staten Island DDSO paid for approximately 215 traffic violations received by its drivers – 130 of these violations were for speeding through school zones. This confirms that, even among paid violations on Staten Island, school zone violations were the most prevalent.

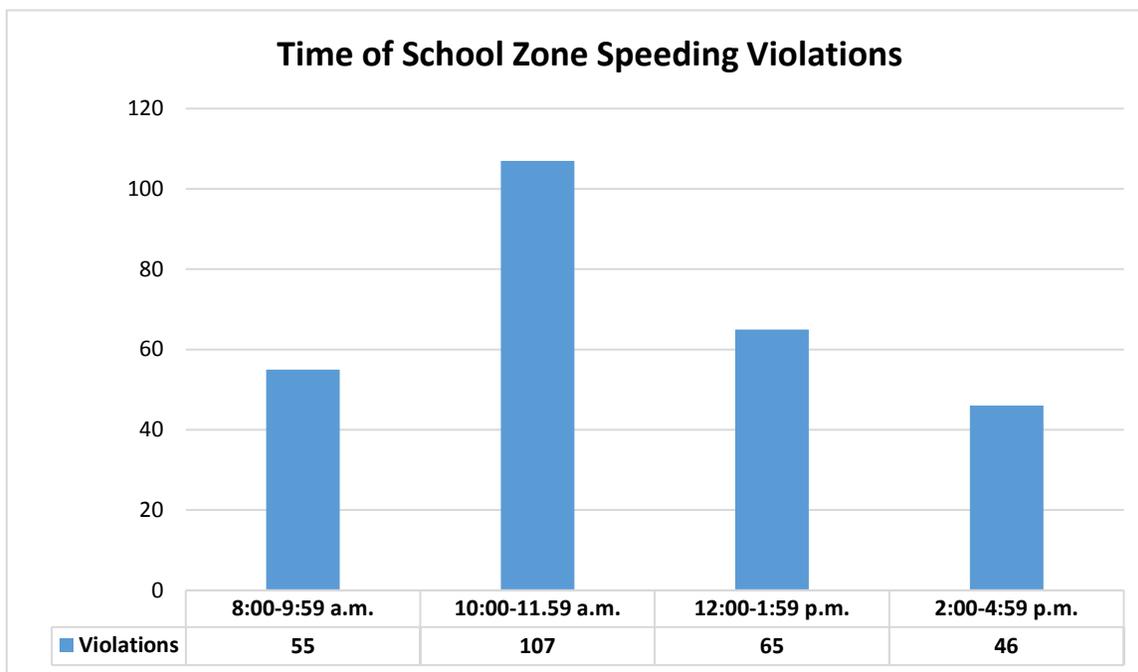
In an effort to eliminate traffic deaths and injuries, the State enacted Section 1180-b of the New York State Vehicle and Traffic Law in 2013. This law granted NYC the authority to install a pilot photo speed violation monitoring program to deter speeding in 20 school zones. In June 2014, the pilot was expanded to 140 school zones. The law allows NYC to deter speeding with speed cameras<sup>1</sup>:

- On school days during school hours, including one hour before and one hour after the school day; and
- During student activities at the school, including up to 30 minutes immediately before and up to 30 minutes immediately after such student activities.

According to a report by the NYC Department of Transportation, the faster a vehicle is moving, the harder it is for the driver of that vehicle to avoid a crash. For example:

- At a speed of 40 mph, a driver would need 300 feet to perceive, react, and brake in response to an unexpected event, twice the distance that would be needed at a speed of 25 mph (150 feet).
- A pedestrian who is struck by a vehicle traveling at 30 mph is twice as likely to be killed as a pedestrian struck by a vehicle traveling at 25 mph.

Over one-third of the 273 school zone violations noted in Table 1 occurred when schoolchildren were most likely entering or leaving school, with 55 occurring between 8:00 and 9:59 a.m. and 46 occurring between 2:00 and 4:59 p.m. (see the following graph).



<sup>1</sup> Chapter 189 of the Laws of 2013 (authorizing the City of New York to establish the school zone speed violation monitoring system demonstration program) and Chapter 43 of the Laws of 2014 (expanding the New York City demonstration program) expired on August 30, 2018 and July 25, 2018, respectively. On August 29, 2018, the State enacted Executive Order 188: Protecting School Children from Speeding Vehicles in School Zones within the City of New York, which temporarily re-established the photo speed violation program in school zones.

