

January 21, 2014

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

Re: James Burke
SCI Case #2013-5055

Dear Chancellor Fariña:

The office of the Special Commissioner of Investigation (“SCI”) has concluded an investigation which found that 27-year-old James Burke, a teacher who had been assigned to PS 69 on Staten Island, anonymously reported false allegations against some of the witnesses involved in a prior substantiated SCI investigation of Burke, against members of their families, and against other Department of Education (“DOE”) employees.¹ Many of the allegations described conduct which was similar to the conduct Burke committed in the prior substantiated SCI case, including tickling, and other inappropriate touching of students.

The original case began on May 31, 2013, when a PS 69 dean lodged a complaint against Burke. SCI investigators attempted to speak with Burke on July 8, 2013; through his attorney, Burke subsequently declined the opportunity to be interviewed. Burke was reassigned as a result of our findings in that case, referred on September 18, 2013, which involved inappropriate behavior toward an Autistic eight-year-old male student.

SCI received the first complaint in question, reported by an anonymous male who purported to be the father of a male 2nd Grader, on July 26, 2013. The allegation of misconduct, made against a teacher at PS 69, was so serious that SCI referred the matter to the New York City Police Department (“NYPD”) and monitored its outcome. SCI

¹ See SCI Case #2013-3048. The DOE brought disciplinary charges against Burke; to settle the matter, Burke agreed to resign irrevocably effective March 31, 2014. SCI was not a party to the settlement.

referred additional serious, but ultimately false, complaints from anonymous males, to the NYPD and monitored them as well. Following investigations of each, the NYPD deemed all these complaints to be unfounded and subsequent investigations by SCI found them to be false complaints. SCI continued to receive allegations and a pattern emerged: the subjects were witnesses against Burke, members of their families, or DOE employees at schools on Staten Island, including PS 69. Burke's involvement came to light when the investigator who handled the original substantiated investigation of Burke realized that one of the complaints had been made from Burke's telephone number. SCI self-initiated an investigation into Burke's false allegations and examined each of the cases.

The Complaints

July 26, 2013

A male caller, who would not give his name, but identified himself as the father of a named seven-year old male student ("Student A"), reported to SCI that a female teacher at PS 69 inappropriately touched Student A on his private parts on multiple occasions in the classroom and when they were alone. According to the caller, the misconduct took place sometime in June and Student A now was having nightmares about it. SCI referred the complaint to the NYPD and monitored it.

The assigned SCI investigator spoke with the NYPD detective, assigned to the Staten Island Special Victims Squad, who handled the investigation. The detective determined that a crime had not been committed. During the investigation, the detective learned that Student A did not live with his father, did not know his father, and never had a relationship with his father. In addition to the student, the detective interviewed the boy's mother who said that "there was never a father" in the household. The mother was upset when she learned about the allegation because she was very satisfied and comfortable with the teacher's assignment to her son. The detective reported that she also interviewed the teacher who was "very distraught" and denied the allegation.

August 5, 2013

An anonymous male telephoned SCI and reported that a female paraprofessional assigned to PS 58 on Staten Island took a named eight-year-old male Autistic student ("Student B") out of lunch early, brought him to an empty classroom, and caressed his genital area over his clothes in the back of the room. The complainant also alleged that, when Student B did not follow her directives, the paraprofessional hit him with his own hand and claimed the boy was hitting himself. SCI referred the complaint to the NYPD and monitored it.

The assigned SCI investigator spoke with the NYPD detective, assigned to the Staten Island Special Victims Squad, who handled the investigation, which was closed. The detective reported that he interviewed Student B who did not disclose being touched inappropriately by any staff member at PS 58. The detective also interviewed the paraprofessional who denied the allegations.

August 15, 2013

An anonymous male telephoned SCI and reported witnessing a female paraprofessional, assigned to PS 58 on Staten Island, tickling a named seven-year-old male 2nd Grade student (“Student C”) near his genitals and kissing his neck on multiple occasions. The complainant also alleged that the paraprofessional slapped Student C in the face when he misbehaved. Later in the day, an anonymous male caller alleged that the paraprofessional touched Student C in his genital area and had the boy touch her under her skirt. The caller also alleged that the paraprofessional inappropriately “tickled” other students. SCI referred the complaints to the NYPD and monitored them.

The assigned SCI investigator learned that an NYPD police officer assigned to the School Safety Division (“SSD”) and a detective assigned to the Staten Island Special Victims Squad found the complaints to be without merit. SCI reclassified the case as an investigation.

