

GILMORE KEAN, LLC

July 22, 2011

Hon. Paul L. Friedman
United States District Judge
United States District Court
for The District Of Columbia
United States Courthouse
333 Constitution Avenue, N.W., Room 6012
Washington, D.C. 20001

Re: Petties v. District of Columbia, No. 95-00148

Dear Judge Friedman:

I am writing to inform the Court of the results of an intensive review that I have conducted to assess the performance of the Division of Transportation (the Division or DOT) as of the end of the 2010/2011 School Year and to review its preparations for the opening of the 2011/2012 School Year. With great reluctance I have concluded that it is necessary to declare that Defendants are in material breach of their obligations in Petties.

The Division, under OSSE's oversight, has never been in compliance with operational performance standards established by the Court. I have continually resisted the temptation to rush to resume direct management of the system because I have believed that Defendants could eventually rise to the challenge with support and guidance, not enforcement. In view of the conditions our review uncovered, I acknowledge that I may have given too much credence to the city's capacity to operate a compliant system and took too long to finally conclude that they cannot. For, as I describe below, the assessment shows that the performance of the Division has markedly deteriorated due to its inability to organize and maintain its fleet of aging buses and is not only continuing to fail to meet performance standards but is jeopardizing the safety of special needs students. In particular, this review discloses, for the first time, that the Division has failed to take steps, notably timely inspection of brakes, that are necessary to assure that the buses are safe for use to transport students. The Division never reported this failure, which was discovered only by investigative work by Gilmore Kean in the course of the review -- work that was made difficult by the chaotic condition of the Division's record keeping system. The fact that the Division's operational problems have now resulted in student safety issues is of great concern to me.

Over the last three weeks since the completion of the assessment, Gilmore Kean has conducted extensive discussions with the Office of the State Superintendent of Education (OSSE) and Division staff to determine what plans, if any, the Division has in place to correct these deficiencies before the start of the new School Year on August 22. Nowhere in our

review were we able to discern evidence of a plan at the Division to correct the problems with the bus fleet or its chronic operating problems, or plans to prepare for the opening of the 2011/2012 School Year, now only 20 working days away. Our efforts to instill a sense of urgency in the Division to take corrective action have been unsuccessful. The efforts that it did undertake were substantially frustrated by the failure of Defendants' budgetary and procurement processes to take timely action to allocate available funds to the purchase orders for the vendors who were prepared to inspect and repair the hundreds of non-compliant buses.

Moreover, on July 21, 2011, the head of the Division of Transportation and its Fleet Manager in charge of the bus fleet were terminated from their positions. The leadership of the Division is now in complete disarray. This leadership vacuum has made it impossible, in my judgment, for Defendants to restore the Division to compliance with the Court's Orders without judicial intervention.

In sum, based on this analysis and our interactions with Defendants since the problems with the fleet were discovered, I have concluded that the Division's failure to take adequate steps over the summer to maintain the fleet and prepare it for the opening of school means that it is no longer possible to prevent substantial operational problems in the transportation system, and significant violations of the *Petties* Orders, at the beginning of the 2011/2012 School Year.

As a result of these operational failures, deficient record keeping, failure to take necessary corrective actions, failure to plan for the new School Year, and constant turnover of high-level executives and managers responsible for the operation of the Division, I have lost confidence in the current ability of Defendants to manage the transportation system in a safe and compliant manner. Even though Defendants have hired a new manager to run the Division who will begin work on July 25, I also have concluded that the institutional problems within the D.C. government that contributed substantially to the deterioration of the Divisions' performance will make it extremely difficult, if not impossible, for this new official to learn the transportation system and resolve its problems in a reasonable period of time, unless he is able to operate with the same array of powers to bypass normal D.C. government procedures that the Transportation Administrator possessed.

For these reasons, I have concluded with the utmost reluctance that in order to avoid continued deterioration of the Division's performance and further non-compliance with the *Petties* Orders, it is necessary that I invoke the provisions of Section 8 of the Transition Order of May 5, 2010 to initiate the process for returning, as quickly as possible, control of the Division of Transportation to a Transportation Administrator with the powers set forth in the Court's June 25, 2003 Consent Order. I believe that this unfortunate step is the only manner in which it will be possible to address the problems facing the Division in a meaningful manner and to avoid a complete loss of the transportation system for the 2011/2012 School Year.

The Court should be under no illusion that the change in control I recommend will prevent operational difficulties at the start of the School Year. It will not. Sufficient time does not exist prior to the start of classes to remedy the failures that have occurred. In my

judgment, what is now realistic, and important, is to reestablish effective management of the Division as soon as possible, to prevent further deterioration in its level of performance and to reduce the time that will be necessary to bring the transportation system back into compliance with the Court's Orders.

