

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 19-0012101 CAF**

<b>SABINE PASS ISD, Complainant</b>	§ § § § § § § § §	<b>BEFORE THE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
v.		
<b>BLUE BIRD CORPORATION and CUMMINS, INC., Respondent</b>		

**DECISION AND ORDER**

Sabine Pass ISD (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2018 Blue Bird school bus. Complainant asserts that the vehicle’s dash lights do not work properly, the vehicle pulls to the right when being driven, it leaks fluid, there are electrical problems in the vehicle’s dash, the vehicle suffers from loss of power, and the vehicle will not start. Co-Respondent, Blue Bird Corporation (Blue Bird) argued that the items which are covered under their warranty have been repaired and no relief is warranted. Co-Respondent, Cummins, Inc. (Cummins) argued that any issues with the engine were caused by water getting in the vehicle’s fuel and that such issues are not covered by their engine warranty. The hearings examiner concludes that the vehicle does have an existing warrantable defect or nonconformity and Complainant is eligible for repurchase relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened telephonically on October 22, 2020, before Hearings Examiner Edward Sandoval. Sabine Pass ISD, Complainant, was represented by Tom Butler, Transportation Director. Also appearing for Complainant were Andy Bates, principal of Sabine Pass High School; Jason Thibodeaux, athletic director of SPISD; Chad Byron, math teacher and basketball coach at Sabine Pass High School; Brette Rector, secretary, and Lindsey Stewart, Account Representative for Regional Pool Alliance. Blue Bird Corporation (Blue Bird), co-Respondent, was represented by Christy Amuny, attorney with Germer, PLLC. Also appearing for Blue Bird were Paul Bell, Field Service Support, and Toysha Massey, Associate General Counsel for Blue Bird. Cummins, Inc. (Cummins), co-Respondent, was represented by Lanita Morgan and Elizabeth Hatting, attorneys with Lathrop GPM, LLP. Also appearing for Cummins were Ben Warren, Certified Field Service Engineer, and Steve Collins, Original Equipment Manufacturer Service and Customer Quality Manager. The hearing record closed on November 2, 2020, after the hearings examiner received additional requested documents from the parties.

## II. DISCUSSION

### A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> (There are three (3) tests which can create a rebuttable presumption that a manufacturer has been given a reasonable opportunity to repair the vehicle. These tests are described below.) Fourth, the owner must have provided written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

The tests which create a rebuttal presumption that a manufacturer, converter, or distributor have been given a reasonable number of attempts to conform a motor vehicle to an applicable express warranty are as follows:

1. if the same nonconformity continues to exist after being subject to repair four or more times and: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.<sup>6</sup>
2. if a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times and: (A) at least one repair attempt was made during the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (B) at least one other attempt was made in the 12 months

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

or 12,000 miles, whichever comes first, immediately following the date of the first repair attempt.<sup>7</sup>

3. a nonconformity still exists that substantially impairs the vehicle's use or market value and: (A) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.<sup>8</sup>

Serious safety hazard" means a life-threatening malfunction or nonconformity that substantially impedes a person's ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.<sup>9</sup>

The 30 day out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.<sup>10</sup>

## **B. Complainant's Evidence and Arguments**

Complainant purchased a new 2018 Blue Bird school bus on February 22, 2017, from Rush Bus Center (Rush) located in Selma, Texas.<sup>11</sup> The vehicle's mileage at the time of delivery was 0.<sup>12</sup> Blue Bird provided several warranties for the vehicle and various aspects of it. Two of the warranties provided by Blue Bird specify that dash lights, suspension, and driveshaft are warranted for two (2) years from the delivery date of the vehicle. Blue Bird also offers a base warranty providing for coverage for the vehicle for 12 months or 12,000 miles. Cummins provided a Base Engine Warranty for the vehicle's engine providing coverage for five (5) years or 100,000 miles. On the date of hearing the vehicle's mileage was 17,784. Blue Bird's warranty for the items indicated above has expired. However, Cummins warranty was still in effect at the time of hearing.

Tom Butler, Complainant's transportation director, testified for Complainant. He stated that the vehicle was purchased as a route and activities bus. However, since purchasing the vehicle Complainant has experienced problems with the vehicle's dash lights not working properly, the

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<sup>7</sup> Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

<sup>8</sup> Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

<sup>9</sup> Tex. Occ. Code § 2301.601(4).

<sup>10</sup> Tex. Occ. Code § 2301.605(c).

<sup>11</sup> Complainant Ex. 2, Bus Purchase Documentation dated February 22, 2017.

<sup>12</sup> *Id.*

vehicle pulling to the right when being driven, leaking fluid, electrical problems in the vehicle's dash, the vehicle suffering from loss of power, and the vehicle intermittently not starting.

Soon after purchasing the vehicle, Complainant's drivers experienced the vehicle pulling to the right and the dash lights intermittently not working. Complainant took the vehicle to Rush's location in Houston, Texas for repair for the issues in March or April of 2017.<sup>13</sup> Rush's service technicians checked the vehicle's dashboard lights and did not find any trouble codes stored on the vehicle's computers for the issue.<sup>14</sup> The technicians determined that the dashboard lights were working correctly.<sup>15</sup> The technicians also determined that the vehicle had a failed wheel seal which caused the vehicle to pull to the right when the brakes were depressed.<sup>16</sup> The technicians replaced the vehicle's brake pads, hub gasket, wheel seal, and adjusted the brakes on both sides of the vehicle in order to address the issue.<sup>17</sup> The vehicle's mileage on this occasion was 3,320.<sup>18</sup> Complainant was not provided a loaner vehicle while their vehicle was being repaired. Mr. Butler was not sure how long the vehicle was in Rush's possession on this occasion. He stated that it usually took weeks to repair the vehicle when it was taken to Rush.