SCI investigators spoke with the subject of the complaints who erroneously had been identified as a paraprofessional at PS 58. She was a teacher at PS 69, but had taught summer school at PS 58. The teacher acknowledged that Student C was in her class during the 2013 summer school session. The teacher denied the allegations in the complaints. The teacher added that the summer session ended on August 13, 2013, and on August 15, 2013, she was on a flight to another state.

The teacher believed that the anonymous caller was Burke, a teacher at PS 69 who worked the 2013 summer session at PS 58. The teacher said that Burke did not like her and she kept her distance from him.

August 29, 2013

A male caller, who claimed to be the one-to-one paraprofessional for a named 10-year-old male 5th Grade student (“Student D”), reported to SCI that Student D had a tantrum in class, but when he calmed down, a PS 69 male teacher who also was a dean, escorted Student D from the room and the caller observed the dean tickle the boy below the belt in his groin area. The caller felt that the dean’s conduct was inappropriate. The caller claimed that he recently became aware of the telephone number at SCI to report the incident. SCI referred the complaint to the NYPD and monitored it.

The case was handled by SSD. The assigned SCI investigator learned that the police officer assigned interviewed the dean who denied the allegations. The NYPD referred the matter back to SCI which reclassified it as an investigation.

Notably, the dean reported the original complaint about Burke to SCI in May 2013. SCI investigators interviewed the dean who denied the allegation.

September 12, 2013

An anonymous male called SCI and reported that, through the window in the classroom door, he saw a female PS 69 teacher fondling a named 4th Grade male student (“Student E”) below his belt. This same teacher had been the subject of the complaints, lodged on August 15, 2013, alleging touching of Student C. The caller also said that he observed the teacher kissing Student E on his head. The call came from the telephone number associated with Burke. SCI referred the complaint to the NYPD and monitored it.

The assigned SCI investigator learned that an NYPD police officer assigned to SSD and a detective assigned to the Staten Island Special Victims Squad found the complaint to be without merit. SCI reclassified the case as an investigation.

SCI investigators questioned the teacher about this and the prior complaints against her during the same interview. The teacher explained that Student E was one of her current students. The teacher said that she did not kiss Student E on the head and did not fondle Student E below the belt.

September 18, 2013

An anonymous male caller, who claimed to be a teacher at PS 69, reported to SCI that, as he passed by the children’s bathroom adjacent to the cafeteria en route to pick up his class, he saw a 1st Grade female teacher inappropriately touching a named 1st Grade female student (“Student F”). The complainant explained that he saw the teacher kissing the forehead and ears of Student F, tickling her, and fondling the girl’s private areas as the student was attempting to pull up her underpants. The caller added that the student in question was not one of the teacher’s students. SCI opened an investigation.

SCI investigators met with PS 69 Principal Doreen Murphy who said that the girls bathroom referred to in the complaint was adjacent to the cafeteria and, although the door usually was open; a partition gave students privacy. Principal Murphy added that passersby could not see into the bathroom without stepping inside.

SCI investigators spoke with Student F in the presence of her father. Student F attended school on September 18, 2013. Student F acknowledged that she sometimes used the bathroom adjacent to the cafeteria, but added that she never was in any school bathroom when an adult also was present inside the bathroom. Student A said that she did not need assistance to dress or undress in order to use the bathroom. Student A added that no adult from the school touched her below the waist, on top of her underwear, or inside her underwear. Student A denied that any adult at the school kissed her on the forehead or ears. Student A added that she was never tickled by any adult at the school.

Student F's father informed the investigators that he did not observe any change in his daughter's behavior this school year. SCI investigators also spoke with Student F's mother who said that Student F knew where her "private parts" were and was aware that no one was allowed to touch her there. The mother added that Student F would have said something if she had been touched inappropriately. According to the mother, Student A was not exhibiting any symptoms of tenderness in her genital region and there was no change in her daughter's overall behavior.

SCI investigators met with the teacher who denied the allegations. The teacher said that she did not kiss a student on the forehead or ears, did not tickle any student, did not sexually or inappropriately touch any student, was not alone in a school bathroom with any student, and did not assist male or female students with pulling up their underpants. The teacher added that she did not have lunch duty and she had not been to the cafeteria or the adjacent restroom this school year.

