

March 6, 2014

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

Re: Patricia Sabater
Rebecca Shaffren
SCI Case # 2011-2489

Dear Chancellor Farina:

An investigation conducted by this office has substantiated that Assistant Principal Patricia Sabater and Guidance Counselor Rebecca Shaffren assigned to PS 219 in Brooklyn, mishandled a complaint they had received concerning an 11-year-old female student (“Student A”) who had alleged sexual abuse.¹ The investigation was prolonged by protracted litigation involving a subpoena issued by this office.²

This investigation began in May 2011, when Principal Winsome Smith contacted the Office of the Special Commissioner of Investigation for the New York City School District (“SCI”) and lodged a complaint against Sabater. Smith stated that Sabater failed to report an incident of student sexual abuse that the victim reported months earlier, in March of 2011. Smith stated that she only learned about this incident on May 19, 2011, when police officers investigating a complaint made by Student A’s parents notified her that Student A had been sexually abused by two male students at the school sometime in March 2011.

Smith informed SCI investigators that on May 19, 2011, New York Police Department (“NYPD”) detectives from the Brooklyn Child Abuse Squad visited the school to inquire about an incident “that might have been reported” by Student A. Smith continued that the detectives asked for any school documentation about the incident,

¹ Neither Sabater nor Shaffren was reassigned during the pendency of this investigation. Student A transferred to another school. She is currently 14-years-old.

² The litigation is explained later in this report.

however, none was found. During the meeting with the detectives, both Shaffren and Sabater acknowledged that there had been an incident of sexual abuse reported by Student A to her teacher, Donancial Thorne, and to Shaffren who then informed Sabater about the matter. Smith continued that Sabater stated that she remembered the incident took place “sometime around March 21, 2011,” and claimed she tried to call the parents of Student A at that time, but was unable to reach them.³ Smith noted that Sabater forgot to follow up on this matter the following day. Smith added that, after Shaffren reported the incident to Sabater, she should have followed up to ensure that all necessary steps had been taken and the incident had been “investigated to completion.”

In an interview with investigators conducted under oath and in the presence of her attorney, Smith explained the procedure at the school for reporting and handling a complaint of student on student sexual abuse. Smith stated that when a staff member or guidance counselor received a complaint, this individual was required to immediately inform someone from the administrative staff. The administrative staff was comprised of Principal Smith and three assistant principals. Smith noted, however, that in all instances, she should be notified because she was the person “in charge of the school.”⁴ Smith stated that, once a complaint was received, a preliminary investigation should be conducted, which entailed speaking with the students, collecting statements, contacting the parents of all the students involved, and reporting the matter on the online occurrence system.⁵ An online complaint form would be generated and, if the situation was of a serious nature, the superintendent and police would be notified. Moreover, if a child’s parent could not be reached, then a letter should be sent home with the child instructing the parent to contact the school.⁶ According to Smith, all paperwork generated from an investigation was maintained in a file; for every incident report there was supposed to be a corresponding file. Smith explained that no one was permitted to go home until a “plan of action” regarding how to proceed was completed – which was the same practice that had been followed since Smith began her career at PS 219 in 1986. Smith added that the assistant principal responsible for the student’s grade level was in charge of conducting the investigation and ensuring that everything was done properly. Sabater was designated to handle matters concerning Student A’s grade level.

Smith informed investigators that at the beginning of every school year, along with a copy of the staff handbook, staff members were provided with a letter which they had to sign and return indicating that they understand that any incident must be reported.

³ Smith recounted that she later learned that on May 17, 2011, Student A’s mother telephoned Shaffren complaining about past sexual abuse of Student A by two male students.

⁴ Smith stated that the staff at the school knew she should be notified because it was addressed at numerous faculty meetings.

⁵ Smith stated that statements were to be collected from students, witnesses, and any staff member who reported the matter. Smith stated that in a situation in which the guidance counselor received the complaint, this individual would “begin the process,” in conjunction with one of the assistant principals.

⁶ Smith noted that depending on the nature of the incident, there were times when a parent coordinator was asked to go to the child’s home.

These letters were maintained in a file at the school. Smith stated that every so often, “reminders” regarding the importance of reporting incidents were included in the daily written morning minutes.

