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August 17, 2015

Hon. Carmen Fariña
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

Re: Wei Liu
SCI Case #2014-5523

Dear Chancellor Fariña:

An investigation conducted by the office of the Special Commissioner of Investigation (“SCI”) has substantiated that Wei Liu, a Confidential Investigator assigned to the Department of Education (“DOE”) Office of Special Investigations (“OSI”), made inaccurate statements in an OSI report substantiating misconduct on the part of Occupational Therapist Debra Fisher, assigned to PS 333 in Manhattan.¹ Investigator Liu also drew inaccurate conclusions based on a telephone conversation with Children’s Museum of the Arts (“CMA”) Executive Director Barbara Hunt McLanahan. The statements and conclusions were at least partially responsible for Liu’s substantiated findings in OSI Case #13-09435X which resulted in disciplinary action being taken against Fisher. The SCI investigation also substantiated, more generally, that OSI investigators and their investigations do not receive adequate supervision.

The SCI investigation revealed that the only person at OSI who reviewed the investigation conducted by Investigator Liu was OSI Attorney Melissa Wilde who said that, both in this instance and generally, she had no contact with investigators during investigations. Wilde explained that she reviewed and signed off on closing reports on behalf of OSI Deputy Director Christopher Dalton who was the Interim Acting OSI Director at the time of Liu’s report on the Fisher investigation. Wilde did not supervise OSI investigators or investigations, but reviewed closing reports for grammar, spelling, punctuation, and stylistic errors. Wilde said that she was not responsible for verifying the accuracy or veracity of OSI reports. Wilde told SCI that she might return a closing report

¹ Liu was not reassigned as a result of this investigation. However, Liu no longer works for OSI or the DOE and has relocated to Ohio.

to an investigator without approval when she determined that additional interviews should be conducted or further information should be gathered. Wilde said that no other OSI personnel reviewed the closing report for OSI Case #13-09435X after she signed off on the report. According to Wilde, she was not questioned by then Interim Acting Director Dalton regarding her approval of Liu's closing report.

Further interviews by SCI demonstrated that the failure to supervise investigators and investigations was a common practice at OSI.

OSI Case #13-09435X

According to Liu's investigative report, OSI received an allegation against Fisher and another Occupational Therapist on January 2, 2014; that matter, referred to OSI by SCI, involved time and attendance issues and was not substantiated. A second allegation in the complaint, made only against Fisher, concerned soliciting contributions from parents for a charity she represented. The Charity later was identified as ThisAbilityNotDisability.org ("TANDA"). Liu substantiated that allegation.

When the OSI investigator originally assigned to the case interviewed the complainant, she reported that Fisher purportedly worked at the CMA on the weekend, which the complainant believed was a conflict of interest. Liu's investigative report contained conclusions to substantiate this allegation.

In the course of the OSI investigation, additional allegations against Fisher and the other Occupational Therapist were forwarded by SCI and included in the investigation. Those allegations were not substantiated.

The SCI Investigation

This investigation began in October 2014, when SCI processed a complaint which CMA Executive Director Hunt McLanahan made to DOE Ethics Officer Samantha Biletsky about Liu's description of his interview with Hunt McLanahan.² In July 2014, OSI Investigator Liu interviewed Hunt McLanahan about Fisher's CMA position. Liu told Hunt McLanahan that Fisher was under investigation for Conflict of Interest violations and for not submitting appropriate paperwork about her CMA position to the DOE.

SCI investigators met with Hunt McLanahan who said that the CMA offered yearly programs on weekends to approximately 260 children with Special Needs. Hunt

² Articles in The New York Times, the New York Post, and the New York Daily News questioned the accuracy of Liu's investigation of and report about Fisher's conduct. A second SCI case was incorporated into this investigation when a complainant forwarded The New York Times article to the Department of Investigation Complaint Bureau.

McLanahan added that the CMA hired Fisher, in April 2012, as a paid consultant for the program for children with Special Needs. According to Hunt McLanahan, the CMA knew about Fisher's DOE Occupational Therapist position when she applied for the CMA position.

Hunt McLanahan said that Liu asked her leading questions and she felt that Liu knew the answer he wanted before he asked a question. Hunt McLanahan explained that she sent an e-mail message to DOE Ethics Officer Biletsky, on October 3, 2014, because she felt that, in his final report for the case, Liu included misstatements about Hunt McLanahan's interview. According to Hunt McLanahan, Liu's statements – "Ms. McLanahan confirmed that Ms. Fisher receives money to provide services to children with disabilities who partake in art classes at the CMA" and "Ms. Fisher was providing services to a student" – were inaccurate. Hunt McLanahan explained that Liu asked her whether Fisher held a paid position at the CMA, but Liu did not ask Hunt McLanahan what the CMA paid Fisher to do. Hunt McLanahan told SCI investigators that Fisher did not work directly with children, but was responsible for instructing teaching artists how to work most effectively with students with Special Needs.

In the conclusion to his report, Investigator Liu made statements which were not supported by any evidence. Liu wrote: "[Ms. Fisher] cultivated a relationship with the parents of another student at the school and utilized that connection, at the very least, to have an inside track to secure a paid position at the CMA. It is incredible that the aforementioned parents that Ms. Fisher befriended would have no influence in the hiring process at the CMA."³ Hunt McLanahan told SCI that she informed Liu that members of the Director's Council did not influence hiring and that Board Members and donors who gave millions were not allowed to influence hiring.

