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February 10, 2014

Barbara J. Fiala
Commissioner
New York State Department of Motor Vehicles
6 Empire State Plaza
Albany, New York 12228

Re: NYS IG 0690-014-2013

Dear Commissioner Fiala:

On April 18, 2013, the Inspector General received a complaint that a clerk in the Warren County Department of Motor Vehicles (DMV) improperly assisted an applicant taking a Commercial Driver License (CDL) examination. According to the complaint, the clerk inappropriately read the test to the applicant and provided him with the correct answers.

In accordance with the Americans with Disabilities Act, DMV will provide assistance on DMV written tests to applicants with reading disabilities. Specifically, DMV procedure 4165 states that DMV should provide audio recordings of tests "whenever an applicant indicates that they have a problem reading." Under the procedure, oral administration of a test is allowed only when a recording is not available.

Our investigation revealed that in or about mid-April 2013, [REDACTED] appeared at the Warren County DMV office and requested of the office supervisor, [REDACTED], that the CDL examination be read to him. [REDACTED], who has a reading disability, had failed the recorded version of the examination on several prior occasions. Despite the availability of a recorded version of the examination, [REDACTED] granted [REDACTED] request and scheduled him to return to the office on April 18, 2013, for an oral administration of the test.

On that date, when ██████ reappeared at the office, ██████ assigned ██████ a clerk, to read the test to him. According to ██████ the oral administration of the test to ██████ took three hours. In her sworn testimony to the Inspector General, ██████ denied providing test answers to ██████ and our investigation did not otherwise corroborate the allegation. ██████ however, admitted that she read the questions numerous times and, on one question, provided a picture of an intersection to explain the meaning of the word. ██████ also revealed that ██████ had to be directed to actually write the answers on the test form. The assistance that ██████ admittedly rendered ██████ not only deviated from DMV's prescribed procedure, but potentially could also be seen as compromising the integrity of the test.

While reviewing the circumstances of the ██████ test, we learned of another instance of an improper oral administration of a CDL test in the Warren County DMV. Our investigation found that in late 2012 a CDL examination was read to ██████, who also is reading disabled and also had previously failed the recorded version of the test. Similar to the situation involving ██████ ██████ read the test to ██████ with the knowledge and approval of ██████ despite the availability of a recorded test. ██████ denied providing ██████ with any answers and claimed that ██████ examination required significantly less time than her three-hour session with ██████ ██████ denied knowing either applicant other than through their appearances at the DMV office.

More significantly, the Inspector General's investigation further revealed that the oral administration of the CDL examinations to ██████ and ██████ in a manner inconsistent with DMV regulation were not isolated occurrences. In fact, in her interview with the Inspector General, ██████ admitted that it has long been routine practice in the Warren County DMV to read the CDL test to applicants with reading disabilities, regardless of the availability of a recorded test.

Based upon our investigation, in August 2013, DMV issued ██████ and ██████ a VTL section 506 notice requiring that they be retested or face suspension of their CDL driving privilege as of September 5, 2013. Both drivers voluntarily surrendered their CDL permits by September 4, 2013.

The Inspector General recommends that DMV take action to ensure that the Warren County DMV is administering CDL oral exams only when permissible by procedure. DMV also should consider issuing written guidance to all relevant staff, including county DMV employees, regarding the proper procedures for the administration of CDL examinations. In addition, Warren County should review the conduct of ██████ and ██████ and take action as appropriate.

Within 45 days, please advise me of any actions or decisions taken in response to the above recommendations, and include copies of any revised policies. If you require further information about our investigation, please contact Deputy Inspector General Audrey Maiello Cunningham at 518-474-1010.

Sincerely,

Catherine Leahy Scott
Inspector General

cc: Pamela J. Vogel, Warren County Clerk
Martin D. Auffredou, County Attorney