September 30, 2013

A male caller claiming to be Paraprofessional Michael Coccozza reported to SCI that, on August 13, 2013, during summer school at PS 58, he saw a female paraprofessional in the boys bathroom and he entered because he heard a boy crying. The caller alleged that he found the paraprofessional adjusting the pants of a named nine-year-old male 4th Grade student ("Student G") and heard Student G tell the paraprofessional: "Stop kissing me." The complainant asserted that Student G told him that the paraprofessional was kissing and licking the boy. The caller claimed that he brought Student G to the nurse and the paraprofessional became "irate." Notably, the female paraprofessional was a one-to-one paraprofessional for a student who had been assigned to Burke's class at PS 69 and she was a witness against Burke in the original substantiated investigation. SCI referred the complaint to the NYPD and monitored it.

SCI investigators met with the detective, assigned to the Staten Island Special Victims Squad, who handled the complaint. The detective interviewed Student G who said that the paraprofessional never accompanied him to the bathroom. Student G added that he did not receive a "bad touch" from anyone during summer school and did not

report such conduct to anyone. The detective also spoke with Paraprofessional Cocozza who said that he did not witness any paraprofessional enter a bathroom with any student. Cocozza denied reporting the complaint to SCI. The NYPD closed its case and SCI opened an investigation.

SCI investigators met with the paraprofessional who confirmed that she worked during the 2013 summer session at PS 58. The paraprofessional said that she was not in the boys bathroom with Student G or any other student at any time. The paraprofessional added that she did not lick or kiss Student G or any other student and did not adjust Student G's pants or the pants of any other student.

SCI investigators spoke with Cocozza who confirmed that he worked during the 2013 summer session at PS 58. Cocozza said that he did not make a telephone call to SCI alleging misconduct on the part of the female paraprofessional. Cocozza added that he did not make an allegation of misconduct against the paraprofessional to anyone. According to Cocozza, he did not enter the boys bathroom at PS 58 and observe misconduct by any employee at the school.

October 3, 2013

An anonymous male caller who claimed to be a parent of a student from Tottenville High School on Staten Island reported to SCI that, on September 30, 2013, a female teacher approached his son when the class was working on an advertisement design assignment and suggested that the boy create an ad for "HPV." When the complainant's son did not know what HPV was, the teacher explained, and told him that she had the virus. The complainant alleged that the teacher showed the student photos of her vagina, which were on her cell phone. The complainant asserted that he went to the school and wanted to make a report to Principal William Dugan, but Assistant Principal David LaMorte would not allow him to do so, and told the complainant that he needed to speak to LaMorte first. The caller alleged that LaMorte did not believe his complaint and responded that the teacher would not do such a thing. The complainant refused to identify himself or his son. The teacher is the daughter of a PS 69 paraprofessional who was a witness against Burke in the original substantiated investigation. SCI opened an investigation.

On October 4, 2013, the mother of the female teacher – the witness against Burke – contacted SCI and reported that Burke was the anonymous male who called SCI and made the allegation against her daughter.

SCI investigators met with Assistant Principal LaMorte who said that, on October 2, 2013, he received a call at his desk from a particular telephone number which was stored on his Caller ID. The male caller identified himself as a parent and asked to

remain anonymous. The caller would not identify the student involved, claiming that he did not want his son to face retaliation. The caller said that, according to his son, the female teacher discussed a sexually transmitted disease, HPV, during class and she showed the caller's son a photo of her vagina, which was on her cell phone. LaMorte told the caller that he would investigate the matter and the call was disconnected. LaMorte retrieved the number from Caller ID, called it, and recorded a portion of his conversation with the anonymous male before the call was disconnected. LaMorte called again and the same male answered "hello" but, upon hearing LaMorte's voice, hung up. Thereafter, LaMorte's calls to the number went unanswered.

Assistant Principal LaMorte informed investigators that he met with the teacher later that day and asked whether she discussed HPV in class. The teacher responded that she did not. LaMorte told the teacher about the anonymous male caller and showed her the number on the Caller ID. Although she did not recognize the number, the teacher said: "Something [was] going on at [her] mother's school." The teacher wrote down the number and subsequently learned from her mother that it belonged to Burke.

The assigned SCI investigator listened to the conversation between the anonymous caller and Assistant Principal LaMorte. The investigator previously had spoken with Burke in person and he identified the voice as Burke's voice.