To help address the problems that have arisen under Defendants' day-to-day operation of the Division, I have already instructed Gilmore Kean personnel who served in senior roles under the Transportation Administrator to spend additional time at DOT headquarters to work with Division staff to help resolve the problems that currently are adversely affecting its ability to deliver transportation to special needs students in a safe and compliant manner.

Introduction

As noted in previous reports, the United States District Court for the District of Columbia issued a Transition Order on May 5, 2010 restoring day-to-day responsibility for management of the Division of Transportation to the Defendants. In that same Order, the Court appointed a Supervising Court Master to monitor the operation of DOT during the transition period and to assume control, if necessary, of the management and operations of DOT if there is a material breach of the substantive criteria that are to be met during the transition period. The performance standards during the transition period are set forth in the "Plan for the Transition of Management and Ongoing Operations of the Division of Transportation" submitted to the Court on May 15, 2009 (the Transition Plan).

The initial transition period was set to expire on April 30, 2011. However, based on two prior reviews conducted by Gilmore Kean, LLC at the direction of the Supervising Court Master, sufficient evidence was presented to demonstrate the Division's lack of compliance with the standards, directives, and mandates under the *Petties* Orders and the Transition Plan. Instead of declaring a material breach and assuming control of the management of the Division, the Supervising Court Master requested that the Court extend the transition period to October 31, 2011 in an effort to give the new State Superintendent an opportunity to rectify the noted deficiencies. The Court so ordered, and the transition period was extended to October 31, 2011. The Court also directed the Supervising Court Master to submit a report and recommendation not later than October 11, 2011 that sets forth his analysis of the extent to which the Division is in compliance with the Court's Orders and his recommendations as to what further actions the Court should take.

This review is the third in a series of studies by the Supervising Court Master of Division operations under OSSE management, timed to assess the Division's performance as of the close of the 2010/2011 School Year. It differs from the two previous reviews in one critical aspect. Though this review included the areas of concern identified in the two preceding reports (on-time performance, compliance with ride-time standards, fleet management, and terminal operations), significant attention was given to the condition of the bus fleet when a startling number of safety concerns came to our attention just prior to the commencement of the on-site review.

This review reveals that the pattern of consistent violation of the *Petties* Orders and the Transition Plan continued during the entire 2010/2011 School Year. Gilmore Kean's follow-up work with Division staff further demonstrates that the degree of non-compliance has become more severe as the School Year progressed and that Defendants do not have meaningful corrective action plans in place to resolve these problems or to prevent substantial and prolonged difficulties with the transportation system at the opening of the new School Year.

Methodology

In June 2011, at the direction of the Supervising Court Master, Gilmore Kean conducted a review of DOT operations for the last three months of the School Year. To determine the Division's performance in key areas identified as deficient in prior reviews and analyses, Gilmore Kean:

- Reviewed a random sample of trip tickets, dispatcher logs, and Automated Vehicle Location (AVL) system reports for the period of observation;
- Analyzed key routing reports (e.g., Alpha, exception report, bell time, etc.);
- Conducted on-site observations of terminal operations;
- Reviewed daily operations, workforce, and fleet reports;
- Interviewed key management, staff, maintenance vendors, and union personnel;
- Examined extensively maintenance reports generated from DOT's Fleet Management System;
- Reviewed daily terminal route assignment sheets;
- Reviewed late route reports generated by the parent call center; and
- Analyzed various financial reports (e.g., budget-to-actual, PeopleSoft earnings statements, reprogramming requests, etc.).

FINDINGS

As reported previously, OSSE's management of the Division in the first four months of the 2010/2011 School Year was substandard, characterized by a substantial decline in performance of the special needs transportation system. The level of performance during the second review period (January 3, 2011 through March 7, 2011) improved substantially from the first reporting period; however, the areas of on-time arrivals and the management of terminal operations remained noncompliant.

This report shows a decline in performance in all areas reported previously, with the exception of on-time performance, which showed a moderate increase. However, the number

of functional GPS devices declined during this examination period, raising question about the accuracy of the on-time reports. Regardless, the gains have not come without sacrificing compliance with other requirements set forth by the Court. For the first time, safety-related concerns have been presented by the Division's operations.

Immediately prior to the start of the on-site assessment, Gilmore Kean was informed of safety concerns with the bus fleet, including in particular that the Division was operating on a daily basis many vehicles that had not had their scheduled brake inspections. The investigation confirmed this fact. I immediately notified the State Superintendent and the Division of my concerns. I also instructed Gilmore Kean to determine the magnitude of the problems facing DOT and the steps the Division was taking to correct these issues before the opening of school.

On July 14, 2011, the most recent date for which data are available, Gilmore Kean was informed by Division personnel that of the total fleet of 827 vehicles, 163 buses were then in the shop awaiting repairs, and an additional 103 buses in the four terminal lots will require varying amounts of work to be ready for the opening of school.¹ Thus, 266 vehicles in a fleet of 827 buses (32.2%) are currently out of service.