Mr. Butler testified that the vehicle drove okay on the way back to Sabine Pass after he picked it up from Rush. However, sometime in May of 2017, Complainant started having problems with the vehicle. The problems were that the dash lights were intermittently not working, the windshield wipers not working, there was a whining noise at the rear of the vehicle when the vehicle was being driven, and the fuel gauge not working properly. Complainant took the vehicle to Rush's location in Houston for repair. Rush's service technicians checked the vehicle's antilock braking system (ABS) module per instructions from Blue Bird's technical representative.<sup>19</sup> The technicians determined that the ABS module had failed and was causing the dashboard lights to malfunction.<sup>20</sup> The technicians replaced the module in order to address the issue of the dashboard lights not working.<sup>21</sup> Rush's service technicians found that the wiper arm assembly was missing a bolt and replaced the assembly in order to resolve the issue of the wipers not working.<sup>22</sup> The technicians also determined that the vehicle's radiator fan gear box (miter box) had a bearing failure which was causing a whining noise from the rear of the vehicle.<sup>23</sup> The

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<sup>13</sup> The invoices from Rush do not indicate a date when the vehicle was delivered for repair, only a completion or invoice date.

<sup>14</sup> Complainant Ex. 3, Repair Order dated April 19, 2017.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Complainant Ex. 4, Repair Order dated September 26, 2017.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

technicians replaced the miter box in order to address the issue.<sup>24</sup> The final issue addressed by Rush's technicians during the repair visit was the fuel gauge not working properly. The technicians determined that the fuel sending unit had separated causing the fuel gauge to give incorrect information and replaced it.<sup>25</sup> The vehicle's mileage at this time was 4,151.<sup>26</sup> The vehicle was in Rush's possession from May of 2017 until September 26, 2017. Complainant was not provided with a loaner vehicle while the vehicle was being repaired.

Mr. Butler picked up the vehicle from Rush on September 26, 2017, and did not notice any issues with the vehicle on the drive back to Sabine Pass. However, in November of 2017, the vehicle began to overheat. Complainant took the vehicle to Rush's location in Houston for repair for the issue. Rush's service technicians were unable to recreate a problem with the vehicle overheating and advised Complainant on December 6, 2017, that the vehicle could be picked up. On December 6, 2017, when Tom Butler, Complainant's transportation director, picked up the vehicle from Rush, it overheated on the drive back to Sabine Pass. As a result, Mr. Butler returned the vehicle to Rush for further repair the same day. Mr. Butler is not sure what work was performed to repair the overheating issue on this occasion.<sup>27</sup> The vehicle's mileage at the time that Complainant picked up the vehicle was 6,821.<sup>28</sup> The vehicle was in Rush's possession from November of 2017 until February 15, 2018. Complainant was not provided a loaner vehicle while the vehicle was being repaired.

Mr. Butler testified that soon after picking up the vehicle from Rush, it started to overheat again. In addition, the air conditioner was making noise and the windshield wipers were not working. Complainant took the vehicle to Rush's location in Houston for repair for the issues in either April or May of 2018. Rush's service technicians determined that air was trapped in the vehicle's coolant system and was causing the vehicle to overheat.<sup>29</sup> The technicians bled the air from the coolant system in order to address the issue.<sup>30</sup> In addition, the technicians found that a bolt had broken on the air conditioner compressor mount and was causing noise in the vehicle.<sup>31</sup> The technicians replaced the bolt in order to address the noise issue.<sup>32</sup> Finally, the technicians found that a relay in the windshield wipers had shorted and replaced it in order to address the issue of

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Complainant Ex. 5, Repair Order dated February 15, 2018. The invoice is not clear if any repair was actually done for the overheating issue at this time, although there appears to be extensive diagnostics performed for the issue over the period of time that the vehicle was in Rush's possession.

<sup>28</sup> *Id.*

<sup>29</sup> Complainant Ex. 6, Repair Order dated June 14, 2018.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

the wipers not working.<sup>33</sup> The vehicle's mileage on this occasion was 11,460.<sup>34</sup> Complainant was not provided with a loaner vehicle while the vehicle was being repaired. Complainant picked up the vehicle from Rush on June 14, 2018.

Mr. Butler testified during cross examination that the vehicle was taken to Rush's location in Houston for repair because the vehicle was intermittently overheating. He did not indicate when Complainant first noticed the overheating issue, although it was after June 14, 2018. Rush's service technician replaced the vehicle's coolant system thermostat, fan clutch, fan drive shaft, and fan in order to resolve the problem of the vehicle overheating.<sup>35</sup> The vehicle's mileage at the time was 12,835.<sup>36</sup> The vehicle was ready for pick up on October 16, 2018, and returned to Complainant on October 23, 2018, the invoice date.<sup>37</sup>

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on October 10, 2018.<sup>38</sup> After the complaint was filed, Mr. Butler was contacted and informed that the vehicle was repaired. He picked up the vehicle from Rush and drove it for two (2) to three (3) weeks to determine whether the vehicle was repaired. After Complainant's employees drove the vehicle for a while without incident, Mr. Butler contacted the Department's case advisor on November 2, 2018, and requested that the complaint be dismissed as he felt that the vehicle had been repaired.