## Payment of Fines Issued to OPWDD Vehicles

OPWDD, as owner of its fleet, is responsible for payment of violations issued to its vehicles. However, OPWDD's Fleet Management Policy states that drivers of State vehicles are personally responsible for all parking, moving, and other violations they incur. According to records from the Office of the State Comptroller's Bureau of State Expenditures and from the Staten Island DDSO, for the period April 1, 2015 through February 7, 2018, OPWDD paid about \$200,000 in fees and penalties for over 1,700 violations incurred by NYC OPWDD drivers. We determined that OPWDD has not provided the DDSOs with guidance as to how they should address traffic violations. As a result, OPWDD employees generally are not being held responsible for these fines. We found that most of the violations that are paid by the State have not been recouped from the drivers responsible. Because few employees have been identified, only \$7,350 of the approximately \$200,000 in fines had been recouped from employees as of our March 2018 review, according to records provided by the DDSOs. The \$7,350 includes \$7,085 recouped by Staten Island.

Furthermore, due to the lack of guidance, the DDSOs are handling the violations differently. For example:

- Metro NY officials said that when fines are received, they generally use the State's credit cards to pay them. We found that officials rarely seek reimbursements from the employees responsible.
- Brooklyn officials generally ignored the violations and did not pay them – indicating that this was due to lack of staffing.
- Bernard M. Fineson officials asserted that they generally advised employees to pay the fines. However, they did not monitor the payments.
- Staten Island officials generally paid the fines and often attempted to identify the drivers responsible and recoup payments.

Because Brooklyn and Bernard M. Fineson generally did not pay the fines in a timely manner, many outstanding violations continued to incur penalties and interest.

Based on the limited information available, we could not determine the breakdown of fines, penalties, and interest included in the \$200,000 paid by the NYC DDSOs. However, our analysis showed that significant penalties and interest were often incurred. As of February 2018, 277 of the 467 violations that were outstanding as of October 2017 remained outstanding. We found that the original fines for these violations totaled \$16,875. Because these violations were left unaddressed for such a lengthy period – some going as far back as 2015 – additional penalties and interest of approximately \$9,290 and \$2,034, respectively, had been incurred as of the time of our review. As a result of our audit, OPWDD officials informed us that outstanding violations have since been paid.

The DDSOs have not identified most of the employees who disobeyed the traffic laws and who were responsible for reimbursing OPWDD for the fines. We note that Staten Island identified the most employees responsible for the violations it paid, doing so for 132 of the 215 violations (61 percent) paid during our audit period. Of concern, the DDSOs have not been identifying

employees who continuously receive safety violations and whether they need training or counseling, or if they should be reassigned. Despite the DDSOs' limited information on drivers who incurred the violations, we analyzed this information and identified several drivers who were repeatedly ticketed for the same or similar violations. For example:

- One Staten Island driver incurred four violations between January 2017 and March 2017 for "speeding through a school zone";
- Three drivers from Bernard M. Fineson each incurred three "speeding through a school zone" violations within a three- to six-month period; and
- Two drivers from Metro NY each incurred two "speeding through a school zone" violations within two months.

DDSO staff have acknowledged that this type of analysis is not performed and that employees who repeatedly violate traffic laws are not identified and targeted to receive training or counseling, or be considered for reassignment.

## **Drivers With Suspended Licenses or Poor Driving Histories**

According to OPWDD officials, employees in the title positions of Direct Support Assistant and Developmental Assistant are required to have valid driver licenses. These employees generally transport OPWDD clients to medical appointments or for shopping and other purposes. Such employees are assigned to specific residences and drive the vehicles assigned to those residences. According to OPWDD's Fleet Management Policy, a vehicle log must be maintained for each vehicle, reflecting information such as the date and time of use, driver, and purpose of each trip.

OPWDD participates in LENS, which notifies organizations of expiration and renewal dates for their employees' driver licenses; suspension, revocation, and restoration of licenses; traffic convictions; and reportable accidents. In order to identify at least 50 employees whose licenses were suspended during our audit period, we first identified a population of 2,543 active employees who, based on their titles, would likely drive clients. We then randomly selected employees at each of the four DDSOs and reviewed their DMV records. In total, we reviewed the records for 282 of the 2,543 employees to identify 50 who had suspended licenses at least once during our audit period.