When questioned regarding the handling of the sexual misconduct complaint involving Student A, Smith acknowledged that the proper procedure was not followed. Smith explained that on May 19, 2011, NYPD detectives approached Smith and asked whether she was aware of a sexual abuse claim made by Student A.⁷ Smith immediately called Sabater and Shaffren down to her office and asked whether they were aware of a sexual complaint involving Student A. Both Sabater and Shaffren stated that they were aware of the incident, although they could not recall the exact date of the complaint made by Student A. Shaffren explained that Thorne had alerted her that “something had been going on” and Student A and a 10-year-old female student (“Student B”) were sent to Shaffren to follow up on the matter. Shaffren continued that she subsequently took statements from Student A and Student B which she had turned over to Sabater. When the detectives asked Sabater for the students’ statements, Sabater claimed that she did not have the statements and that she never received them from Shaffren.⁸ Sabater stated that she tried to contact Student A’s mother at the time of the incident, but the phone was not working and Sabater then forgot to follow up any further.

Smith then called Thorne to her office. Thorne told Smith that, to the best of her recollection, the incident occurred in March 2011. According to Smith, Thorne sent the children to Shaffren and also let Sabater know about the situation because Sabater was the grade supervisor for Student A. Smith told SCI investigators that she thought Thorne had handled the situation properly by reporting the matter to Shaffren and Sabater. When investigators showed Smith a copy of Thorne’s statement, dated March 21, 2011, Smith indicated that this was the first time she had ever seen this document.

Smith disclosed that during a subsequent meeting with Student A and her mother, Student A confided that she had made numerous complaints about being sexually abused by two students to Thorne, Shaffren, and Sabater.⁹ In a written statement, Student A reported that the sexual abuse had been going on all year. Student A also referenced another incident of sexual abuse that Teacher Ahmad had witnessed. When Smith spoke to Ahmad about the matter, Ahmad informed Smith that she had reported her observations to Sabater. Smith conferred with Sabater who claimed she knew nothing about this incident. Smith recounted that she then went back to Ahmad and asked whether she had any proof that she had previously reported the matter. Ahmad showed

⁷ According to Smith, around May 17, 2011, Sabater had informed Smith that Shaffren had received a call from Student A’s mother complaining that her child had been beaten up in the park. During this conversation, the mother also mentioned that some boys had made inappropriate remarks to Student A. Smith stated that when the detectives arrived at the school, she initially thought they were there to discuss the park incident.

⁸ Shaffren insisted she gave the statements to Sabater.

⁹ Thorne insisted that March 21, 2011 was the only time Student A made any complaint of sexual abuse.

Smith an entry she made in her attendance book, as well as a copy of the statement that she had written.¹⁰ Smith stated that she showed Ahmad's statement to Sabater who still maintained that she had no recollection of this event.

Investigators spoke with Student A's mother who recounted that, in May 2011, Student A "broke down" and disclosed a pattern of sexual abuse involving two male students that had been going on since the beginning of the school year. Student A informed her mother that she had reported this abuse on numerous occasions to Thorne, Shaffren, and Sabater, and also had written numerous statements. Student A's mother went to the school the following day and met with Shaffren and Sabater. According to Student A's mother, it was only after she brought up the subject of the sexual abuse that the matter was addressed by Shaffren and Sabater. Student A's mother stated that when she inquired why nothing had been done, she was informed that the two boys "had served some sort of in-school suspension." Student A's mother then asked for her daughter's written statements and was told that they had been lost. Student A's mother was further told that she had not been notified because the attempts to contact her were unsuccessful.

Student A's mother continued that, in June 2011, she and Student A went to the school and had a meeting with Principal Smith who told them that she had not been made aware of the situation by either Shaffren or Sabater. During the meeting, Student A wrote a statement about the abuse which was given to Smith.¹¹ Student A's mother added that she never would have let Student A continue to go to the school if she had been made aware of these incidents.¹²

Investigators met with Student A who provided additional relevant information. Student A related that, since the beginning of the school year, she had been having problems with two male students at the school. These students touched her breasts and buttocks, rubbed up against her, and threw her on the floor and humped her. On one occasion, they approached her from behind and pulled down her pants. According to Student A, this sexual abuse occurred practically every day.

Student A told investigators that she first reported this misconduct to Thorne in October 2010. Student A stated that she was told by Thorne to write a statement and give it to Shaffren, which Student A did. Student A maintained that she reported the abuse again to Shaffren in November 2010 and wrote another statement. According to Student A, in December 2010, January 2011, and February 2011, she reported the sexual abuse to

¹⁰ In her attendance log book, Ahmad wrote: "reported case with Ms. Thorne's student." At the conclusion of this notation, was an arrow referencing the date of April 5th.

¹¹ While Student A was out of school she wrote two statements about what had happened to her during the school year.

¹² Student A's mother subsequently contacted the Child Advocacy Center and reported the matter.

either Thorne, Shaffren, or Sabater, and each time she wrote a statement documenting the improper conduct.¹³ All of her statements were written on notebook paper. Student A told investigators that since nothing was being done, she stopped making complaints and made no complaints in March, April, or May of 2011.