From the information provided by the Division, it is difficult to determine how many vendors currently are authorized to perform bus repairs and are currently performing such work, but it is clear that the number is inadequate to achieve the goal of having a sufficiently large, functioning, and safe fleet in place for the opening of school. Maintenance vendors have reported great difficulty in obtaining the funds under their purchase orders that would be necessary for them to work. In addition, DOT apparently stopped doing business with one or more maintenance vendors on June 9.

The lack of repair activity is not due to an overall shortfall in appropriated funds available for this purpose. Rather, the problem arises from the Division's inability to manage the purchase orders necessary to authorize the repair contractors to work and its inability to obtain the necessary cooperation from Defendants' budgetary and procurement offices to have the available funds allocated to the purchase orders. The contractors have started and then stopped work on the brake inspections and repairs due to exhaustion of the funds on their purchases orders and the delays, sometimes stretching out for several weeks, before new funding becomes available. The uncertainty surrounding their funding has prevented the contractors from establishing an efficient process for resolving the problems facing the bus fleet.

Throughout this process, Division management has demonstrated a lackadaisical attitude toward the compliance hole in which DOT now finds itself. The Division keeps falling further out of compliance, rather than undertaking proactive and effective actions to get the

¹ There is a substantial discrepancy in the information provided by Defendants about the size of the bus fleet. In some communications, such as the June 14 Fleet Activity Reports, show 827 assigned busses. Later communications, such as an e-mail from the Superintendent dated July 15, reflect a total fleet of 778 buses. For purposes of these calculations, we will employ the larger number of 827, which produces results more favorable to the Division than using the smaller fleet size.

266 vehicles in its fleet checked for safety issues, repaired, and returned to service for the start of the school year. Based on their inaction to date, I have lost confidence in the Division's management and concluded that the Division is currently incapable of resolving the problems it faces and operating a safe and compliant transportation system.

With only 20 working days remaining before the opening of school, and given the magnitude of the problems facing the Division, its lack of meaningful plans to address the problems, and its poor track record in seeking to manage the bus fleet, I have concluded that it is now inevitable that the transportation system will experience substantial compliance failures at the opening of school. These problems have been exacerbated by the termination on July 21 of the head of the Division of Transportation and the Fleet Manager. There is now a leadership vacuum in DOT at a critical moment. I therefore have initiated the provisions of the Transition Order to return control of DOT to a Transportation Administrator, to prevent the Division from falling further into non-compliance.

Finding 1: OSSE KNOWINGLY TRANSPORTED STUDENTS ON BUSES THAT WERE NOT PROPERLY MAINTAINED OR INSPECTED, JEOPARDIZING THE SAFETY AND WELL-BEING OF THOUSANDS OF SPECIAL NEEDS STUDENTS.

In accordance with Orders in the *Petties* case, the Division provides door-to-door transportation services for 3,562 special needs students on 683 routes daily. Essential to the successful operation of the special needs transportation system is the maintenance of an adequate and appropriate fleet of buses to meet the demand for transportation services, as specified in student IEPs. The absence of an adequate, safe, and reliable fleet effectively renders any transportation system ineffective.

Gilmore Kean examined the DOT fleet maintenance records to determine the adequacy and appropriateness of the fleet to meet the demand for special needs transportation services. The results were distressing. The Division's longstanding preventive maintenance program appears to have been abandoned. Many buses were not inspected in accordance with regulations of the District of Columbia, and the Fleet Management System (FMS) was not properly maintained to provide sufficient information regarding the condition of the fleet. As a consequence, OSSE transported students on buses with possible safety issues and, in some cases, buses that had not been inspected in accordance with District law. Further, the FMS records are so unreliable that DOT will be particularly challenged in addressing the fleet's needs for the upcoming School Year.

Most astonishingly, OSSE officials acknowledged awareness of the severe maintenance issues to the Gilmore Kean team during its recent on-site visit. Up until that point, OSSE appeared not to have taken necessary steps to correct the issues – with the exception of the dismissal of the former fleet manager. There was no evidence of increased maintenance activity to address the violations of the preventive maintenance policy and DC regulations.

Failure to Adhere to the Preventive Maintenance Schedule

The DOT preventive maintenance schedule was established to ensure safe operating conditions of the bus fleet, prolong the useful life of the assets, reduce downtime, and reduce unscheduled repairs. Given the age and the size of the DOT school bus fleet, strict adherence to the preventive maintenance schedule is crucial.

A review of maintenance reports derived from FMS show that DOT failed to adhere to the established preventive maintenance schedule. The table below illustrates the results of the analysis:

**Analysis of Fleet Records
June 2011**

Inspection Type	Requirements	Description	Bus Results
A	Every 45 days or 3,000 miles	Basic Safety Inspection—lights, mirrors, glass, oil, brakes, etc.	754 (91%) Past Due
B	Every 365 days or 12,000 miles	Comprehensive Brake Inspection	492 (59%) Past Due
L	Every 5,000 miles	Oil, Lube, and Filter	298 (36%) Past Due

After reviewing terminal records of buses assigned to routes (terminal assignment sheets) for specific days identified in our sample, it was determined that many of these buses with overdue brake inspections, in particular, were used to transport students. The failure to conduct brake inspections is particularly troublesome because it introduces into the transportation system the risk of problems that may adversely affect student safety.