Mr. Butler stated that the vehicle worked fine until April 14, 2019. Andy Bates, school principal, was driving the vehicle with several student passengers to Carthage, Texas for a school function. Mr. Butler and Mr. Bates both testified that during the drive, the vehicle's instrument cluster lights kept going in and out and the vehicle refused to go above 15 to 20 mph. Mr. Bates attempted to perform an engine regeneration on the side of the road, but was unable to correct the issues. Mr. Bates was able to eventually drive the bus to the hotel in Carthage where the students were going to spend the night. The next morning, April 15, 2019, the vehicle would not start. Mr. Bates contacted a roadside repair service (Action Truck & Auto, LLC (Action) located in Marshall, Texas) to see if they could get the vehicle started. Action's service technician was unable to start the vehicle, but determined that the vehicle's 3, 4, and 5 injectors were faulty and the vehicle needed to be towed to a repair shop.<sup>39</sup> Action charged Complainant \$270 for the repair attempt and the diagnosis which Complainant paid out of pocket.<sup>40</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Respondent Ex. 1, Repair Order dated October 23, 2018.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Mr. Butler testified that the original Lemon Law complaint was filed on October 1, 2018. However, Department records indicate that the complaint was actually filed on October 10, 2018.

<sup>39</sup> Complainant Ex. 7, Repair Order dated April 15, 2019.

<sup>40</sup> *Id.*

Since the vehicle could not be started, Complainant had the vehicle towed to Rush's location in Tyler, Texas on April 15, 2019. Rush's service technician reinstalled the vehicle's driveline with new strap kits.<sup>41</sup> In addition, Rush's service technicians discovered fault codes for the engine's 3, 4, and 5 injectors stored on the vehicle's computers.<sup>42</sup> As a result, the technicians replaced the vehicle's electronic control module (ECM) and the 3, 4, and 6 injectors (the 6 injector was replaced as the technicians had previously swapped the 5 and 6 injectors and the fault had transferred to the 6 injector as well).<sup>43</sup> Once Rush's service technicians had made the repairs, the technicians test drove the vehicle and found that the vehicle was running rough due to the #2 cylinder misfiring.<sup>44</sup> The technicians then checked for a fuel related fault which might have caused the misfire, but did not find one.<sup>45</sup> The technicians replaced the vehicle's #2 cylinder in order to address the issue of the misfire and test drove the vehicle.<sup>46</sup> After the test drive, the technicians determined that the vehicle was repaired as there were no longer trouble codes stored on the vehicle's computers and the vehicle seemed to drive as designed.<sup>47</sup> The vehicle's mileage at the time was 17,784.<sup>48</sup> Complainant was not provided with a loaner vehicle while the repairs were being performed. Complainant was advised on May 14, 2019, that the vehicle was available for pick up. However, Complainant did not pick up the vehicle due to their dissatisfaction with it.

On June 11, 2019, Complainant wrote a letter to Respondent advising them of their dissatisfaction with the vehicle.<sup>49</sup> Complainant filed a Lemon Law complaint with the Department on June 12, 2019.<sup>50</sup>

Mr. Butler stated that Complainant did not pick up the vehicle from Rush until August 3, 2020. However, an inspection of the vehicle was scheduled for February 12, 2020, due to an order for inspection issued by the below signed hearings examiner. The inspection was performed by John Dufour, Department case advisor, at the Rush location in Tyler, Texas. Present at the inspection were: Tommy Butler, Complainant's representative; Paul Bell, Blue Bird's representative; Ben Warren, Cummins' technical representative; and Lanita Morgan, Cummins' attorney.<sup>51</sup> Mr. Dufour indicated on the inspection report that the vehicle was not operable when he arrived at the

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<sup>41</sup> Complainant Ex. 8, Repair Order dated May 14, 2019.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Complainant Ex. 10, Letter to Blue Bird Corporation dated June 11, 2019.

<sup>50</sup> Complainant Ex. 1, Lemon Law Complaint dated June 12, 2019.

<sup>51</sup> Complainant Ex. 9, Sabine Pass ISD Vehicle Inspection Report dated March 2, 2020.

location.<sup>52</sup> The engine wouldn't crank and the vehicle would not start, because the vehicle's batteries were dead and had to be replaced.<sup>53</sup> After the batteries were replaced, the vehicle started but ran rough and there was "significant" engine vibration.<sup>54</sup> Cummins' representative, Mr. Warren, ran diagnostics on the vehicle's engine to determine why the engine was running rough.<sup>55</sup> The diagnostics run by Mr. Warren revealed that there was moisture in the fuel and that there was a misfire on the vehicle's #5 cylinder.<sup>56</sup> Rush's service technicians replaced the engine fuel filters, drained the fuel tank, and added fresh diesel fuel in order to allow a test drive of the vehicle for the inspection.<sup>57</sup> When the fuel was drained from the vehicle, water was observed to be in the fuel.<sup>58</sup> After the fuel was replaced by Rush's technicians and the vehicle started, the misfire on the #5 cylinder occurred again.<sup>59</sup> Since the misfire remained active, Mr. Warren advised Mr. Dufour that it was not advisable to drive the vehicle as further engine damage could occur.<sup>60</sup> As a result, Mr. Dufour was not able to complete the ordered inspection. Mr. Butler stated that he does not know if Rush's staff performed any maintenance for the vehicle during the several months that it was at their location prior to the scheduled inspection. Mr. Butler feels that Rush is responsible for the fuel being contaminated, since Complainant did not have possession of it and there was no fuel contamination at the time of the May 14, 2019 repair.