Student A explained that after receiving sexual text messages from one of the male students in May 2011, she “broke down” and told her mother about what had been occurring at school. Student A’s mother kept her out of school and during that time, she wrote two statements about the abuse she had been enduring. When her mother met with Smith about the matter, Student A wrote another statement detailing the students’ misconduct.

Investigators met with Student B who recounted that she previously attended school with Student A and they were in the fifth grade together.¹⁴ Student B stated that, sometime after school began in September 2011 until around March 2011, two male classmates touched her private areas. Student B continued that she also was present on numerous occasions when these males improperly touched Student A. According to Student B, before Christmas, she and Student A complained to Thorne who brought them to Shaffren. Both Student A and Student B wrote statements about what had happened, using yellow legal paper.

Student B further disclosed that she was present during a Gym class when the boys pulled down Student A’s pants and started feeling her backside. Student B recalled that she reported the matter to Thorne and, once again, Shaffren had Student A and Student B write statements about the incident. Student B said that she believed that the two males received an in-school suspension for a couple of weeks but then they returned to class. Student A, however, was removed from the class and never returned to the school. Student B claimed that she and Student A complained numerous times during the school year about the two males to Thorne who instructed them to “stay away from the boys.”¹⁵

Student B’s mother told investigators that she was not made aware of any of Student B’s complaints until the middle of March 2011, when she had a meeting with Smith.¹⁶ Student B’s mother stated that she never saw any statements that were

¹³ As stated previously, Thorne insisted that March 21, 2011 was the very first time that Student A made any complaint of sexual abuse and it was only after another student came forward. Similarly, Sabater told investigators that Student A made no official complaint to anyone prior to March 21, 2011.

¹⁴ Student B has since turned 13-years-old.

¹⁵ Smith stated that she recalled one complaint made by Student B in November 2010 regarding being inappropriately touched by one of the male students. Smith related that the matter was handled by Sabater and reported online.

¹⁶ Smith stated that her only meeting with Student B’s mother occurred in late May or early June 2011, regarding an incident involving Student B’s brother. According to Smith, Student B’s name never even came up during this meeting.

purportedly written by Student B, nor was she made aware of what punishment the two males received.

In an interview with investigators, Teacher Thorne provided additional relevant information. Thorne recounted that on March 21, 2011, Student B reported that two male classmates had been touching her inappropriately. Student B told Thorne that Student A would verify her story because it also had been happening to Student A. Thorne spoke with Student A who confirmed Student's B allegations and admitted that she also was being touched inappropriately by the same two male students.

Thorne contacted Sabater who then sent Shaffren to address the situation. Shaffren arrived at Thorne's classroom and removed both Student A and Student B to interview them and have them write statements. Thorne told investigators that once she reported this incident to Sabater, she was not provided with any updates about what, if anything, was being done.¹⁷ Thorne insisted that March 21, 2011 was the very first time that Student A made any complaint of sexual abuse and it was only after Student B came forward. In fact, Thorne explained that it was the first time she had ever dealt with a complaint involving sexual misconduct. Thorne provided the assigned investigator with a copy of a statement that she wrote on March 21, 2011, documenting her actions on that date.

Thorne subsequently was interviewed at SCI and, in the presence of her attorney, she was placed under oath. Thorne repeated her prior statement that in March 2011, Student B confided that two male students had touched her and Student A inappropriately. Thorne recounted that she spoke with Student A who corroborated Student B's account. Thorne explained to investigators that at the time of this incident, the protocol for reporting this type of situation was to notify your immediate supervisor and then await further instructions. Thorne promptly notified Sabater who advised Thorne that she was sending Shaffren to retrieve both students from Thorne's classroom.¹⁸ Shaffren arrived shortly thereafter and took both Student A and Student B with her.

Later that day, Student A and Student B returned to Thorne's classroom. Although Thorne never inquired about the matter, she thought the situation had been handled because, at the end of the day, Sabater indicated to her that "everything [was] okay" and they had "spoke[n] to the girls." Thorne disclosed that she wrote a statement

¹⁷ Thorne recalled that Student A, Student B, and the two boys remained assigned to her classroom, although Student A had not been to her class for at least three weeks. Investigators learned that once Student A's mother was informed about the sexual abuse by the two male students, she removed Student A from PS 219 while waiting for a transfer to another school.

¹⁸ Although Thorne recalled that there was a discussion about having the students write statements, Thorne never witnessed Student A or Student B write a statement nor did she ever see any statements written by these students.

about the incident in a log book she maintained. Thorne insisted that no one ever asked her for a written statement and she never asked Sabater or Shaffren about the outcome of the situation. Thorne further stated that it was not until around June 2011, when detectives came to the school and it became apparent that nothing had been done, that she spoke with Smith about the incident. When asked how many times Student A complained to Thorne about being improperly touched, Thorne maintained Student A made only one report about being subjected to sexual abuse. Thorne added that if Student A had made other complaints, Thorne would have reported those instances and would have written statements.