We reviewed DDSO vehicle logs (see Table 2) and found that at least 7 of the 50 employees had driven OPWDD vehicles assigned to transport clients while their driver licenses were suspended. These seven employees had 15 suspensions and drove at least 33 times with suspended licenses, including one employee who drove 19 times. For another eight employees (seven from the Brooklyn DDSO and one from the Staten Island DDSO), we could not determine whether they drove OPWDD vehicles during the suspension period because the DDSOs did not provide us with the relevant vehicle logs.

**Table 2 – Seven Employees Who Drove With Suspended Licenses**

Employee	DDSO	Date of License Suspension	Date License Suspension Cleared	Date(s) Employee Drove With Suspended License
1	Metro NY	1/23/2017	8/29/2017	3/27/2017; 5/4/2017
2	Metro NY	8/30/2016	9/15/2016	None
		9/7/2016	9/15/2016	None
		10/15/2016	1/20/2017	11/4/2016; 11/6/2016; 12/26/2016
		11/25/2017	1/10/2018	None
3	Metro NY	9/16/2017	9/29/2017	9/20/2017; 9/21/2017; 9/22/2017; 9/26/2017
4	Bernard M. Fineson	5/5/2016	6/3/2016	5/5/2016; 5/6/2016; 5/7/2016; 5/10/2016; 5/11/2016; 5/12/2016; 5/14/2016; 5/15/2016; 5/17/2016; 5/18/2016; 5/19/2016; 5/20/2016; 5/21/2016; 5/26/2016; 5/27/2016; 5/28/2016
		11/2/2016	11/9/2016	None
		8/30/2017	9/6/2017	8/30/2017; 9/2/2017; 9/5/2017
5	Bernard M. Fineson	7/4/2017	7/25/2017	7/8/2017; 7/14/2017
		10/3/2017	1/12/2018	None
6	Bernard M. Fineson	2/15/2017	2/17/2017	2/15/2017; 2/16/2017
7	Bernard M. Fineson	7/8/2015	7/29/2015	7/21/2015
		5/8/2016	5/18/2016	None
		5/31/2017	5/31/2017	None

Our review found that the DDSOs were not always monitoring LENS reports to ensure employees do not drive with suspended licenses. Each DDSO's HR office is responsible for monitoring LENS reports. However, for 8 of the 15 suspensions noted in Table 2, HR did not have the LENS reports. For the remaining seven suspensions for which HR did have LENS reports, five reports were received by HR timely; HR received the remaining two reports 2 and 26 days, respectively, after the suspension date. HR staff from one of the DDSOs told us that there was inadequate staffing to monitor LENS reports.

Further review of the driving histories of the 50 employees with suspended licenses identified significant issues, including three drivers who had their licenses suspended for driving their personal vehicles while impaired. Other drivers received several points on their licenses in a very short period of time, indicating a need for enhanced OPWDD oversight. As the DMV records

reviewed did not indicate the vehicle being driven at the times the points were issued, we do not know if these individuals were driving OPWDD vehicles when the points were issued.

- One employee received 15 points between April 2017 and October 2017 for violations such as failing to stop at a stop sign, using a cell phone while driving, and backing up unsafely. Her license was suspended five times between 2016 and 2018.
- Another employee received 12 points between July 2016 and June 2017 for using a cell phone while driving, failing to stop at a stop sign, and speeding. This employee received nine suspensions between February 2015 and January 2018.

It is imperative that OPWDD monitor employees who have poor driving records to ensure that they receive appropriate training in safe driving practices, thus minimizing the risks to clients and the public.

In their response, OPWDD officials pointed out that, although the Metro NY DDSO business office had previously been responsible for notifying the employee and his or her supervisor when the employee's license was suspended, this responsibility has since been transferred to its HR office to ensure consistency across the State. Further, OPWDD officials responded that they do not have the authority to counsel or discipline employees for matters unrelated to their work, such as their personal driving histories. As stated on the LENS website, the purpose of LENS is to supply organizations with important information about the driving qualifications of their drivers so they can quickly identify problem drivers and focus efforts to improve safety and decrease vulnerability. We recommend that OPWDD monitor and use this information to improve driving safety.