As mentioned previously, OSSE management acknowledged awareness of the maintenance issues. Further, after discussion with the Gilmore Kean team during field work, OSSE indicated that they would “ground” the buses in the fleet with past due brake inspections. We reviewed the fleet report for the last day of school and found that out of the total fleet of 827 buses, only 163 were actually taken out of service (19.7%, versus 59% past due). Clearly, OSSE failed to ground all of the buses with brake inspection issues.

Gilmore Kean made several requests for information regarding the outcome of the brake inspections that were performed after the fleet was “grounded.” Two weeks after the Gilmore Kean site visit, OSSE provided a new report from FMS which indicated that the number of buses with past due brake inspections was down from 492 buses to 202. OSSE asserted that the actual brake inspections had originally been coded incorrectly in the FMS and, as a result, did not show up on the preventive maintenance reports. Given the current condition of the fleet information in the FMS and DOT recordkeeping, it is highly unlikely that OSSE could make that determination without an actual review of the physical records for each bus identified.

Moreover, OSSE still failed to comply with our request to provide the vendor records for all buses in which brake inspections were performed after the fleet was grounded. Instead, we were provided vendor records for one terminal in which a comprehensive brake inspection was performed on 67 buses, 26 (38.8%) of which actually failed.

By email dated July 6, DOT informed Gilmore Kean that during the three day period June 27-29, the annual brake inspection of 160 buses had been completed. 66, or 41%, of these buses failed.

Gilmore Kean also reviewed a sample of maintenance work orders in order to determine if any issues had been encountered due to OSSE's failure to adhere to the preventive maintenance schedule. We encountered significant problems with the accuracy and completeness of the data provided. Quite simply, the records appear to be in disarray. Of particular interest, we identified 307 buses that had experienced power failure, smoking, or cutting off. These issues are usually a result of several different factors or a combination of the following: ERG Valves, clogged injectors, clogged fuel filters, and dirty oil among other issues. By following a sound preventive maintenance program, some of these issues can be eliminated or minimized.

Gilmore Kean also found that the Division failed to perform timely air conditioning (A/C) inspections on buses in preparation for the warmer months. A review of fleet records show that the A/C inspections did not occur until late May. To identify A/C issues, the process should have started at least one month earlier. As a result of the delay in examining buses for A/C issues, the Division encountered many A/C failures in the buses toward the end of the School Year, as the temperature rose in the region and the A/C was needed on the routes. Gilmore Kean examined maintenance records for one day in June for the Southwest Terminal and determined that 42 buses had A/C units that were not functioning. As a result, some students were transported on buses without A/C during extreme heat. This issue was brought to the attention of Division management when the DOT Director of Investigations issued correspondence to Terminal Managers and OSSE managers alerting them of specific students whose IEPs require A/C on the buses used to transport them to school and identifying many other medically fragile students who should be transported on buses with functioning A/C.

Maintenance vendors also reported to Gilmore Kean that the Division often exhausted funding on purchase orders. This further delayed necessary bus repairs, as the vendors could not start work or had to discontinue ongoing operations until funding was made available. Vendors report having to track purchase order balances to avoid this issue. In addition, Division finance staff reports that it provided the Fleet Director information, well in advance, regarding the available balances on purchase orders. It is apparent that the Fleet Department failed to track expenditures. During the time of our on-site review, for example, two of the Division's maintenance vendors had purchase orders with no funding attached.

Noncompliance with DC Inspection Regulations

The District of Columbia Code of Municipal Regulations (18 DCMR 601.4) requires that school buses be inspected semiannually. A review of the records in the FMS indicate that 789 (95%) of all buses in the fleet were past due for the mandatory DC Inspection. Because the number appeared artificially high, we examined the records maintained at the terminals to determine the number of buses actually out of compliance with the DC Inspection requirement. This analysis identified 72 (9%) buses that were past due for DC Inspection. A review of terminal assignment sheets for one day in June demonstrated that 27 of these buses were used to service bus routes. The use of other buses could not be validated due to poor recordkeeping at the terminal level.

As with the information in the FMS, these data were proven unreliable. Gilmore Kean identified five additional buses at one terminal with past due inspections that were not included on the list of 72 buses DOT provided Gilmore Kean.