The vehicle remained at Rush's location until August 3, 2020, when Mr. Butler picked it up. Complainant felt that they needed to use the vehicle due to the Covid-19 pandemic which required that students follow social distancing to prevent the spread of the disease. The vehicle was needed because without it, Complainant was not able to meet the social distancing requirements and be able to transport all of its students adequately. Mr. Butler stated that he was able to drive the vehicle from Tyler to Sabine Pass without any problems. The vehicle worked fine the first day back. However, the second day back the vehicle wouldn't start. Complainant's driver was able to start the vehicle a couple of days later. However, the check engine light (CEL) illuminated when the vehicle was being driven. In addition, the vehicle died intermittently at stop signs or red lights. Currently, the vehicle does not always start on the first attempt. Sometimes the driver has to turn the key on and off several times before it will start. Complainant does not currently use the vehicle as there is a fear that the vehicle will die and not start again when there are student passengers.

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

Chad Bryan, math teacher and basketball coach, testified in the hearing and stated that he drove the vehicle about twice a week during basketball season. He stated that when driving to road games during 2017 and 2018, the vehicle would often overheat. He'd have to pull the vehicle over to the side of the road to allow the vehicle to cool down. It got to the point where he requested that he not be required to use the vehicle for the basketball team's trips as he was afraid that it would eventually strand him and the team on the side of the road.

Mr. Butler stated that he does not know the useful life of the vehicle. He also stated that the vehicle's engine warranty was good for five (5) years or 100,000 miles.

## **C. Respondent's Evidence and Arguments**

### **1. Blue Bird's Testimony**

Paul Bell, Field Service Support, testified for Blue Bird. Mr. Bell testified that Blue Bird's vehicles are not built until a production order is received. In addition, engines for Blue Bird's vehicles are provided by Cummins. Once a vehicle is manufactured, Blue Bird's staff performs a pre-delivery inspection of the vehicle at the manufacturing plant. The vehicle is then delivered to the dealer who is supposed to perform another inspection of the vehicle.

Mr. Bell stated that Blue Bird does provide a warranty for their vehicle, but the engine and transmission are under a separate warranty.

Mr. Bell stated that according to Rush's April 19, 2017 invoice, the issue with the vehicle pulling to the right and leaking fluid was corrected by replacing the vehicle's brake pads, hub gasket, wheel seal, and adjusting the brakes on both sides of the vehicle. In addition, the issue with the vehicle's dash lights not working properly was repaired according to the September 26, 2017 invoice by replacing the vehicle's ABS module. During the same visit, Rush's technician repaired the issue with the vehicle's windshield wipers by replacing the wiper arm assembly because a bolt was missing. The vehicle's miter box was replaced in order to address a whining noise from the back of the vehicle.

Mr. Bell testified that a vehicle on occasion can overheat. Sometimes the issue cannot be duplicated by a dealer's service technician. Mr. Bell denied telling anyone that there was a problem with Respondent's vehicles' engines running hot, as indicated on the invoice dated February 15, 2018.<sup>61</sup> In addition, Mr. Bell indicated that sometimes air can get in a vehicle's cooling system and cause overheating as described in Rush's invoice dated May 14, 2018. Mr.

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<sup>61</sup> Complainant Ex. 5, Repair Order dated February 15, 2018.

Bell also stated that during the October 23, 2018 repair, Rush's technicians replaced the vehicle's coolant system thermostat, fan clutch, fan drive shaft, and fan in order to resolve the problem of the vehicle overheating. Mr. Bell stated that he felt that the overheating issue was repaired at the time.

Regarding the incident that occurred on April 14, 2019, Mr. Bell stated that there was a problem with the vehicle's engine's injectors. He stated that he was not contacted by Rush's technicians regarding the issue. Regarding the dashboard lights turning on and off, Mr. Bell stated that the ignition switch could have been faulty and caused the lights to turn on and off.

Mr. Bell testified that he attended the February 12, 2020 inspection at Rush's location in Tyler. He stated that the vehicle was stored on Rush's back lot. He had contacted Rush's representatives prior to the inspection and advised them of the planned inspection and asked that they get the vehicle ready for the inspection. The vehicle appeared to have been sitting for a long time when Mr. Bell arrived at the facility. The vehicle's batteries had to be replaced as the vehicle would not start. After replacing the batteries and starting the vehicle, a fuel warning light illuminated indicating that there was water in the fuel. Rush's technicians replaced the engine fuel filters, drained the fuel tank, and added fresh diesel fuel in order to allow the inspection to continue. Mr. Bell stated that after the fuel was added, that the vehicle continued to run rough and the CEL illuminated. At that time, the inspection ended since the parties did not want to risk further damage to the vehicle.

Mr. Bell stated that if a vehicle sits for ten (10) months, as did the subject vehicle, the batteries could be depleted if the bus wasn't started. In addition, water condensation could build up in the vehicle's fuel tank and contaminate the fuel.

Mr. Bell testified that Blue Bird provides a base warranty that provides coverage for the vehicle for 12 months or 12,000 miles. He also stated that he feels that a bus's useful life is around 250,000 miles.