Hunt McLanahan said that Liu's statement in his report – "Ms. McLanahan could not disclose whether members of the Directors' Council are able to influence the hiring process at the CMA, but claimed that there 'is a process'" – was not true. Hunt McLanahan did know how the CMA hiring process worked and did not tell Liu that she could not provide that information. Hunt McLanahan explained that the CMA must follow strict conflict of interest rules set forth by the Internal Revenue Service about the hiring process and accepting donations to retain its non-profit status.

Hunt McLanahan said that the CMA did not hire unqualified candidates as a favor to donors and no parent or donor pressured the CMA Board of Directors or administrators to hire Fisher. Hunt McLanahan added that, most of the time, candidates recommended by donors did not meet the job requirements and were not hired by the CMA. The CMA publicly advertised open positions, conducted interviews of applicants, and new hires were selected by a group of people, not one or a few influential donors. Hunt

³ In an interview with SCI investigators, Liu stated that the "incredible" reference was based on his interview of Hunt McLanahan. He did not claim to have any other external support for the statement.

McLanahan explained that Fisher submitted a résumé and was interviewed on three separate occasions. Other candidates also applied and were interviewed for Fisher's position, however, Fisher was hired because she was qualified and experienced and had received DOE background clearance and training.

Hunt McLanahan reported that other DOE employees also worked for the CMA. Hunt McLanahan did not know what conflict of interest disclosure documentation the DOE required of employees. The CMA did not have a policy of advising new hires to notify their existing employers about their employment with the CMA.

Hunt McLanahan said that Fisher continued to be employed by the CMA. Hunt McLanahan added that the 13-year-old male student ("Student A"), who was part of the focus of Liu's investigation, attended the CMA program for children with Special Needs.

SCI investigators met with Occupational Therapist Fisher who said that, in the summer of 2014, she was the subject of three OSI cases: Liu was investigating allegations against Fisher under OSI Case #13-09435X, Investigator John Eleftheriades was investigating allegations against Fisher under OSI Case #14-03812X, and Investigator Gerard Danko was investigating allegations against Fisher under OSI Case #14-03453X. Fisher described Eleftheriades and Danko as helpful, respectful, and professional each time she interacted with them. However, when Liu notified Fisher that she was the subject of an investigation, she asked about her right to representation, and Liu was unhelpful, cruel, and abrasive.

On June 24, 2014, Liu, Eleftheriades, and Danko interviewed Fisher. Danko asked Fisher about a video posted on social media that showed students. Eleftheriades asked Fisher about assisting students during State exams and her entries in the Special Education Student Information System, known as SESIS. Liu asked Fisher about her chairperson position at the charity TANDA and about Fisher's position at the CMA. According to Fisher, Liu was "overly aggressive" and caused her to think that he had made up his mind about her before they had spoken. To Fisher, Liu seemed "out to get" her, as though Liu's goal was to substantiate the allegations he was investigating, rather than merely collecting facts.

As a result of Liu's findings, Fisher was suspended by the DOE without pay from September 16, 2014 to October 30, 2014. Fisher filed a complaint with the DOE Office of Equal Opportunity & Diversity Management ("OEO") about Liu's investigation, but OEO forwarded Fisher's complaint to OSI, the office where Liu worked.

In a second interview with SCI investigators, Fisher explained that Student A was a child with Cerebral Palsy who inspired Fisher and to whom Fisher had become very close. Fisher said that Student A chronicled his experiences as a person with a disability on a Tumblr blog and started an online fundraising campaign at Kickstarter called Kickstarter: The TANDA Project. Student A sought funding to create a children's book and produce an animated film which depicted challenges similar to Student A's

experiences. Fisher added that, in January 2014, Student A was featured on *Today* to promote his Kickstarter campaign. Word quickly spread through the PS 333 community about Student A's appearance on *Today* and most people were excited and happy to support him. Fisher explained that she sent e-mail messages to the PS 333 community to promote Student A's Kickstarter campaign because she was proud of him.

When Liu interviewed Fisher in June 2014, he questioned her about sending e-mail messages soliciting donations during the school day. Liu referenced an e-mail message that Fisher sent to members of the PS 333 community at 11:07 a.m. on January 13, 2014, a redacted version of which was included in Liu's closing report. Fisher told Liu that her workday began at 8:25 a.m., that she spent very little time sending the e-mail message, and that the message encouraged its recipients to support Student A's Kickstarter campaign, not to give money to Fisher. Liu did not ask Fisher specific questions about soliciting funds from parents or staff members, but substantiated that Fisher conducted non-DOE business during the school day, based primarily on the e-mail message she sent on January 13, 2014.

Fisher explained that Student A's activism inspired her to co-found the charity, TANDA, to create after school programs for students with disabilities. TANDA included links to Student A's Kickstarter campaign and blog on its website, but Student A's Kickstarter campaign was separate from TANDA. Fisher explained that Liu spoke about the charity and the Kickstarter campaign as though he did not understand they were not the same entity. Fisher said that she never pressured Student A to be involved with TANDA and was offended by Liu's conclusion in his closing report that Fisher "exploited Student A's disability and created a charity to solicit funds."

Fisher was assigned to an 11-year-old female student ("Student C") whose mother sat on the CMA Director's Council. Fisher said that she never asked Student C's mother to help her obtain a position at the CMA. Rather, Student C's mother saw a video, posted online by Fisher, which showed an Art Therapy project Fisher helped to create for students with disabilities. As a result, Student C's mother suggested that Fisher learn more about the CMA.