Lack of Comprehensive Plan for Maintenance in Preparation for the 2011/2012 School Year

During its review, Gilmore Kean requested information regarding the Division's plans for maintenance of the buses in preparation for the upcoming School Year. In response to the request, the new OSSE Fleet Director provided a memorandum that was submitted to the OSSE Director of Operations laying out an agenda for the summer fleet maintenance program. Specifically, the memorandum identified actions such as the following that are proposed:

- Establishing a maintenance service area at the New York Avenue Terminal for on-site maintenance through the use of two vendors;
- Using Transportation Assistants trained by D.C. Department of Public Works for minor repairs to assist on-site vendors;
- Working with the Chief of Bus Operations on driver education program to educate drivers on the fleet and their role in preserving the fleet;
- Replacing Transportation Assistants who have not obtained Commercial Driver's Licenses (CDLs) with ASE certified mechanics to reduce maintenance costs by performing routine maintenance in-house;
- Establishing an in-house store room at the Fifth Street terminal to store commonly used parts and materials, thereby reducing training and maintenance costs;
- Sending an ASE certified mechanic to towing class in partnership with DPW Fleet Maintenance;
- Converting from the Division's existing fleet management software to the District's fleet maintenance software package;

- Preparing the fleet for the loss of 29 buses in July, when the leased buses will be returned to the leasing company; and
- Training new staff on best practices and procedures for the Division's maintenance department.

The OSSE plan was not comprehensive in that it did not lay out specific details regarding an implementation strategy; no timelines were associated with the outline of activities; key deliverables were not specified; there was no plan for accommodating the fleet for the loss of 29 leased buses in July; and there were no details on how DOT planned to catch up on overdue preventive maintenance. Further, OSSE could not provide details concerning the financial and other resources that would be required to implement some of the action items, as well as to support the organization and staffing changes in the fleet area.

Many of these items would require additional research to determine their feasibility. For example, the move towards in-house maintenance requires a detailed cost-benefit analysis to determine what approach is most beneficial for the Division from both a cost and performance standpoint. Further, storing commonly used parts is only beneficial if the Division is able to capture economies of scale at the level of the vendors that currently provide the parts and services. Finally, the plan does not account for adding more vendors to the DOT vendor pool to ensure that the current fleet is serviced properly during the summer down time.

These planning deficiencies present the risk of serious adverse consequences. Without a comprehensive plan for fleet operations, the Division will not be prepared for the new School Year. Given the existing demand for bus transportation, the Division will have to strictly follow sound fleet management strategies to ensure an adequate and appropriate fleet.

The problems presented by these failures in the Division's planning process for the new School Year, while important, are of a lesser degree of significance, however, than its ongoing failure to have a corrective action plan to have the buses inspected, repaired, and ready for service at the start of school.

Finding 2: THE DIVISION CONTINUES TO INCREASE SLIGHTLY THE RATE OF ON-TIME DELIVERY OF STUDENTS TO SCHOOL; HOWEVER, DOT REMAINS NONCOMPLIANT WITH THE ON-TIME ARRIVAL STANDARDS SET BY COURT ORDER.

On-time arrival standards established under *Petties* require that students be delivered to school programs no more than thirty (30) minutes and no less than ten (10) minutes prior to program start time. The Transition Plan accepted by the Court established an on-time arrival benchmark of 94%.

During our review of the first four months of the 2010/2011 School Year, the Division reported achieving an on-time arrival rate of 80.61%². That reported rate increased to 86.77% for the period of January through March 2011. For the period of April 2011 through June 2011, the Division reported a 92.69% rate of on-time arrival, a 5.92% improvement over the last reporting period. Thus, the average daily rate of on-time arrival for the entire 2010/2011 School Year, as reported by the Division, was 86.04%.

In its two prior reports, Gilmore Kean documented the disparity between the reported on-time performance rate and what was reported at the terminal level on the dispatch logs, trip tickets, and the Automated Vehicle Location system (AVL). The most recent analysis suggests that this disparity remains, although to a lesser degree. While the dispatcher log for the period of May 2011 through June 2011 shows a rate of on-time arrival of 92.9%, the unweighted AVL statistic for that same period was 90.1%. As reported previously, the degree of reliability of the AVL statistic is questionable. OSSE's recent report states that on a daily basis, approximately 40% of the buses have a functioning GPS device. This percentage is even lower than that reported in the last period, as the number of functioning units continues to decline. As a consequence, a meaningful comparison between AVL, trip tickets and dispatcher logs cannot be made unless and until the majority, if not the entirety, of the fleet is equipped with functioning GPS devices.

While the Division can report progress in the area of on-time arrival, this achievement has not come without imposing a hardship on students. As the following sections in the report describe, gains in the area of on-time arrival have been realized through unofficial route alterations, potential safety violations, and the failure to provide specialized transportation services required by student IEPs. Regardless of these disparities, however, the overall rate of on-time arrival of 86% is far less than the required 94% rate established in the Transition Plan.

In sum, the findings of this review demonstrate the need for additional compliance assessments, including a more detailed analysis of the methodology used to generate on-time arrival statistics using the AVL system.