## Vehicle Recalls

The National Highway Traffic Safety Administration (NHTSA) issues vehicle safety standards and requires manufacturers to recall vehicles that have safety-related defects or that do not meet federal safety standards. Defects can include steering components that can break suddenly, wiring problems that can result in a fire, and wheels that can crack or break. NHTSA maintains a database of open recalls (unresolved recalls) for specific vehicles. Vehicles are removed from the database after the manufacturers report that they have completed the repairs.

We searched the NHTSA database to determine whether there were any open recalls for the 456 OPWDD vehicles assigned to the four NYC DDSOs. We found that 57 vehicles (13 percent) had been issued 60 recall notices, which remained open as of October 20, 2017. Documentation provided by the DDSOs indicated that 10 of the 60 recalls had, in fact, been corrected, but were not reflected in the NHTSA database. However, these ten recall repairs were not made timely – taking between 168 days (5.6 months) to 2,324 days (6.4 years) after issuance of the recalls.

In response to our preliminary findings, OPWDD officials provided the auditors with documentation to support the repairs of 15 additional recalls. However, the documentation indicates that 14 of the 15 repairs were done after our visits to the DDSOs. Eleven of the 15 repairs took nearly four or more years, with the longest repair taking nearly seven years. OPWDD officials also indicated that two additional recalls are no longer outstanding on the NHTSA database; however, OPWDD

did not provide us with documentation to support when the repairs were done.

OPWDD also informed us that, until the 2017-18 fiscal year, it was only required to retain documentation, including repair receipts, for four years. However, OPWDD officials did not provide documentation to support the repairs of another 21 vehicles with open recalls from March 17, 2014 to July 24, 2017, which is within the four-year time frame that such supporting documentation should have been retained. Some of the recalls for which OPWDD did not provide support included repairs of a serious nature, such as unintended engine shut-off, inflator rupture during airbag deployment, and leaks in vehicle equipment that could cause fire or other harm.

OPWDD officials also indicated that one vehicle with an open recall dated July 24, 2017 for a safety risk related to the seatbelt anchor bolt was totaled and will be surplus. However, we note that in order for OGS to surplus a vehicle, OPWDD must attest that there are no open recalls. This underscores why it is important for OPWDD to maintain documentation in support of recall repairs.

## Recommendations

1. Analyze traffic violations and driving histories to identify whether employees need training or counseling, or if they should be reassigned.
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.
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.
4. Ensure recall repairs are done timely and maintain supporting documentation of the repairs.

## Audit Scope, Objective, and Methodology

The objective of this audit was to determine whether OPWDD ensures that its vehicles are being operated safely by employees with valid driver licenses. Our audit covered OPWDD employees' driving histories and violations and OPWDD's resolution of vehicle recalls during the period of April 1, 2015 through June 26, 2018, but excluded third-party contracted drivers. This audit, which began in July 2017, was severely delayed as a result of OPWDD officials' resistance to our repeated requests for program information and access to staff. It took until January 2018 for OPWDD officials to begin providing audit staff with the requested information and with access to appropriate OPWDD program staff.

To accomplish our objective and assess the internal controls as they related to our audit objective, we reviewed applicable regulations, policies, and procedures. We interviewed OPWDD officials to

gain an understanding of OPWDD’s process for tracking vehicles assigned to NYC offices, monitoring camera and parking violation fines issued to OPWDD vehicles, and repairing vehicle recalls. Using DMV’s electronic database, we reviewed the driving records of randomly sampled employees whose function, according to OPWDD officials, included transporting clients; identified drivers with suspended licenses; and reviewed vehicle logs to identify individuals who might have driven with suspended licenses. We obtained a list of vehicles assigned to the OPWDD offices from OGS and from OPWDD and tested the integrity of the data we received. Using the NYC online search tool, we identified and reviewed the status of camera and parking violations issued as of October 2017 and as of February 2018 to the more than 450 OPWDD vehicles assigned to the NYC DDSOs. We searched for open recall repairs using the NHTSA database.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State’s accounting system; preparing the State’s financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

## Authority

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This audit was performed pursuant to the State Comptroller’s authority under Article V, Section 1 of the State Constitution and Section 8 of the State Finance Law.