Fisher visited the CMA and met with a director – whom she could not identify – about implementing a program at the CMA based on the project featured in the video. Fisher's suggestion was rejected, but she persisted in pitching it, until the CMA agreed to a trial of the program. Fisher said that the trial program went very well and began expanding. Fisher submitted a résumé and interviewed with three different people before she was hired at the CMA. Fisher added that she explained to Liu that her role at the CMA was supporting staff and showing teaching artists how to help children with Special Needs. Fisher never told Liu that she worked directly with children.

Fisher reiterated that, during the interview, Liu asked leading questions geared toward substantiating the allegations against her. Fisher provided the assigned SCI investigator with a binder containing more than 500 pages of documents relating to the

OSI investigation of Fisher and its subsequent media coverage. Fisher said that she offered to provide many of those documents to Liu to give him a better understanding of Fisher's role in Student A's life, with TANDA, and at the CMA, but Liu was not interested in hearing Fisher's version of events.

SCI investigators met with Student A in the presence of his father. Student A confirmed that OSI Investigator Wei Liu and an unidentified OSI investigator interviewed him in connection with an OSI investigation of Fisher. Student A had been receiving Occupational Therapy from Fisher for several years. In 2008 or 2009, Fisher introduced Student A to a Mercy College Professor who invited Student A to be a real life example of a person with disabilities for Mercy College Occupational Therapy students to learn effective techniques; Student A accepted, and speaks at Mercy College every December.

Student A acknowledged that he inspired Fisher to create TANDA. Student A did not ask Fisher to create a charity and TANDA did not raise money for Student A. Student A added that Fisher never solicited donations for TANDA from his father. Student A explained that he wrote a book, This Kid Can Fly: It's About Ability (NOT Disability), whose subject was a child who was the only person able to walk in a world where everyone was in a wheelchair. The child overcomes adversity to save a town. According to Student A, it was his idea to create a Kickstarter campaign to have the book printed and have the proceeds of the book sales go to TANDA. Student A said that he needed TANDA to be affiliated with his Kickstarter campaign because he was under 18 and could not create a Kickstarter account as a minor.

Fisher encouraged Student A and guided him to people who could help him, but his father and other parents helped him create his Kickstarter campaign. Fisher did not ask or push Student A to make any fundraising efforts. On his own volition, on Tumblr, Student A started a blog about his experiences as a person with a disability; the blog came to the attention of Tumblr founder David Karp who reached out to Student A and offered to have him featured on *Today* to promote his Kickstarter campaign. Student A was featured on *Today* in January 2014. Student A reported that his Kickstarter campaign raised \$15,000: \$10,000 was used to print the book and \$5,000 remained unused.⁴ Student A did not give any of the money raised by his Kickstarter campaign to Fisher or TANDA.

Student A said that Liu presented him with a list of donors to his Kickstarter campaign and asked him to identify which donors were from the PS 333 community. Student A recognized only about five names on the list; he was not sure whether the donors learned about his Kickstarter campaign from his appearance on *Today* or as a result of e-mail solicitations by Fisher.

⁴ Those figures were as of November 2014.

According to Student A's description of the interview, Liu "hounded" him with questions which he felt "adults are supposed to answer." Student A said that Liu scared him because Liu told Student A not to tell anyone, including his father, about what was discussed during the interview. Student A added that Principal Lowenstein was present during the interview, but Liu made no attempt to contact his father, a DOE School Food employee assigned to PS 333, who was in the building on the day of the interview.

According to Student A, Liu seemed to think that Fisher was guilty and Liu told him: "If you're trying to help your friend, don't help your friend. Be honest." Student A acknowledged that Liu did not try to have Student A change answers which Liu did not like, but Liu was "drilling" Student A to get specific answers to questions. Student A said that the other investigator present was nicer and had a different interviewing style. However, Student A felt both investigators pressured him and tried to lead him to say negative things about Fisher.

SCI investigators met with Principal Claire Lowenstein who said that Liu never asked to interview her. Principal Lowenstein was present during an interview Liu conducted of Student A, but did not recall when the interview took place. According to Lowenstein, Liu asked Student A fair questions about Fisher's conduct with students during State exams. Lowenstein maintained that Liu did not tell Student A that he could not tell his parents about what was discussed during the interview. Principal Lowenstein asserted that Liu did not try to intimidate or scare Student A.

SCI investigators spoke with the mother of a 13-year-old male student ("Student B") who had received Occupational Therapy from Fisher for eight years. The mother said that Fisher always behaved professionally and never solicited charity donations from her.

At the beginning of the 2013-2014 school year, Student B's mother's assistant took a call from Liu. The mother described Liu as "elusive" and rude with her assistant. Student B's mother returned Liu's call and he asked to interview her by telephone. The mother explained that she was uncomfortable being interviewed on the telephone by a person she never had met, but Liu never offered to interview her in person. Liu asked Student B's mother questions about TANDA and the mother responded that everyone in the PS 333 community was supportive of Student A and TANDA, not just Fisher.

According to Student B's mother, it seemed clear that Liu had deemed Fisher "guilty before proven innocent." The mother said that Liu phrased questions in a way which implied his personal opinions, rather than merely asking questions seeking facts. For example, when Liu asked the mother about Fisher's level of professionalism, Liu phrased the question: "Wouldn't you say that she acts unprofessional?" The mother said that Liu "was trying to set [her] up to say things." Student B's mother said that Liu's interview style "felt threatening" and the interview was "badly handled." Student B's mother acknowledged that Liu's unprofessionalism provoked her to become combative and the interview ended badly.