Finding 3: ROUTES HAVE CONSISTENTLY VIOLATED STUDENT RIDE TIME STANDARDS FOR THE ENTIRE SCHOOL YEAR.

The *Petties* Orders set forth ride-time standards for students as follows:

- 60 minutes, if attending programs in the District of Columbia
- 60 minutes, if attending programs in the Maryland that are seven (7) miles or less from the District of Columbia

² This is the weighted average from dispatch logs during the period of observation. The reported statistics were weighted to account for the differing number of routes assigned to each terminal and the variance between individual days.

- 75 minutes, if attending programs located in Maryland that are more than seven (7), but less than fifteen (15) miles from the District of Columbia
- 90 minutes, if attending programs in Maryland that are between 15 and 20 miles from the District of Columbia
- 75 minutes, if attending programs located in Virginia that are more than 8 miles from the District of Columbia
- 90 minutes, if attending programs in Virginia that are more than 8 miles but less than 15 miles from the District of Columbia
- Long term exceptions to these ride time limitations may be established on an individual basis through the IEP process for students who attend school programs located beyond these distances from the District; who live outside the District; and/or whose IEPs document individual needs limiting the amount of time they can tolerate in transit pursuant to a determination of a physician or other appropriate expert.

As reported previously, Gilmore Kean found persistent ride-time violations in at least 17% (August-December) and 23% (January–March) of routes operated.

Unfortunately, our review of the current period (April-June) shows a further decline. In fact, 217 routes (32% of all routes) consistently exceeded standards prescribed by the *Petties* Orders. In total, 702 students were transported outside the *Petties* ride-time standards.

Finding 4: OSSE CONSISTENTLY VIOLATED STUDENT IEPs BY FAILING TO PROVIDE SPECIFIED TRANSPORTATION SERVICES, ESPECIALLY ONE-TO-ONE AIDES AND CAR SEATS.

The Individuals with Disabilities Education Act requires the development of an IEP describing the educational and related-services needs for all students identified as eligible for special education services. Transportation needs are defined in the IEP as a related service. Transportation accommodations can include provision of dedicated aides, car seats, assistive technology, etc.

A review of trip tickets and other documentation demonstrated that the Division continuously violated student IEPs by failing to provide required dedicated aides for almost one-half of the students whose IEPs require aides, and by failing to provide car seats for as many as 64% of students whose IEPs require such seats.

DOT Failed to Provide One-to-One Aides to 50% of Students Whose IEPs Identified This Requirement

Over the course of the school year, DOT has averaged 100 students whose IEPs specifically require a One-to-One Aide/Attendant. As shown in the table below, for the dates observed, on

average OSSE has violated the IEPs of 51% of students who require a One-to-One Aide on the bus route.

**Students Not Provided
One-to-One Aides on Routes³**

Date	% of Students Not Receiving One-to-one Aide
3/14	58%
5/13	53%
5/17	48%
5/18	47%
6/7	54%
6/14	45%

On March 29, 2011, the DOT Director of Investigations sent the Division a memorandum clarifying the meaning and role of a one-to-one aide, and requested that a copy be provided to all drivers and attendants. In particular, the memorandum provided managers, drivers and attendants the following guidance regarding dedicated aides:

- A student requires a One-to-One Aide if the mobility code ATTEND is on the trip ticket.
- The One-to-One Aide is on the bus solely to support the student that requires the aide:
 - The One-to-One Aide should sit with, not across from, behind, or in front of the student and should be aware of the student needs.
 - The One-to-One Aide should be the one to receive and deliver the assigned student.
 - While the student is on the bus, the One-to-One Aide should never be away from that student.
 - Training is available for any person assigned as a One-to-One Aide to help understand the needs of the student and manage behavior.
 - One-to-One Aides should be permanent and should not change throughout the School Year. Ideally, the Aide will develop a personal rapport with the student.
 - The One-to-One Aide should be the primary, if not the sole, point of contact for the relevant student, rather than the driver or another attendant.

³ The information for the dates in May was a result of an analysis conducted by the DOT Investigations Unit.

Despite the information provided to terminal managers and staff, our analysis demonstrated that the IEP violations continued. One DOT Terminal Manager expressed concerns around personnel shortages due to a slowdown in hiring, which resulted in the failure to comply. To compensate, the manager consulted with experienced staff to determine which students could be transported without a One-to-One Aide. While well intentioned, this practice is in direct contravention of the IEPs of affected students.

The Division Failed to Provide Car Seats for 65% of the Students Whose IEPs Identified Such Seats as a Transportation Requirement

Records provided to DOT by the DCPS Office of Special Education identify 420 students who, according to their IEPs, must be transported in a car seat. DOT inventory records, however, identify only 151 car seats in stock. As with many other areas, there may be record keeping issues. In either event, DOT staff have no idea if they have enough car seats to service students who actually need them and whose IEPs prescribe that they must be provided.