## Reporting Requirements

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We provided a draft copy of this report to OPWDD officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of this report. Although OPWDD officials stated that they disagreed with certain of the conclusions and recommendations, they nevertheless indicated that they are implementing and/or strengthening several of their policies and procedures to address the various issues identified by our audit.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office for People With Developmental Disabilities shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees,

advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

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## Contributors to This Report

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**Kenrick Sifontes**, Audit Director  
**Cindi Frieder**, CPA, Audit Manager  
**Aida Solomon**, CPA, Audit Supervisor  
**Jeremy Mack**, Examiner-in-Charge  
**Margaret Finlayson**, Senior Examiner  
**Sophia Lin**, Senior Examiner  
**Kevin Fung**, Senior Editor

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## Division of State Government Accountability

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Andrew A. SanFilippo, Executive Deputy Comptroller  
518-474-4593, [asanfilippo@osc.ny.gov](mailto:asanfilippo@osc.ny.gov)

Tina Kim, Deputy Comptroller  
518-473-3596, [tkim@osc.ny.gov](mailto:tkim@osc.ny.gov)

Ken Shulman, Assistant Comptroller  
518-473-0324, [kshulman@osc.ny.gov](mailto:kshulman@osc.ny.gov)

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### Vision

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### Mission

To improve government operations by conducting independent audits, reviews, and evaluations of New York State and New York City taxpayer-financed programs.

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# Agency Comments and State Comptroller's Comments

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## Office for People With Developmental Disabilities

ANDREW M. CUOMO  
Governor

KERRY A. DELANEY  
Acting Commissioner

August 29, 2018

Mr. Kenrick Sifontes  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11th Floor  
Albany, New York 12236

Re: Draft Report 2017-S-50

Dear Mr. Sifontes:

The Office for People With Developmental Disabilities has reviewed the Office of the State Comptroller's draft audit report, 2017-S-50, entitled: "Oversight of Passenger Safety."

Please find attached our comments on this draft report. Thank you for the opportunity to comment. If you have any questions or concerns, please do not hesitate to contact me directly at 518-474-0677 or [amanda.s.mitchell@opwdd.ny.gov](mailto:amanda.s.mitchell@opwdd.ny.gov).

Sincerely,

Amanda Mitchell  
External Audit Liaison

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Executive Office

44 Holland Avenue, Albany, New York 12229-0001 | 866-946-9733 | [www.opwdd.ny.gov](http://www.opwdd.ny.gov)

**Office for People With Developmental  
Disabilities' Response to the Office of the State  
Comptroller's Draft Audit Report (No: 2017-S-50):  
"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") draft audit report (2017-S-50) entitled "Oversight of Passenger Safety."

OPWDD provides services and supports to over 130,000 individuals with developmental disabilities, throughout New York State. OSC's review focused on the use of 450 state-owned vehicles in New York City. These vehicles are used to transport individuals with developmental disabilities, to bring maintenance crews to OPWDD offices and residences, and to assist managerial staff in providing necessary oversight and supervision.

The safety of the individuals that OPWDD serves is our highest priority. OPWDD is committed to ensuring that the vehicles used to transport these individuals are safe and that employees are driving them safely. OPWDD issued an agency-wide Fleet Management Policy to all OPWDD employees in November 2017. OPWDD employees must acknowledge in writing that they have received and read the policy before they are permitted to use state vehicles. This policy emphasizes that safety is our first priority by:

- Requiring OPWDD employees driving a state vehicle to have a valid driver's license of the class required for the vehicle being operated;
- Requiring OPWDD employees using a state vehicle to immediately inform his or her supervisor of any license revocation, suspension, or restriction;
- Requiring OPWDD to participate in the Department of Motor Vehicles' ("DMV") License Event Notification Service ("LENS") to receive reports of driver's license revocations, suspensions, and restrictions;
- Prohibiting any person from operating a state vehicle if there has been a change in licensure that restricts driving privileges, unless the operation of the state vehicle complies with such restrictions;
- Informing OPWDD staff that OPWDD retains the right to require any person using a state vehicle to participate in a safe driving program;
- Requiring the completion and maintenance of a vehicle use log for all state vehicles; and
- Holding the driver of a state vehicle personally responsible for all parking, moving, and E-ZPass violations.