SCI investigators spoke with Paraprofessional Facelys Martinez whom Liu and an unidentified OSI investigator interviewed by telephone. Liu asked Martinez whether Fisher gave any students special treatment or helped students during exams. Liu also questioned Martinez about Fisher's relationship with Principal Lowenstein and about TANDA.

Martinez provided Liu with an e-mail message which she received from Fisher about Student A's Kickstarter campaign; however, Martinez did not recall answering questions about Fisher soliciting funds from parents and staff members. According to Martinez, Liu was fair, asked many questions, and did not try to get Martinez to answer in specific ways. However, Liu did not ask follow up questions which Martinez thought were important. For example, when Liu asked Martinez whether Fisher favored any students, Martinez replied in the affirmative, but Liu moved on to a new line of questioning. According to Martinez, had Liu asked her to explain her answer, Martinez would have clarified that everyone had students whom they naturally gravitated to more than others. Martinez got the impression that Liu believed that Martinez's response meant that Fisher treated certain students better than others or that Fisher showed favoritism toward students to get favors from parents, however, Liu did not ask Martinez those specific questions.

SCI personnel interviewed OSI Attorney Melissa Wilde who signed off on Liu's closing report on the Fisher investigation. Wilde said that OSI investigators may conduct interviews in person or by telephone. Wilde added that OSI investigators took notes during interviews, but did not prepare typed reports of interviews for the case file. Instead, OSI investigators memorialized the interviews in the closing OSI Investigative Report for the case.

Wilde said that, generally, she had no contact with investigators during investigations, but she reviewed and signed off on closing reports on behalf of OSI Interim Acting Director Christopher Dalton.⁵ Wilde explained that she reviewed closing reports for grammar, spelling, punctuation, and stylistic errors, but was not responsible for verifying the accuracy or veracity of reports. Wilde did not supervise investigators, but Wilde might return a closing report to an investigator without approval when she determined that additional interviews should be conducted or further information should be gathered. According to Wilde, after she granted approval, closing reports only were reviewed by General Counsel Chief of Staff Amelia Barbadoro, former OSI Director Candace McLaren, or OSI Associate Director Norris Knowles when the subject of the investigation was to be scheduled for a Technical Assistance Conference, known as a TAC. Wilde said that no other OSI personnel reviewed the closing report for OSI Case #13-09435X, Liu's investigation of Fisher, after she signed off on the report.

According to Wilde, to her knowledge, OSI did not receive any complaints about Liu's conduct, professionalism, or investigative work. Wilde had reviewed and signed

⁵ Dalton previously was and currently holds the position of Deputy Director of OSI.

off on Liu's reports in the past, but she did not know the type of language Liu typically used in closing reports. Wilde said that every interview conducted during an OSI investigation should be included in the closing report, even when the information provided during the interview did not reveal new or important facts. However, Wilde did not know that Liu interviewed Student B's mother because Liu made no reference to the interview in his closing report. Wilde did not know whether Liu attempted to interview Student C's mother or any CMA board member. Wilde believed that Liu did not interview any CMA board members because no such interviews were included in Liu's closing report.

Wilde did not question Liu about interviewing CMA board members or the evidence that Student A's disability or relationship with Fisher played a role in Fisher's hiring at the CMA. Wilde acknowledged that Liu did not explain his conclusion that Fisher "exploited Student A's disability and created a charity to solicit funds," but Wilde assumed that Liu was referring to Fisher using Student A's disability to create opportunities for herself at the CMA. According to Wilde, OSI investigators were permitted to consider their opinion of a subject's credibility when assessing whether allegations have been substantiated.

Wilde added that Liu's substantiation of allegations against Fisher based on his conclusion – "It is incredible that the aforementioned parents that Ms. Fisher befriended would have no influence in the hiring process at the CMA" – was valid. She did not, however, ask Liu about his factual support for this statement. Wilde did not have a conversation with Liu about the media coverage of the Fisher investigation. Wilde was not questioned by then Interim Acting Director Dalton in connection with her approval of Liu's closing report.

SCI investigators spoke with Office of Legal Services ("OLS") Senior Field Counsel Matthew Fleming who was notified, in late August or early September 2014, that Liu had substantiated the investigation of Fisher. Fleming said that Liu found Fisher sent e-mail messages during school hours soliciting funds from parents and PS 333 staff members for a charity, in violation of the Chancellor's regulations regarding conflict of interest, and theft of service. Fleming asserted that he was not responsible for verifying the validity of OSI findings.

In turn, Fleming notified Principal Lowenstein of OSI's findings and recommendation that strong disciplinary action, including termination of employment and a problem code, be taken against Fisher. Fleming asked Lowenstein what disciplinary action she felt should be taken against Fisher. Lowenstein responded that she was a new principal and asked Fleming to contact Ethics Officer Biletsky for a recommendation about disciplinary action. Fleming advised Lowenstein that he had received the notification about the outcome of the case near the end of the contractual time frame and there was limited time to make a decision.

Lowenstein informed Fleming that Fisher did not have a significant disciplinary history and she did not have a preference for the action to be taken against Fisher. According to Fleming, at some point, “someone” – Fleming did not recall who – suggested that Fisher be issued a 60 calendar day unpaid suspension, but Fleming declined the suggestion because he felt it was excessive. Fleming issued a recommendation of a 30 calendar day unpaid suspension and no termination of employment, which seemed appropriate and fair to him.