This failure also presents a threat to student safety. For example, in March 2011, DOT experienced a significant issue directly related to the lack of car seats. A driver was in an accident on a route while transporting a child who was required to have a car seat. Because the student was not in a car seat, the student fell on impact and was lodged under the seat in front of her. The District of Columbia Fire Department had to remove the vehicle seat in order free the student.

Finding 5: DIVISION MANAGEMENT FAILED TO PROVIDE SUFFICIENT OVERSIGHT OF BUS OPERATIONS TO ENSURE COMPLIANCE AND EFFICACY OF OPERATIONS.

The failure of Division management to effectively oversee bus operations to ensure compliance with laws, regulations, and Court orders has been a repeated finding in each report issued by Gilmore Kean. While we noted some improvement in the March report, considerable issues remain. Division management still must establish a system of accountability for transportation services by tracking, reporting, and correcting performance and compliance issues in a manner that is effective and transparent.

Specific findings related to ineffective terminal management include the following:

- Routes Unofficially Adjusted to Comply with On-Time Arrival Standards. Of the 217 routes consistently operated in violation of ride-time standards, 184 were operated outside of the scheduled pick up times (10 minutes or more to prior scheduled time). In total, 635 students were impacted. As reported previously, these unofficial adjustments apparently were done to achieve on-time delivery. If routes were operated as planned, it is likely that all of the routes would have been classified as "late" under *Petties* ride-time standards.
- Students Not Riding. 174 routes (25% of all routes) had a total of 355 students reported as "not riding" over the period of observation. This figure is higher than the 21%

reported for January through March and the 17% reported for the first three months of school. In many cases, non-riders were reported by drivers on actual trip tickets. Managers, however, failed to correct issues to make these routes more efficient.

- Early Pick-Ups. 117 routes (17% of all routes) consistently picked up 529 students more than 20 minutes before scheduled pick up times. This number increased considerably from the 6.2% reported in the last prior period.
- Inadequate Recordkeeping of CDL and DOT Cards. A review of the records maintained related to CDLs licenses and DOT Cards (which provides for the S endorsement needed to operate a school bus) revealed that 138 drivers have expired CDL licenses and 257 have expired DOT cards. The OSSE manager responsible for maintaining the data indicated that the records had not been updated and that the actual numbers are lower than reported in the system. However, updated information was not provided to Gilmore Kean. Previously, the tracking of this data was performed by DOT operations staff, and notices were sent to drivers as early as 60 days prior to expiration. OSSE (questionably, in my judgment) transferred the function from the DOT staff to the OSSE central office, which often prevents the Division staff from being aware of pending expirations. The purpose of keeping this function at the Division level was to ensure terminal staff access to information for planning and decision-making purposes and to eliminate unnecessary administrative layers and processes.
- Failure to Provide Mandated CPR and First Aid Training. The *Petties* Orders and the Transition Plan identify CPR and First Aid training as required for the DOT workforce. A review of training records indicates that 56% of staff have either expired CPR certifications or unknown status. Similarly, with respect to First Aid certifications, 47.5% of staff have expired certifications or unknown status. A review of correspondence regarding this issue indicates that the decision not to continue the required training was purely related to the fiscal condition of the agency.
- Inconsistent Practices in Terminal Operations. Fleet reports, assignment sheets, and call log reporting vary among the terminals. There is no uniform methodology applied in tracking and reporting transportation at the terminal level. Further, an examination of terminal assignment sheets, trip tickets, and the Parent Call Center logs indicates that route activities, such as the doubling of routes, are not reported accurately. We found instances where doubled routes identified on assignment sheets were not identified on trip tickets or in the Parent Call Center logs, and vice versa. In many cases, the information reported on one document was difficult to trace using other sources of information.
- Failure to Manage Fleet Operations at the Terminals. As noted previously, fleet data maintained at the terminals are not captured uniformly and often are incomplete. For example, while performing an on-site observation at one terminal, Gilmore Kean identified 25 buses in operation that did not have the vehicle registration sticker in the

window, which is required under District regulations. In addition, as noted earlier in the report, terminal inspection records are inaccurate. Terminal management staff play a significant role in providing “checks and balances” for the fleet maintenance operations. In the past, the fleet staff and terminal staff met weekly to discuss fleet issues at the terminal level. These kinds of discussions, which have been abandoned by DOT management, could have prevented the existing backlog of buses requiring service and ensured adequate fleet and quality repairs for Division vehicles.

- Failure of Management to Review Trip Tickets. Our analysis demonstrates that terminal management staff is not actively reviewing trip tickets. Although there is evidence of manager certification of review on trip tickets through actual signatures on the document, the findings identified in this report such as constant ride-time violations, a significant number of non-riders, failure to provide One-to-One Aides, and altered pick-ups effectively demonstrate that managers are not reviewing actual route performance.

Finding 6: THE DIVISION HAS FAILED TO DEVELOP AN EFFECTIVE ROUTING PROCESS.