## **2. Cummins' Testimony**

Ben Warren, Certified Field Service Engineer, and Steve Collins, Original Equipment Manufacturer Service Leader, both testified for Cummins. Mr. Warren testified that on April 15, 2019, the vehicle's engine went into "derate" mode which is a mode that the engine will operate in if there's a problem occurring with the engine. The derate mode is designed to prevent further damage to an engine. Active fault codes on the engine's computers regarding the injectors failing would induce a derate condition. Diesel engines have to regenerate in order to clear soot out of the engine's systems and are part of the diesel emissions process in order to ensure that unburned

gasses are not released into the environment. Mr. Warren stated that an amber warning light will illuminate on the vehicle's dash informing the driver that they should start the regeneration process. If the regeneration is not done at the time, the vehicle will go into derate mode. Mr. Warren feels that the issues with the vehicle's engine were repaired during the May 2019 repair.

Mr. Warren testified that he was present during the vehicle inspection attempted on February 12, 2020 at the Tyler Rush location. He made the suggestion not to attempt a test drive of the vehicle after the fault code indicating a cylinder #5 misfire was discovered during a diagnostics scan of the engine. He also observed water in the vehicle's fuel at the time of the inspection. Mr. Warren stated that if a half full (or less) fuel tank is stored for a period of time, condensation can occur in the tank and contaminate the fuel. Diesel engines require lubricants contained in diesel fuel in order to operate properly. If excessive water is in the fuel, the lubricants can be removed by the water. He stated that just draining the fuel will not cure the issue. Cummins warranty will not cover a situation where a vehicle's fuel has excessive water and causes damage to an engine. Mr. Warren stated that Rush personnel continued to trouble shoot the vehicle after the parties left the facility when the inspection could not be completed. He also stated that there was no evidence that there was water in the vehicle's fuel prior to February of 2020.

Mr. Collins stated that the engine's claims history shows only two (2) warranty repairs done for the vehicle's engine and these were performed on April 15, 2019. He stated that he does not feel that Respondent's warranty covers anything that occurred to the vehicle's engine after February of 2020. He also stated that the tow bill for the vehicle on April 15, 2019, was not covered by the warranty as the tow took place more than two years after the vehicle was purchased.

#### **D. Analysis**

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet or rebut the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

### **1. Dash Lights Not Working Properly/Electrical Problems in the Dash**

Complainant raised the issue of the vehicle's dash lights not working properly. They would turn on and off while the vehicle was being driven. Respondent, Blue Bird, indicated that the issue was repaired on September 26, 2017, the second repair for the issue, when the vehicle's ABS module was replaced. Evidence presented at the hearing established that the issue recurred on April 14, 2019, when the vehicle was being driven on a trip to Carthage, Texas. However, Complainant did not raise any allegations that they have had any problems with the dash lights not working properly since they got the vehicle back in August of 2020. As such, the hearings examiner must hold that the issue has been repaired and, as such, does not provide grounds to order repurchase or replacement of the vehicle.

### **2. Vehicle Pulling to the Right/Leaking Fluid**

Complainant included on the Lemon Law complaint the issue of the vehicle pulling to the right when the brakes were applied. The evidence shows that one repair was performed for the issue on April 19, 2017, when Rush's technician replaced the vehicle's brake pads, hub gasket, wheel seal, and adjusted the brakes on both sides of the vehicle in order to repair the vehicle's wheel seal which was leaking fluid. The issue has not recurred since the repairs performed on the date in question. Since the issue has been repaired, it does not provide grounds to order repurchase or replacement of the vehicle.

### **3. Loss of Power Issue**

The evidence established that there was one incident where the vehicle lost power, during the trip to Carthage on April 14, 2019. The evidence shows that the vehicle went into derate mode during the trip because the vehicle's engine was not regenerated in a timely manner. Since the incident only occurred once and has not recurred, it appears that the loss of power issue has been repaired. As such, the hearings examiner must hold that the issue does not provide grounds to order repurchase or replacement of the vehicle.

### **4. No Start Issue**

The evidence established that the vehicle failed to start on April 15, 2019, and had to be towed to Rush's location in Tyler, Texas. In addition, Complainant's witness testified that the vehicle has failed to start or failed to start on the first attempt on several occasions since the vehicle was picked up from Rush in August of 2020. Complainant's employees don't want to drive the vehicle for fear of being stranded if the vehicle dies. Complainant purchased the vehicle in order

to use it as a route and activities bus. Complainant has not been able to use the vehicle for its intended purpose since April of 2019. As such, the hearings examiner must hold that Complainant has established that the vehicle has a defect or condition that substantially impairs its use or market value, *i.e.*, the no start or failing to start on the first attempt issue.

The hearings examiner also holds that Respondents were given sufficient opportunities to repair the vehicle. Complainant has experienced several issues with the vehicle over the years they've owned it. It appears that the vehicle has been in the process of being repaired more than it's been used for its intended purpose, as evidenced by the fact that the vehicle's mileage after more than three and a half (3½ ) years of ownership (from February 22, 2017 through the date of hearing, October 22, 2020) was only approximately 18,000 miles. It is also apparent that Complainant's employees have become wary of using the vehicle, as it is very unreliable.

On April 15, 2019, the vehicle was delivered to Rush's location in Tyler for repair and the repairs were not completed until May 14, 2019, almost 30 days. Complainant was not provided with a loaner or rental vehicle to use in lieu of the subject vehicle. In fact, during none of the repairs was Complainant ever provided a loaner vehicle despite the fact that the vehicle was in Rush's possession for repairs for months at a time.