Fleming recommended to Lowenstein that she and the Director of Occupational Therapy hold a joint disciplinary conference with Fisher. Fleming subsequently learned that Fisher grieved the disciplinary action taken against her at the Chancellor’s level, but the penalty was sustained.

In an interview with SCI personnel, Wei Liu explained that OSI Case #13-09435X involving Fisher and another Occupational Therapist was reassigned to him when the assigned investigator left the office on March 29, 2014. The previous investigator obtained timecards and interviewed Supervising Occupational Therapist Carolyn Hahn; Liu conducted all other investigative work for the case. Liu confirmed that Fisher also was the subject of two separate OSI investigations being conducted by OSI Investigator Danko and OSI Investigator Eleftheriades. Liu, Danko, and Eleftheriades sat in on interviews for all of the cases. Liu did not recall where he first learned that Fisher had obtained a paid consultant position at the CMA.

Liu was not present when the previous OSI investigator interviewed Hahn. The notes regarding Hahn’s interview indicated that Hahn reported allegations about Fisher to SCI, including soliciting parents by telephone and e-mail for donations to TANDA during the school day; SCI referred Hahn’s allegations to OSI. Hahn provided a printout of TANDA’s website which listed Fisher as the organization’s co-chair and made several references to Student A.

Liu asserted that he visited PS 333 and spoke with Principal Lowenstein who was unaware of the allegations against Fisher.

Liu and Eleftheriades interviewed Student A at PS 333 in the presence of Principal Lowenstein. Liu “would have rathered” that Student A’s father accompany Student A during the interview, but Liu did not contact Student A’s father at any point. Liu said that neither Student A nor Principal Lowenstein informed him that Student A’s father was a DOE employee assigned to PS 333 and was present on the day of Student A’s interview.

Liu responded “absolutely not” when asked whether he directed Student A not to disclose what was discussed during the interview to his parents. Liu did not recall Student A’s answers to Liu’s questions. Liu asserted that Student A asked whether Fisher was going to get into trouble, but Liu did not recall his response to Student A.

Liu interviewed CMA Executive Director Hunt McLanahan by telephone. Hunt McLanahan had knowledge of TANDA. Hunt McLanahan told Liu that several PS 333 students attended the CMA program for children with disabilities. According to Liu, Hunt McLanahan also told him that Student C was a PS 333 student and her parents served on the CMA Director's Council and Student C's parents made financial contributions to the CMA, but Liu did not recall whether Hunt McLanahan quantified the amount of the donations.

Liu asserted that the CMA Director's Council made decisions in the hiring process of CMA employees. Liu acknowledged that Hunt McLanahan did not say that Student C's mother or father helped Fisher obtain a job at the CMA. Liu did not ask Hunt McLanahan whether Student C's mother or father removed themselves from the hiring process when Fisher was a candidate. Liu agreed that it was his opinion that McLanahan's information about Student C's parents alluded to influence over Fisher's hiring at the CMA. According to Liu, his conclusion in the OSI closing report – "It is incredible that the aforementioned parents that Ms. Fisher befriended would have no influence in the hiring process at the CMA" – was based on his interview of Hunt McLanahan.

According to Liu, Hunt McLanahan did not recall how Fisher was hired at the CMA. Liu thought that Hunt McLanahan said Fisher provided Art Therapy to children in CMA's program for children with disabilities and worked directly with children, but Liu was not sure. Liu sent an e-mail message to Hunt McLanahan after the interview asking for further information about how Fisher obtained the CMA consultant position, but he did not receive a response from her.

Liu acknowledged that he never attempted to interview Student C's parents. Liu said that he interviewed two or three parents whose names appeared on a list of donors on TANDA's website, but Liu did not recall the names of the parents he interviewed. Liu asserted that he did not include the interviews of the parents in his closing report because the parents did not provide helpful information. Liu said that he attempted to interview Student B's mother, but she called him a "Nazi" and said that Liu should be ashamed of himself for investigating Fisher. Liu maintained that he did not ask Student B's mother any questions. Liu acknowledged that he did not speak with Student A's parents or any parents of children who attended the CMA.

Liu said that he spoke with New York City Conflicts of Interest Board Assistant Counsel for Enforcement Jeff Tremblay by telephone. According to Liu, Tremblay confirmed that it was a conflict of interest for DOE employees to solicit money from parents and staff members, to solicit charitable donations or do non-DOE work during DOE time, and to cultivate relationships with students or parents to gain employment outside of the DOE.

Liu interviewed Paraprofessional Facelys Martinez by telephone. Martinez provided Liu with the e-mail message which he included in his investigative report. Liu

indicated that Fisher sent the message during the school day to solicit donations for Student A's Kickstarter campaign. Liu said that he did not know whether Fisher sent the message from her DOE e-mail account or her personal account. However, Liu added that the type of account would not have made a difference to him.

The redacted copy of the message, which was embedded in Liu's investigative report, showed that Fisher sent the initial e-mail message from her personal Gmail account to herself at 8:25 a.m. on January 13, 2014, and forwarded the message from her personal account to Martinez and another PS 333 staff member at their personal e-mail accounts at 11:07 a.m. on January 13, 2014. Liu said that Fisher's DOE work hours were from 8:00 a.m. to 4:00 p.m.; Liu did not know what time Fisher was scheduled to take lunch or breaks. Liu did not know who else, if anyone, received Fisher's e-mail message. Liu acknowledged that this was the only e-mail message he had and did not know whether others existed.