SCI investigators met with the teacher who said that she did not discuss HPV in class on September 30, 2013, or on any other date. The teacher added that she did not show a photo of her vagina to any student. The teacher confirmed that she was aware of the "situation" involving her mother and Burke. The teacher asked her mother about the number captured on Caller ID. The teacher's mother determined that the number belonged to Burke. The teacher listened to the recorded conversation and recognized Burke's voice.²

October 7, 2013

An anonymous male called SCI, claimed to be a parent of a student at Staten Island Technical High School ("Staten Island Tech"), and alleged that, in the cafeteria on October 4, 2013, a male paraprofessional spoke to male students about masturbation and followed the conversation by showing the male students videos of men "jerking off," which were stored on his cell phone. The caller would not identify himself or his child, but said that he left a message for the school principal about the incident, and did not receive a return call. SCI initially referred the matter to the Office of Special Investigations ("OSI"), but called back the case and opened an investigation because an SCI investigator realized that it likely was a complaint lodged by Burke.

² The teacher had been in Burke's company on approximately 10 occasions. The teacher explained that she and Burke had a mutual friend.

On October 10, 2013, Staten Island Tech Principal Mark Erlenwein contacted SCI and reported receiving an allegation of misconduct against the male paraprofessional made by an anonymous male in telephone call to the school on October 3, 2013. The allegation made to the school was the same one lodged at SCI. According to Principal Erlenwein, the caller, who refused to identify himself or his son, asked to speak to the principal, but when Erlenwein picked up, the complainant hung up. The school attempted to contact the caller, using the number stored on Caller ID, but got no response. SCI personnel recognized the number as belonging to Burke. The male paraprofessional is the brother of a female paraprofessional assigned to PS 69 who was a witness against Burke during the original substantiated investigation.

SCI investigators met with the male paraprofessional who said that he was a one-to-one paraprofessional assigned to a 15-year-old male student (“Student H”) in the 10th Grade. The paraprofessional asserted that he did not discuss masturbation with Student H or any other student. The paraprofessional denied behaving inappropriately toward any student.

The paraprofessional reported that he learned from his sister that a former PS 69 teacher was making complaints against family members of PS 69 staff who were connected to an investigation of the teacher. The paraprofessional believed that the allegations against him were related to the situation at PS 69.

October 10, 2013

An anonymous male who claimed to be a parent called SCI and reported that a female teacher assigned to the Mark Twain Intermediate School for the Gifted and Talented in Brooklyn asked his son to return to the classroom, room #213, to review some English notes on the smartboard, but what was displayed on the smartboard were photos of the teacher and her boyfriend engaging in sexual relations. The complainant refused to identify himself or his son. SCI opened an investigation.

SCI investigators met with the teacher who was another daughter of a PS 69 paraprofessional who was a witness against Burke in the original substantiated investigation. The teacher said that she did not display inappropriate or sexual images to students and did not use the classroom identified by the complainant. The teacher heard from her sister, who also was accused of misconduct by an anonymous male complainant, and her mother that a former PS 69 teacher was making false allegations against PS 69 staff and their family members. The teacher believed that the allegation made against her was related to the situation at PS 69.

October 2 and 3, 2013

On October 11, 2013, a PS 69 paraprofessional contacted the SCI investigator who was assigned to the original Burke case, in which she was a witness, and reported that an anonymous male had telephoned St. John Villa Academy (“St. John Villa”) on Staten Island and alleged that her 14-year-old daughter, a 9th Grader at St. John Villa (“Student I”), was selling drugs to other students. The paraprofessional asserted that this fell into the pattern of anonymous false allegations being made against family members associated with the substantiated case against Burke.

SCI investigators met with St. John Villa Principal Barbara Logan, Assistant Principal Fran Hetherington, and Assistant Principal Susan Shepherd. These administrators confirmed the paraprofessional’s report. Principal Logan explained that she did not discuss the allegations with Student I or her parents, but days later, she received a call from the mother who alerted her to the possibility that Student I could be the target of a false allegation. Principal Logan informed the mother that the call already had been received.

SCI investigators spoke with Assistant Principal Hetherington who said that, on October 2, 2013, Ms. Cruz, assigned to the school switchboard, received a call which she transferred to Hetherington. Assistant Principal Hetherington explained that the phone system did not have the Caller ID feature. Hetherington took the call; a male who claimed to be the parent of a student at St. John Villa asserted that Student I was selling drugs to other students at the school. Hetherington said that Principal Logan and Assistant Principal Shepherd were present during the conversation and heard the allegation by speaker phone. Assistant Principal Hetherington confirmed that the caller refused to identify himself or his child. When Assistant Principal Hetherington asked the complainant for his number so she could call him back, he disconnected the call.