Texas Occupations Code § 2301.605 has established a rebuttable presumption that a manufacturer, converter, or distributor have made a reasonable number of repair attempts in certain circumstances and gives three (3) tests to establish that presumption. However, as indicated the presumption is rebuttable. The hearings examiner must hold, based on the evidence and the testimony taken at hearing, that Complainant has rebutted the presumption. The hearings examiner will hold that Respondents have had adequate opportunities to repair the subject vehicle and it still does not conform to Respondents' warranties.

In addition, the evidence presented at the hearing indicates that Complainant provided Respondent with written notice of the defect and a final opportunity to cure the defect. Complainant informed Respondent via letter dated June 11, 2019, of their concerns with the vehicle and providing Respondent, Blue Bird, with an opportunity to cure. Blue Bird's representatives did not contact Complainant to request an opportunity to inspect or repair the vehicle. Respondent, Cummins, was given written notice when the Lemon Law complaint was filed. They also had an opportunity to request an opportunity to inspect or repair the vehicle, but did not make such a request. In fact, the vehicle was at the Rush location from April of 2019 through August of 2020 and Respondents had sufficient opportunity to inspect the vehicle or attempt to repair it while it was in Rush's possession.

Although Respondents have been provided adequate opportunity to repair the vehicle and to ensure that it operates properly, they have not been able to repair the vehicle so that it conforms to their written warranties. As such, Complainant has met their burden of persuasion to establish that the vehicle has a warrantable and existing defect or condition which substantially impairs the use or market value of the vehicle. Therefore, the hearings examiner will order Respondents to repurchase the vehicle as requested by Complainant.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant's request for repurchase relief is hereby granted.

### III. FINDINGS OF FACT

1. Sabine Pass ISD (Complainant) purchased a new 2018 Blue Bird school bus on February 22, 2017, from Rush Bus Centers (Rush) located in Selma, Texas with no mileage at the time of delivery.
2. The manufacturer or distributor of the vehicle, Blue Bird Corporation (co-Respondent), provided several warranties for the vehicle. Two of the warranties provided by Blue Bird specify that dash lights, suspension, and driveshafts are warranted for two (2) years from the delivery date of the vehicle. In addition, Blue Bird provided a base warranty for the vehicle providing coverage for 12 months or 12,000 miles.
3. The engine manufacturer, Cummins, Inc., (co-Respondent), provided a base engine warranty providing coverage for the engine for five (5) years or 100,000 miles.
4. The vehicle's mileage on the date of hearing was 17,784.
5. At the time of hearing Blue Bird's warranties had expired; however, Cummins warranty for the engine was still in effect.
6. Ever since purchasing the vehicle, Complainant has experienced several issues with it, including: the dash lights not working, the vehicle pulling to the right when it's driven, fluid leaking from the engine area, electrical problems in the vehicle's dashboard, loss of power from the engine, and the vehicle not starting.
7. Complainant took the vehicle for repair to Respondent's authorized dealer, Rush, in order to address their concerns with the vehicle on the following dates:

- a. April 19, 2017, at 3,320 miles;
  - b. September 26, 2017, at 4,151 miles;
  - c. February 15, 2018, at 6,821 miles;
  - d. June 14, 2018, at 11,460 miles;
  - e. October 23, 2018, at 12,835 miles; and
  - f. May 14, 2019, at 17,784 miles.<sup>62</sup>
8. Complainant presented the vehicle to Rush for repair because the dash board lights were not working and the vehicle pulled to the right when the brakes were applied and was invoiced for the repairs on April 19, 2017.
  9. During the repair visit described in Findings of Fact #8, Rush's service technicians determined that the vehicle's dash light were working properly and that no error codes were stored on the vehicle's computers for the issue.
  10. Also, during the repair visit described in Findings of Fact #8, Rush's service technicians determined that the vehicle had a failed wheel seal which caused the vehicle to pull to the right when the brakes were depressed. The technicians replaced the vehicle's brake pads, hub gasket, wheel seal, and adjusted the brakes on both sides of the vehicle in order to address the issue.
  11. Complainant presented the vehicle to Rush for repair for the following issues: dash lights not working, windshield wipers not working, a whining noise at the rear of the vehicle when the vehicle was being driven, and the fuel gauge not working properly and was invoiced for the repairs on September 26, 2017.
  12. During the repair visit described in Findings of Fact #11, Rush's service technicians determined that the vehicle's antilock brake system (ABS) module had failed and replaced it in order to address the issue of the dashboard lights not working.
  13. Also, during the repair visit described in Findings of Fact #11, Rush's service technicians determined that the vehicle's windshield wipers were not working because a bolt was missing off the wiper arm assembly and replaced the assembly in order to address the issue.
  14. Also, during the repair visit described in Findings of Fact #11, Rush's service technicians determined that the vehicle's radiator fan gear box (miter box) had suffered a bearing

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<sup>62</sup> The dates listed are the invoice dates, i.e., when the vehicle was determined to be repaired and ready for pick up by Complainant.