According to Liu, he could not determine whether TANDA's donors contributed to the charity of their own volition or as a result of Fisher's solicitations. Liu printed out a list of donors posted on TANDA's website, but never spoke with any officials from TANDA, other than Fisher. Liu said that he did not speak with any other PS 333 staff members about Fisher soliciting donations. Liu could not quantify how much DOE time Fisher spent soliciting donations. Liu said that he was not investigating allegations that Fisher failed to provide occupational services to students because she was using DOE time to solicit donations.

Liu visited TANDA's website and Student A's Kickstarter page and assumed that there was an affiliation between the charity and Student A. Liu acknowledged that he did not ask Student A about the purpose of his Kickstarter campaign.

According to Liu, he had no issues with Fisher when he visited PS 333 to inform her that she was the subject of an OSI investigation. However, Liu said that, immediately upon learning that she was being investigated, Fisher seemed intimidated and panicked and began making telephone calls. Fisher asked Liu whether he thought Fisher was a "bad person." Liu advised Fisher to contact her union for representation during her interview.

According to Liu, Fisher was upset when she appeared at OSI, in June 2014, with her union representative, to be interviewed by Liu, Danko, and Eleftheriades for their respective cases. Liu informed Fisher that he was assigned to investigate allegations that she solicited donations from parents and staff members for a charity which Fisher created during DOE time and, in response, Fisher denied the allegations. Liu asserted that, when he sat in on Danko's interview of Fisher, she "might have mentioned" that she was a paid CMA employee. Liu added that Danko "might not have asked" Fisher how she came to be hired at the CMA. Liu did not ask Fisher whether she applied for a Conflicts of Interest waiver to work for the CMA or to establish a non-profit organization. Liu added

that Danko asked whether Fisher had obtained a waiver to work for the CMA and Fisher responded that she had not.

Liu acknowledged that he did not ask Fisher to explain why she founded TANDA, what TANDA was, or to describe TANDA's website. Liu did not recall what Fisher intended to do with the money that she was asking parents and staff members to donate. According to Liu, he believed that Fisher assessed that Student A was disabled and the son of poor immigrants and Fisher started a charity to bring awareness to Student A's disability and to help Student A. Liu said that his conclusion in his closing report – "[Fisher] exploited Student A's disability and created a charity to solicit funds" – was meant to indicate that Fisher gained attention for herself and TANDA from her affiliation with Student A. Liu explained that he substantiated that Student A was affiliated with TANDA based solely on the contents of TANDA's website. Liu said that he did not believe that Fisher gained financially from Student A's disability.

Liu said that his closing investigative report was reviewed and signed off on by an OSI attorney; Liu did not recall which attorney signed off on his report. Liu did not recall whether the reviewing attorney requested corrections or additional interviews before approving the report. Liu said that he was responsible for making disciplinary action recommendations, but was not responsible for determining the disciplinary action to be taken against the subjects of substantiated cases.

Asked to explain how Fisher "exploited" Student A's disability, Liu said that it was his "feeling." Liu defended his conclusions as based on the totality of his investigation and added that he thought Fisher would repeat her conduct with other children if she was not stopped and he recommended that her employment be terminated. Liu asserted that tension between him and Fisher played no role in his conclusions or recommendation. Asked whether Fisher was simply trying to help Student A, Liu responded: "Sure – she said that."

The New York Times Reporter Jim Dwyer attempted to contact Liu, but Liu transferred Dwyer's call to the OSI public relations department. According to Liu, OSI Deputy Director Dalton, who was Interim Acting Director of OSI at the time of the Fisher report, spoke with him about the Fisher investigation only when SCI requested a copy of Liu's case file – which was after the media coverage.

SCI sought to determine how Fisher came to be hired by the CMA, but Board members were reluctant to be interviewed. However, CMA Executive Director Hunt McLanahan forwarded an e-mail message to the assigned investigator which attached a letter from the CMA Executive Committee explaining the hiring process used when Fisher obtained a paid consultant position at the CMA in April 2012. According to that letter, the CMA was a non-profit organization which received New York City, New York State, and Federal grants and adhered to all applicable regulations relating to advertising

and employing staff and consultants to ensure equality of opportunity for all candidates. These regulations ensured that the CMA, and all non-profit organizations, prevented people with authority, whether they were funders, government officials, staff members, or board members, from having undue influence in the selection of the best qualified candidate for a position.

The position for which Fisher ultimately was hired was posted on Indeed.com and candidates were asked to submit résumés. Student C's mother and father, who were members of the CMA Director's Council, recommended Fisher. The CMA Executive Committee reported that Student C's parents had no other involvement in the hiring process.

Fisher and other candidates, including one who later was hired for the second Occupational Therapist position, were interviewed for the consultant position which Fisher obtained. Fisher first was interviewed by the Director of Museum Programs; her second interview was with the Director of On-Site Programming who currently held the position of Director of Community Programs. Fisher had a third interview with the CMA Executive Director who chose to hire Fisher based on her excellent qualifications and experience, as well as the positive feedback he received from those who conducted Fisher's first two interviews. The CMA Executive Committee did not know of anyone contacting Student C's mother or father during the interview process, and Student C's parents did not offer their opinion on the candidates under consideration.

The CMA Executive Committee explained that the Director's Council, of which Student C's parents were members, was an informal group of people who acted as advisors to and supporters of the CMA. The Director's Council was not engaged in daily management issues and was not involved in hiring decisions. The CMA Board of Directors was the governing body of the CMA and was involved in hiring only the executive director. The CMA Executive Committee reported that all other employment issues were managed by the executive director and the professional managers of the CMA.