SCI investigators spoke with Assistant Principal Shepherd who said that, on October 3, 2013, she received a call at her office from a male who claimed to be the parent of a student at the school and reported that Student I was bullying an unidentified student. Assistant Principal Shepherd added that this caller was the same person who spoke with Assistant Principal Hetherington, on October 2, 2013, and made an allegation against Student I.

October 21, 2013

On June 13, 2013, OSI forwarded an anonymous letter which reported that a PS 69 teacher was verbally and physically abusive to students and limited the bathroom visits of Autistic children. The writer added that PS 69 Principal Doreen Murphy was aware of this conduct, but swept it under the rug. SCI initially referred the matter to OSI,

but called back the case on October 21, 2013, and opened an investigation, because an investigator realized that it likely was a complaint lodged by Burke. An anonymous male caller made a complaint against this teacher on July 26, 2013, alleging misconduct toward Student A.

SCI investigators met with Principal Murphy who said that she was aware of the content of the letter and had forwarded it to OSI in June 2013. Principal Murphy added that she did not “sweep things under the rug.” Principal Murphy explained that, other than in the anonymous letter, there were no allegations of physical and verbal abuse or limiting bathroom visits made against the teacher. According to Principal Murphy, she reported all incidents to the appropriate agencies and investigated when directed to do so or when it was appropriate to do so.

Through her attorney, the teacher declined the opportunity to speak with investigators from this office.

Burke’s Involvement Confirmed

Telephone Records

The phone number associated with the complaints made to SCI was the same number Burke supplied to the assigned SCI investigator who handled the original substantiated investigation. The investigator contacted and spoke with Burke using that phone number. Burke’s telephone carrier also confirmed that the number was assigned to him. Moreover, documents which Burke submitted to the DOE and his résumé both listed that number as his telephone number.

A review of records relating to that number revealed:

- It contacted SCI on July 26, 2013, the day when a false allegation against a PS 69 teacher was called in;
- It contacted SCI on August 5, 2013, when a false allegation against a PS 58 paraprofessional was called in;
- It contacted SCI in August 15, 2013, when a false allegation against a PS 58 paraprofessional – really a PS 69 teacher – was called in;
- It contacted SCI on August 29, 2013, when a false allegation against a PS 69 dean was called in;

- It contacted SCI on September 12, 2013, when a false allegation against a PS 69 teacher was called in;
- It contacted SCI on September 18, 2013, when a false allegation against a PS 69 teacher was called in;
- It contacted SCI on September 30, 2013, when a false allegation against a PS 69 paraprofessional was called in;
- It contacted Tottenville High School on October 2, 2013, when a false allegation against a teacher was called in to the school;
- It contacted SCI on October 3, 2013, when a false allegation against a Tottenville High School teacher was called in;
- It contacted Staten Island Technical High School on October 3, 2013, when a false allegation against a paraprofessional was called in to the school;³
- It contacted SCI on October 10, 2013, when a false allegation against a Mark Twain Intermediate School for the Gifted and Talented teacher was called in;
- It contacted St. John Villa on October 2, 2013, when a false allegation against Student I was called in to the school; and
- It contacted St. John Villa on October 3, 2013, when a false allegation against Student I was called in to the school.

James Burke

SCI investigators attempted to speak with Burke who declined to be interviewed without legal representation. Subsequently, through his attorney, Burke declined the opportunity to speak with investigators from this office.

Recommendations and Referrals

It is the recommendation of this office that, when James Burke's irrevocable resignation takes effect, he be made ineligible for work with the DOE. Thereafter, this matter must be considered should Burke apply for a position in the City school system, with one of its vendors, or in one of its facilities, in the future.

We are referring our findings to Richmond County District Attorney Daniel M. Donovan, Jr. for whatever action he deems appropriate.

³ The same allegation was called in to SCI, but that call did not appear in the telephone records.

We are forwarding a copy of this letter to the Office of Legal Services. We also are sending our findings to the New York State Education Department for whatever action it deems appropriate. 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 James Burke. Thank you for your attention to this matter.

Sincerely,

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

By: _____

Regina A. Loughran
First Deputy Commissioner

RJC:RAL:gm

c: Courtenaye Jackson-Chase, Esq.
Laura Brantley, Esq.
Katherine Rodi, Esq.