- failure causing a whining noise when the vehicle was driven. The technicians replaced the vehicle's miter box in order to address the issue.
15. During the repair visit described in Findings of Fact #11, Rush's service technicians determined that the vehicle's fuel sending unit had separated which caused the fuel gauge to provide incorrect readings regarding the level of fuel in the vehicle. The technicians replaced the fuel sending unit in order to resolve the issue.
  16. Complainant presented the vehicle to Rush for repair for an overheating issue and was invoiced for the repairs on February 15, 2018.
  17. During the repair visit described in Findings of Fact #16, Rush's service technicians were unable to recreate a problem with the vehicle overheating and advised Complainant on December 6, 2017, that the vehicle could be picked up.
  18. On December 6, 2017, when Tom Butler, Complainant's transportation director, picked up the vehicle from Rush, it overheated on the drive back to Sabine Pass. As a result, Mr. Butler returned the vehicle to Rush for further repair the same day.
  19. No actual repair was performed for the overheating issue during the ongoing repair visit described in Findings of Fact #16, even though there was extensive diagnostics performed by Rush's technicians.
  20. Complainant presented the vehicle to Rush for repair because the vehicle was overheating, the air conditioner was making noise, and the windshield wipers were not working and was invoiced for the repairs on June 14, 2018.
  21. During the repair visit described in Findings of Fact #20, Rush's service technician determined that air was trapped in the vehicle's cooling system and bled air from the system to resolve the issue of the vehicle overheating.
  22. Also, during the repair visit described in Findings of Fact #20, Rush's service technician determined that a bolt had broken in the vehicle's air conditioner compressor mount and was causing noise from the air conditioning system. The technician replaced the bolt and remounted the compressor in order to resolve the issue.
  23. Also, during the repair visit described in Findings of Fact #20, Rush's service technician determined that the vehicle's windshield wipers were not working because a relay had shorted. The technician replaced the relay in order to address the issue.

24. Complainant presented the vehicle to Rush for repair because the vehicle was intermittently overheating and was invoiced for the repairs on October 23, 2018.
25. During the repair visit described in Findings of Fact #24, Rush's service technician replaced the vehicle's coolant system thermostat, fan clutch, fan drive shaft, and fan in order to resolve the problem of the vehicle overheating.
26. Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on October 10, 2018.
27. On November 2, 2018, Complainant contacted the Department and requested that the complaint be dismissed as it appeared that the vehicle had been repaired.
28. On April 14, 2019, Andrew Bates, Complainant's high school principal, took several students on a school trip to Carthage, Texas in the vehicle.
29. On the way to Carthage, the vehicle's dash lights stopped working, then turned back on, then stopped working again.
30. Also, on the trip to Carthage described in Findings of Fact #28, the vehicle's engine lost power and the vehicle would not accelerate over 15 mph.
31. On the morning of April 15, 2019, the vehicle would not start.
32. On April 15, 2019, Complainant contacted Action Truck & Auto, LLC (Action) located in Marshall, Texas to have one of their technicians attempt to repair or start the vehicle; however, the technician was unable to start the vehicle.
33. During the repair described in Findings of Fact #32, Action's technician indicated that there were fault codes for engine injectors 3, 4, and 5 and that the vehicle needed to be towed to a repair facility.
34. Complainant paid Action \$270 out of pocket for the attempted repairs on April 15, 2019.
35. On April 15, 2019, Complainant had the vehicle towed to Rush's location in Tyler, Texas since it would not start.
36. Complainant presented the vehicle to Rush for repair because the vehicle would not start and was invoiced for the repairs on May 14, 2019.

37. During the repair visit described in Findings of Fact #36, Rush's service technicians reinstalled the vehicle's driveline with new strap kits.
38. During the repair visit described in Findings of Fact #36, Rush's service technicians discovered fault codes for the engine's 3, 4, and 5 injectors stored on the vehicle's computers.
39. As a result of the findings of Rush's service technicians described in Findings of Fact #38, the technicians replaced the vehicle's electronic control module (ECM) and the 3, 4, and 6 injectors (the 6 injector was replaced as the technicians had previously swapped the 5 and 6 injectors and the fault had transferred to the 6 injector as well).
40. Once Rush's service technicians had made the repairs described in Findings of Fact #39, the technicians test drove the vehicle and found that the vehicle was running rough due to the #2 cylinder misfiring.
41. Rush's technicians checked for a fuel related fault which might have caused the misfire, but did not find one.
42. Rush's service technicians replaced the vehicle's #2 cylinder in order to address the issue of the misfire and test drove the vehicle.
43. After making the repairs described in Findings of Fact #42, Rush's service technicians determined that the vehicle was repaired as there were no longer trouble codes stored on the vehicle's computers and the vehicle seemed to drive as designed.
44. Complainant refused to pick up the vehicle from Rush after the repairs performed during the repair visit described in Findings of Fact #36.
45. On June 11, 2019, Complainant mailed a letter to Blue Bird advising them of their dissatisfaction with the vehicle.
46. On June 12, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
47. The Department's case advisor, John Dufour, inspected the vehicle on February 12, 2020, pursuant to an order by the hearings examiner in this case.