All staff whose duties include driving receive robust training during New Employee Orientation, and before driving any OPWDD vehicles, to assure their driving competence. Staff are trained on topics such as lawful use of State vehicles, safe van use, and emergency procedures. They receive on-the-job training regarding specific details of the vehicles they will use at their worksite. This training includes, for example, wheelchair securement and vehicle maintenance procedures. Staff also review the Fleet Management Policy annually. Further, OPWDD monitors LENS to track and monitor current employee driver status and takes immediate action upon learning that an employee's license has been suspended or revoked.

OSC's audit reviewed OPWDD's transportation services in New York City between April 1, 2015 and June 26, 2018. To perform this review, OSC used DMV's electronic database to obtain the driving records of randomly sampled employees whose job functions included transporting individuals with developmental disabilities, identified drivers with suspended licenses, and reviewed vehicle logs to identify individuals who might have driven with suspended licenses. Further, OSC used the City of New York's online search tool to identify and review the status of camera and parking violations as of October 2017 and February 2018 issued to the OPWDD vehicles assigned to the New York City offices, and searched for open recall repairs using the National Highway Traffic Safety Administration ("NHTSA") database. OPWDD maintains a fleet of approximately 450 vehicles in New York City, the majority of which are driven multiple times a day.

OSC's review raises several concerns:

1. First, OSC found approximately 1,700 violations over the course of its three-year review for OPWDD's entire 450-vehicle fleet in New York City. OPWDD disagrees with OSC's implication, however, that all such violations implicated safety concerns. OSC made this conclusion based on violations that, for the most part, had nothing to do with safety. In fact, a high percentage of the violations analyzed in OSC's draft report were violations that created relatively few or no significant safety concerns, including failure to display meter receipts, parking in unauthorized areas, and expired registration.

**State Comptroller's Comment** - OSC did not indicate that the 1,700 violations implied safety concerns. Rather, we stated that OPWDD paid about \$200,000 in fees and penalties for over 1,700 violations. What we did state was that of the 467 violations outstanding as of October 2017, 293, or 63 percent, were issued to OPWDD vehicles for either speeding through school zones or failure to stop at a red light. The remaining 174 violations (473 less 293) were for infractions that included parking in unauthorized areas, failure to display meter receipts, and expired registrations. We are surprised that OPWDD officials seem to be implying that speeding through school zones and not stopping at red lights are not safety issues.

OSC did not analyze whether the cited violations occurred while individuals with developmental disabilities were in the vehicles.

**State Comptroller's Comment** - We believe the onus is on OPWDD to analyze its records and determine whether the cited violations occurred while individuals with developmental disabilities were in the vehicles.

OPWDD continually strives to assure that drivers of its vehicles do not incur violations, and that all passengers are transported safely and responsibly. OPWDD requests that OSC revise and correct this conclusion based on the facts presented.

2. Second, OSC identified seven employees who drove OPWDD vehicles while their licenses had been suspended. OPWDD has taken immediate steps to rectify this issue going forward. As noted, OPWDD monitors LENS to track and monitor current employee driver status. Nevertheless, seven employees who were identified through LENS were not promptly removed from driving privileges. To address these concerns, OPWDD has shifted and standardized the monitoring of LENS to Human Resources offices statewide. OPWDD is also in the process of documenting and reinforcing policies and procedures relating to LENS to ensure monitoring efforts capture all employees whose licenses have been suspended or revoked.

3. Third, OSC found that OPWDD did not consistently make timely payment of traffic violations and did not recoup funds from employees who committed traffic violations while driving state vehicles. OSC also found that there was a lack of uniformity in the handling and payment of traffic violations and recoupment of fines. OPWDD disagrees with the OSC conclusion that these are pervasive problems because in fact, these issues are not pervasive, and all violations have since been paid. Nevertheless, OPWDD is enhancing its controls by formalizing and issuing written directions to its Business Offices on the procedures to be used to pay fines and to identify, notify, and collect reimbursement from employees responsible for traffic violations. OPWDD is also developing a bulletin that will be distributed to all staff reminding them of their responsibilities, including their obligation to reimburse OPWDD for fines incurred while driving state-owned vehicles.

**State Comptroller's Comment** - Failure to consistently pay traffic violations timely and recoup funds from employees, and the lack of uniformity in the handling and payment of traffic violations and recoupment of fines, were indeed pervasive problems. Further, OPWDD did not begin paying the outstanding violations until we brought them to its attention.