SCI investigators spoke with Occupational Therapist Leslie Daley who first learned about Student A's Kickstarter campaign from Fisher. Daley did not know who started the Kickstarter campaign or the campaign's purpose. Daley said that Fisher had worked with Student A for several years and was extremely vocal about her support of Student A's fundraising efforts.

In the weeks preceding Student A's appearance on *Today*, Daley often witnessed Fisher and Student A in a classroom practicing for Student A's television appearance. Daley did not know what Fisher should have been doing when she was coaching Student A because she did not supervise Fisher. After Student A's appearance on *Today*, Daley heard that Fisher had sent an e-mail message with a link to a video of the segment to a

Physical Therapist and Daley asked Fisher to forward the email to her, too. Fisher never solicited donations from Daley in person or by e-mail.

Daley said that she did not intend to make an official report about Fisher when she made a comment in passing to Supervising Occupational Therapist Hahn about overhearing Fisher speaking on her cell phone. Daley explained that, for about a week around the time when Student A launched his Kickstarter campaign, Daley witnessed Fisher constantly sending text messages and making phone calls on her cell phone. Daley did not know what Fisher should have been doing, where Fisher should have been, or with whom Fisher was communicating when Daley saw her using the phone. Daley made a comment to Hahn about seeing Fisher on her cell phone and hearing her comment: "Well, it's tax deductible." Daley said that Fisher's phone conversation took place in the morning around the time when students arrived, but Daley did not recall whether she overheard Fisher's conversation before or after the school day officially began. Daley assumed that Fisher was talking to a parent and was soliciting a donation for Student A's Kickstarter campaign, but Daley was not sure about the details.

Daley never witnessed Fisher ignoring a student to whom she should have been providing services and, instead, using her phone. Daley said that Fisher's workday ended at 3:30 p.m., but during that time period, Fisher left around 1:30 p.m. about twice a week without giving an explanation to her co-workers. Daley did not know whether Fisher notified or received permission from her supervisor to leave early.

Daley never had a conversation with Fisher about TANDA. Daley believed that TANDA "involves some parents of the kids" based on information that Daley found on TANDA's website; Daley believed that she saw Student C's mother featured on TANDA's website. Daley knew that Fisher worked at a museum because Fisher asked whether Daley would be interested in working there, but Daley did not pursue a job at the CMA. Daley was not able to provide any information about the affiliation Student C's mother had with the museum where Fisher worked.

Daley said that OSI Investigator Liu interviewed her briefly by telephone. According to Daley, Liu's statement in his closing report – "Ms. Daley spoke to this investigator regarding the allegations against Ms. Fisher and [name omitted] and noted that she does not recall ever seeing either Ms. Fisher or [name omitted] leaving early without permission" – was inaccurate. Daley told Liu that she had seen Fisher leave early, but did not tell Liu that Fisher left early without permission. Daley did not recall Liu asking her any questions about the second Occupational Therapist he was investigating.

According to Daley, Liu's statement in his closing report about a claim made by Daley – "Ms. Fisher was telling the parent how a contribution to TANDA or its affiliated Kickstarter campaign was 'tax deductible'" – was inaccurate. Liu asked Daley about

overhearing a comment by Fisher during a cell phone conversation; Daley responded that, during the time period, Fisher often was talking about Student A's Kickstarter campaign, but Daley only overheard Fisher say "tax deductible" during one call on her cell phone. Daley said that Liu "might have paraphrased" her answer because she never told Liu that she was sure Fisher was talking about TANDA or a Kickstarter campaign and never told Liu that Fisher was speaking to a parent. According to Daley, Liu asked fair questions and did not pose questions seeking to get specific negative answers about Fisher. Daley did not feel that Liu had a bias against Fisher.

SCI personnel interviewed OSI Deputy Director Dalton who was Interim Acting Director when Liu's closing report in the Fisher investigation was approved. Dalton essentially confirmed the OSI operating procedures described by Attorney Wilde, who reviewed Liu's closing report of the Fisher investigation.

Asked about OSI procedures for supervising investigators and investigations, Dalton responded that full case reviews were conducted two times a year. Other case reviews took place as needed. Dalton described the OSI supervision procedure as "really an informal structure." Dalton noted that his door was always open.

Dalton confirmed that one of three OSI attorneys reviewed the closing report of an OSI investigation. Attorneys randomly selected a case from a drawer in the OSI office. The attorneys did not supervise investigators or investigations. Dalton explained that the reviewing attorney checked for completeness – that all the allegations were answered out – checked grammar, punctuation, and word usage. Unlike Wilde's description of the process, Dalton asserted that the reviewing attorney matched the handwritten notes to the closing report to check whether the content was accurate. Dalton said that the attorney was authorized to return the case for additional work and was authorized not to sign off. Dalton added that the attorney always could confer with him.

According to Dalton, previous OSI Director Candace McLaren and current OSI Director Jaclyn Vargo also reviewed OSI investigations, but not every case. Dalton said that Vargo had not changed any of the procedures put in place by McLaren.

Dalton did not know of any complaints about Liu's work.

Dalton did not review Liu's investigation of Fisher and became familiar with it only after it garnered media attention. Dalton said he reviewed Liu's closing report and found it was the "normal course of business," and the action was based on the facts – "the facts [Liu] uncovered were the facts." Dalton then took a few moments to read Liu's closing report. Asked whether he thought the conclusion flowed from the facts, Dalton responded: "I do." Asked whether he would have signed off on that version of the

report, as Attorney Wilde did, Dalton replied that he would have changed a few words – “the phraseology” – such as “incredible” and “befriended.”