As documented in each report submitted by the Supervising Court Master, the routing process is inefficient and is not managed properly. Many of the issues identified in this report demonstrate that significant routing-related issues remain unresolved. In the last report, we noted that nearly 23% of routes operated transported 593 students outside of route time standards established under the *Petties Orders*. Further, 257 students did not ride the school bus continuously. In the current period of observation, we found that 32% of routes transported 702 students over ride time and that there are 355 students not actively riding the school bus. Ideally, the routing process should function to correct the identified issues based on actual route performance. This process requires effective communication among routing staff, managers, and drivers to ensure that critical pieces of information are captured, reported, and corrected in the routing process.

Division management appears to have abandoned the long-standing practice of having routing staff review, on a weekly basis, 25% of the actual routes operated in order to identify and resolve issues. To add to DOT’s routing woes, a number of routes appear to have been constructed without regard to bell times and well-known traffic realities.

The failure of Division management to act appropriately and responsively to routing issues suggests a tendency to focus on the improvement of on-time arrival, while sacrificing compliance with the *Petties Orders* in other areas that are just as critical, such as student ride-times. As a result, some of the most vulnerable students in the system endure longer ride times. As noted above, DOT has made progress, particularly in the area of on-time performance. However, none of the above findings are likely to be successfully addressed without significant changes in the Division’s routing department.

Finding 7: LEADERSHIP OF THE DIVISION HAS BEEN INADEQUATE, AND OFTEN EVEN INCOMPETENT.

My last report to the Court acknowledged that I thought the improvement trend at DOT was due in some measure to the attention being paid to the Division's problems by the then newly-appointed State Superintendent of Education. Shortly thereafter, the Superintendent assigned a high level OSSE executive to oversee the Division. Believing that she could rely on that individual's leadership, the Superintendent turned her attention to other pressing OSSE business. Crediting the Superintendent in the earlier report proved to be correct because, during the most recent period, while she wasn't looking, her designee ran the Division into a significant hole. No purpose would be served by enumerating her managerial shortcomings and transgressions here. They have been shared with the Superintendent in detail. As a result, the individual was removed from the position and separated from OSSE. Subsequently, on July 21, the head of the Division and the Fleet Manager were removed from their positions.

A new Director of Transportation has been appointed and will soon assume his duties. We look forward to his providing consistent quality leadership, and as demonstrated above, he will face several pressing problems on the day he starts work. But the broader lesson is also quite clear: DOT requires the continuing attention of the Superintendent personally. To achieve and maintain compliance, she must frequently get into the weeds to assure that the Division is being run in a competent manner in her name. That does not appear to be happening.

Some might conclude that I am sounding like a broken record on this point, but I have never thought that OSSE and DOT were a good fit. I still don't. However, that's a matter for the city administration. Unless and until the Mayor decides otherwise, OSSE is the parent of DOT, and the State Superintendent of Education must act accordingly to operate a compliant transportation system.

Meanwhile, in view of some of the serious deficiencies still in evidence in DOT's performance and until there's a steady improvement in DOT's capacity, monitoring will be significantly intensified. Two of Gilmore Kean's partners will spend portions of each week on-site observing operations. In addition, an experienced fleet expert (the former Fleet Manager during the tenure of the Transportation Administrator) will also be on-site for portions of each week.

An early draft of this report was provided to the State Superintendent, and I afforded her an opportunity to respond to finding and information contained herein within 10 days, with the commitment that her responses would be included in the final report without edit.

However, subsequent reports I have received in the past few days from my fleet expert and the inadequacy of OSSE's responses lead me to believe that there is little sense of urgency at OSSE or the will and capacity to remediate these critical problems. As I reported above, in an

extraordinary, precipitous, and in my view irresponsible act, the Superintendent fired two of the few remaining senior managers yesterday. Less than three weeks before the opening of school and five days before the new Director arrives, and with so much still to be accomplished to get ready for the opening of school, she has left the Division essentially leaderless. Compounding the problem is the fact that several of the operations managers "left in charge" are on forced furloughs today. Consequently, I have determined that it is more essential to submit this report to the Court as quickly as possible and to initiate the process in the Transition Order for declaring a material breach and returning control of the Division to a Transportation Administrator. I began the process today by sending an informal notice to the Attorney General.

The Superintendent is free to submit her comments to the Court for its consideration. I do not believe that there is any disagreement about the facts concerning the actual operation of the Division. The only basis for disagreement would be on the conclusions about future remedial steps that should be drawn from the Division's known operational deficiencies and Defendants' failure to take necessary corrective actions concerning the bus fleet and general absence of planning to make the transportation system ready for the upcoming School Year.

Sincerely,

A handwritten signature in black ink, appearing to read "David Gilmore", with a long, sweeping flourish extending to the right.

David Gilmore
Supervising Court Master

cc: Counsel for Plaintiffs
Counsel for Defendants