48. Present for the inspection were: Tommy Butler, Complainant's representative; Paul Bell, Blue Bird's representative; Ben Warren, Cummins' technical representative; and Lanita Morgan, Cummins' attorney.
49. The inspection described in Findings of Fact #47 was performed at Rush's location in Tyler, Texas where the vehicle had been since April of 2019.
50. During the inspection described in Findings of Fact #47, Mr. Dufour found that the vehicle was inoperable, as the engine would not crank and the vehicle would not start due to dead batteries.
51. Rush's service technicians replaced the vehicle's batteries in order to be able to start the vehicle for the inspection.
52. After the vehicle's batteries were replaced as described in Findings of Fact #51, Mr. Dufour then found that the vehicle ran rough and had significant engine vibration.
53. Cummins' representative, Mr. Warren, ran diagnostics on the vehicle's engine to determine why the engine was running rough.
54. The diagnostics run by Mr. Warren revealed that there was moisture in the fuel and that there was a misfire on the vehicle's #5 cylinder.
55. Rush's service technicians replaced the engine fuel filters, drained the fuel tank, and added fresh diesel fuel to the vehicle in order to allow a test drive for the inspection.
56. When the fuel was drained from the vehicle as described in Findings of Fact #55, water was observed to be in the fuel.
57. After the fuel was replaced by Rush's technicians and the vehicle started, the misfire on the #5 cylinder occurred again.
58. Since the misfire remained active, Mr. Warren advised Mr. Dufour that it was not advisable to drive the vehicle as further engine damage could occur.
59. The vehicle remained at Rush in Tyler, until August 3, 2020, when Complainant had to pick up the vehicle in order to use it to drive students for school activities.
60. The vehicle refused to start the second day after it was picked up by Complainant.

61. Complainant was able to start the vehicle eventually and continued to attempt to use it for a period of time; however, the vehicle would die intermittently and the check engine light (CEL) would illuminate.
62. Complainant states that the vehicle will currently not start on the first attempt. The driver has to make several attempts to turn on the vehicle before it will start.
63. Complainant is not currently driving the vehicle as staff is afraid that children will be stranded if the vehicle dies and refuses to restart.
64. Complainant accrued incidental expenses due to issues with the vehicle on April 15, 2019, totaling \$270 (repair attempt by Action).
65. A school bus's useful life is 250,000 miles.

66. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$131,959.00
Delivery mileage	0
Mileage at first report of defective condition	3,320
Mileage on hearing date	17,784
Useful life determination	250,000

Purchase price, including tax, title, license and registration	\$131,959.00			
Mileage at first report of defective condition	3,320			
Less mileage at delivery	<u>0</u>			
Unimpaired miles	3,320			
Mileage on hearing date	17,784			
Less mileage at first report of defective condition	<u>-3,320</u>			
Impaired miles	14,464			
Reasonable Allowance for Use Calculations:				
Unimpaired miles				
	<u>3,320</u>			
	250,000	X	\$131,959.00	= \$1,752.42
Impaired miles				
	<u>14,464</u>			
	250,000	X	\$131,959.00	X .5 = <u>\$3,817.31</u>
Total reasonable allowance for use deduction:				\$5,569.73
Purchase price, including tax, title, license and registration	\$131,959.00			
Less reasonable allowance for use deduction	-\$5,569.73			
Plus filing fee refund	<u>\$35.00</u>			
<b>TOTAL REPURCHASE AMOUNT</b>	<b>\$126,424.27</b>			

67. On July 15, 2019, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.

68. The hearing in this case convened telephonically on October 22, 2020, before Hearings Examiner Edward Sandoval. Sabine Pass ISD, Complainant, was represented by Tom Butler, Transportation Director. Also appearing for Complainant were Andy Bates, principal of Sabine Pass High School; Jason Thibodeaux, athletic director of SPISD; Chad Byron, math teacher and basketball coach at Sabine Pass High School; Brette Rector, secretary, and Lindsey Stewart, Account Representative for Regional Pool Alliance. Blue Bird Corporation (Blue Bird), co-Respondent, was represented by Christy Amuny, attorney with Germer, PLLC. Also appearing for Blue Bird were Paul Bell, Field Service Support, and Toysha Massey, Associate General Counsel for Blue Bird. Cummins, Inc. (Cummins), co-Respondent, was represented by Lanita Morgan and Elizabeth Hatting, attorneys with Lathrop GPM, LLP. Also appearing for Cummins were Ben Warren, Certified Field Service Engineer, and Steve Collins, Original Equipment Manufacturer Service and Customer Quality Manager. The hearing record closed on November 2, 2020, after the hearings examiner received additional requested documents from the parties.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant's vehicle has an existing defect or condition (the vehicle's engine will not start and intermittently dies) that substantially impairs Complainant's use or market value of the vehicle. Tex. Occ. Code § 2301.604(a).

7. After a reasonable number of attempts, Respondents have been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranties. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief and repurchase of the 2018 Blue Bird school bus under Texas Occupations Code § 2301.604(a).

**IT IS THEREFORE ORDERED** that:

1. Respondents shall accept the return of the vehicle from Complainant. Respondents shall have the right to have their representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. Respondents shall repurchase the subject vehicle in the amount of **\$126,694.27**. (This total includes the \$35.00 Lemon Law filing fee and the cost of incidental expenses.) Respondent Blue Bird Corporation will be responsible for \$94,750.70 of the repurchase price and Respondent Cummins, Inc. will be responsible for \$31,673.57 (25% of the purchase price). The total refund shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondents, then the full refund shall be paid to Complainant. At the time of the return, Respondents or their agents are entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondents with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day from receipt of this order, Respondents are subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

4. Respondents, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. Respondents, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. Respondents, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondents, Blue Bird Corporation and Cummins, Inc., shall repair the warrantable defect (the vehicle's engine not starting and dying intermittently) in the reacquired vehicle identified in this Decision.

**SIGNED February 1, 2021.**



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**EDWARD SANDOVAL**  
**CHIEF HEARINGS EXAMINER**  
**OFFICE OF ADMINISTRATIVE HEARING**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**