Dalton said that interviews by telephone were allowed “sometimes,” because the witness was otherwise not available, but the use of telephone interviews should be infrequent. Dalton added that he would like a footnote in the closing report to explain why the interview was not conducted in person.

Dalton confirmed that OSI investigators took handwritten notes during interviews, but did not complete typed memos, and used the notes to produce the typewritten closing investigative report. Dalton confirmed that every interview conducted should be reflected in the closing report even when the information was not helpful. According to Dalton, OSI investigators did not have the luxury of traveling in pairs and did not conduct interviews in pairs. The exception was when more than one investigator had a case with the same subject.

SCI personnel met with OSI Director Jaclyn Vargo who assumed that position on October 14, 2014. Vargo’s knowledge of Liu’s investigation of Fisher was based on media coverage and she did not read the report.

Vargo said that the day-to day decisions about an OSI investigation – such as, what step is next – was left to the assigned investigator, although the investigator was welcome to confer with a manager as needed. Vargo confirmed that, when a case was ready to be closed out, one of three OSI attorneys reviewed it for sign off.⁶ Vargo said that the attorney was given the entire case file and the draft report. According to Vargo, the attorney reviewed the report not just for typos, but also for content. Vargo reiterated that the attorney had access to the case notes and, as needed, reached out to the investigator to clarify something in the report. On occasion, as needed, the attorney asked the investigator to speak with a witness who had not been interviewed or to re-interview a witness. Vargo, also an attorney, randomly “cherry picked” reports to review from beginning to end for quality control and as a management tool.

Vargo said that a case file being closed consisted of the referral documents, all notes, any supporting documents, an action sheet, and the draft report. Asked whether the reviewing attorney was expected to examine the entire case file, Vargo responded that the attorney had “access” to everything and noted that some cases were more complex while others were straightforward. According to Vargo, there was no mandate to look at the file, but she would be surprised if it were not routine.

⁶ Vargo said that, when the “drawers” were full, Deputy Director Dalton, who was not an attorney, also reviewed cases. An attorney did not review Dalton’s review. Vargo explained that the “drawers” were in a filing cabinet which was closed and locked.

Vargo noted that one change she made at OSI was to the backlog of cases and she reported that, since her arrival, it was down 72%. However, according to Vargo, the system of supervising cases at OSI was “largely the same.” Vargo said that she had not made any substantive changes to the procedure that was in place when she arrived.

Meeting with the Chancellor

Department of Investigation Commissioner Mark Peters and Special Commissioner Richard Condon subsequently met with DOE Chancellor Carmen Fariña, her Chief of Staff, Ursulina Ramirez, and her General Counsel, Courtenaye Jackson-Chase, at Condon’s office to discuss this Report; specifically, the findings which criticized the supervision of OSI investigations and investigators.

Chancellor Fariña acknowledged that, as a result of the findings of this Report, the DOE would continue to implement improvements made under its new director, including expanding the role and responsibilities of attorneys at OSI, and restructuring some aspects of its case review process. Some of the improvements, which either already are in place or will be implemented shortly, include:

- Direct and ongoing supervision by both a supervising investigator and an attorney to ensure a complete and accurate investigation.
- Hiring additional attorneys who will continue to review and fact check investigative files, but also will be responsible for the final drafting of investigative reports.
- Continuing education for OSI investigators and OSI attorneys to support best practices in the investigative process.

SCI will follow up with the DOE to monitor the progress at OSI.

Conclusion and Recommendation

OSI Director Vargo and OSI Deputy Director Dalton differed in their wording, but essentially described the same procedure used to conduct and review OSI investigations. Deputy Director Dalton called the supervision procedure “really an informal structure.” Director Vargo said the system of supervising investigations was “largely the same” as that followed by her predecessor.

Wei Liu’s investigation of Fisher did not meet professional standards and contained certain conclusions not supported by the factual record developed. Of greater concern, the SCI investigation of Wei Liu’s investigation of Debra Fisher demonstrates that there is insufficient supervision of OSI investigators and OSI investigations. An investigator should not be the sole judge of the completeness or accuracy of an investigation he or she conducted. The findings of an investigation which recommends

the termination of someone's employment should be subjected to an oversight and review process that includes more than checking for grammar and punctuation. The DOE must take steps to ensure that meaningful supervision of investigators and investigations becomes an integral part of the structure of OSI.

We refer our findings for your review and to take appropriate action.

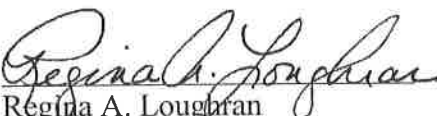
We note that violations of the conflicts of interest provisions of the New York City Charter are handled by the New York City Conflicts of Interest Board.

We are forwarding a copy of this letter to General Counsel. Should you have any inquiries regarding the above, please contact First Deputy Commissioner Regina Loughran, the attorney assigned to the case. She can be reached at (212) 510-1426. Please notify First Deputy Commissioner Loughran within 30 days of receipt of this letter of what, if any, action has been taken or is contemplated regarding this investigation. Thank you for your attention to this matter.

Sincerely,

MARK G. PETERS
Commissioner of the
Department of Investigation

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By: 
Regina A. Loughran
SCI First Deputy Commissioner

MGP:RJC:RAL:ss

c: Courtenaye Jackson-Chase, Esq.