4. Last, OSC identified that OPWDD should improve its handling of manufacturer recalls. OPWDD does not believe that OSC established a systemic issue with OPWDD's handling of recalls. Further, OSC acknowledged in its draft report that the NHTSA recall database it used was unreliable and contained inaccurate information. Nevertheless, OPWDD is formalizing and will issue policies and procedures to ensure that recall repairs are done timely and that supporting documentation of the repairs is maintained.

OPWDD's specific responses to OSC's recommendations are 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.

Response: OPWDD disagrees with OSC's conclusion because, as noted above, the data upon which this conclusion is based, for the most part, has little to do with safety.

**State Comptroller's Comment** - OSC did not indicate that the 1,700 violations implied safety concerns. Rather, we stated that OPWDD paid about \$200,000 in fees and penalties for over 1,700 violations. What we did state was that of the 467 violations outstanding as of October 2017, 293, or 63 percent, were issued to OPWDD vehicles for either speeding through school zones or failure to stop at a red light. The remaining 174 violations (473 less 293) were for infractions that included parking in unauthorized areas, failure to display meter receipts, and expired registrations. We are surprised that OPWDD officials seem to be implying that speeding through school zones and not stopping at red lights are not safety issues.

Nevertheless, OPWDD has taken significant steps to even further ensure safety compliance. OPWDD will continue to rely upon LENS to notify it of employees who have their licenses suspended or revoked. Further, OPWDD will continue to monitor violations incurred by employees driving agency vehicles. However, OPWDD disagrees with this recommendation to the degree to which it recommends that OPWDD monitor employees' personal driving records. Although OPWDD uses LENS to monitor employees' driving violations when they result in a license suspension or revocation, it cannot monitor

for other traffic and parking violations incurred on an employee's personal time. Further, most minor violations incurred by employees on their personal time cannot become the basis for employment-related discipline because they are not work-related.

**State Comptroller's Comment** - We did not recommend that OPWDD use minor traffic or parking violations incurred by employees on personal time as the basis for employment-related discipline. Rather, based on the weaknesses we identified in the report, we recommend that OPWDD use available information to do a better job in monitoring the traffic violations and driving histories of its employees to better identify ways to improve the safety of its clients.

**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.

Response: OPWDD is formalizing and will issue written directions to its Business Offices on the procedures to be used to pay fines and to identify, notify, and collect reimbursement from employees responsible for traffic violations. OPWDD is also developing a bulletin that will be distributed to all staff reminding them of their responsibilities, including their obligation to reimburse OPWDD for fines incurred while driving state-owned vehicles. In addition, OPWDD is exploring the feasibility of installing global positioning software ("GPS") in OPWDD state-owned vehicles statewide to strengthen the safe transport of individuals it serves. The use of GPS, which would have driver-specific key fobs, would serve many purposes, including assisting with expedited identification of employees who commit traffic violations, therefore creating more efficient recoupment of fines from drivers. Further, OPWDD has hired a new fleet manager dedicated to implementing these and other transportation-related improvements. Lastly, OPWDD will use the City of New York's Fleet Management System as a tool to assist in ensuring that all New York City traffic violations are timely resolved.

**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.

Response: OPWDD disagrees with the need for this recommendation because it currently engages in such monitoring. LENS is used to track and monitor current employee driver status. Upon learning that an employee's license has been suspended or revoked, appropriate administrative action will be taken. To further strengthen practices, OPWDD is also in the process of documenting and reinforcing policies and procedures relating to LENS to ensure monitoring efforts capture all employees whose licenses have been suspended or revoked.

**State Comptroller's Comment** - The fact that seven employees drove vehicles while their licenses were suspended indicates a need for strengthening this monitoring process. We are pleased to learn that OPWDD is in the process of documenting and reinforcing policies and procedures to further strengthen its monitoring efforts for capturing all employees whose licenses have been suspended or revoked.

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

Response: OPWDD is formalizing and will issue policies and procedures to ensure that recall repairs are done timely and that supporting documentation of the repairs is maintained. OPWDD has also repaired

or obtained proof of prior repair for 54 of the 60 open recalls identified by OSC in its audit. The remaining six recalls are associated with vehicles that are no longer operational and are in the process of being sent to OGS for disposition.