Thorne told investigators that when everyone returned to school in September 2011, Smith instituted a new procedure. Thorne explained that if a serious incident happened in your classroom, it was your responsibility to document the incident, notify everyone in the chain of command, and complete and submit all reports before going home that day. Thorne continued that the incident must be put online within 24 hours and your supervisor, the guidance counselor, and Smith must be notified.

In the presence of her attorney, SCI investigators met with Teacher Augusta Ahmad on two occasions.¹⁹ Investigators asked whether Ahmad witnessed Student A being subjected to unwanted sexual contact by two male students in March 2011.²⁰ Ahmad informed investigators that she was unaware of any incident that took place in March 2011, however, she did witness one incident involving Student A and a male student on April 5, 2011. Ahmad explained that as she was walking in the hallway behind Student A's class, she observed a student approach Student A from behind, place his hands on her hips, and swing from left to right behind Student A. Student A promptly confronted the student and exclaimed, "stop, don't touch me!" Ahmad continued that she intervened and reprimanded the male student who rudely yelled: "I did not do anything. I did not touch her. Don't look at me!" Ahmad then advised Thorne about her observations and they agreed that the incident should be reported.²¹ Ahmed asked Thorne the identity of the children and then wrote a statement on computer paper in Thorne's classroom.²²

Ahmad recounted that she went directly to Sabater and informed her about the incident that she had just witnessed. Ahmad spoke with Sabater for approximately 10 minutes and then provided her with the statement she had written. According to Ahmad, Sabater said, "I will take care of this Ms. Ahmad." Ahmad recalled that while speaking

¹⁹ The second interview of Ahmad occurred at SCI where Ahmad was placed under oath.

²⁰ In a written statement, Student A mentioned that Ahmad might have witnessed the misconduct committed by the two male students.

²¹ Thorne recounted that when she was gathering the children in a line to walk toward their classroom, Ahmad approached her and expressed that she had witnessed something inappropriate. Thorne further stated that Ahmad said she intended to write a letter to Sabater about the incident.

²² Ahmad initially wrote a rough draft of her statement which she recopied making the proper indentations and correcting any mistakes. The corrected statement was the one she provided to Sabater.

with Sabater she requested a copy of her statement because she did not have access to a copy machine. Ahmad told investigators that Sabater indicated that she was very busy, but would give her a copy of the statement and would handle the matter. Ahmad left Sabater's office and returned to her classroom without a copy of her statement. Ahmad continued that while in her classroom she wrote another statement in her notebook documenting the incident with Student A.²³ Ahmad also made an entry across the top of a page in her attendance book which read: "reported case with Ms. Thorne's student" and next to this notation was an arrow pointing to the date of April 5th.

The following day, Ahmad returned to Sabater's office and repeated her request for a copy of her statement. Sabater reminded Ahmad that she said she was handling the matter and that she would provide Ahmad with a copy of her statement. Ahmad, however, never received the document from Sabater.

Ahmad recalled that a few days after the incident, she encountered Student A who indicated that she knew that Ahmad had written something about the hallway incident and hoped that she had provided the document to Sabater. Ahmad informed Student A that she did confer with Sabater about the matter. According to Ahmad, Student A seemed relieved.

Ahmad stated that in June 2011, Smith inquired about the incident that had occurred involving Student A on April 5, 2011. In response, Ahmad explained what she had done that day and Smith indicated that she would confer with Sabater about the matter. Later that day, Smith approached Ahmad and asked whether she had any proof regarding her actions on April 5, 2011. Ahmad then showed Smith the entry she had made across the top of a page in her attendance book. Smith then advised Ahmad that she believed her. Ahmad added that she also had made an entry in her own personal log book and that she had written "rough draft" of the statement that she had provided to Sabater.²⁴

In an interview with investigators conducted in the presence of her union representative, Assistant Principal Sabater initially claimed that, in March 2011, Student A was brought to her office by Thorne around dismissal time. Sabater stated that there were other students in Sabater's office so Thorne and Student A did not want to discuss the matter. Sabater did, however, ask Thorne whether it had to do with "touching" and Thorne replied that it did. According to Sabater, Thorne indicated that she also had notified Shaffren. Sabater continued that she told Student A to go home and tell her mother what had happened and that Sabater would contact Student A's mother. Sabater

²³ Ahmad explained that she often wrote in her notebook about events so she would not forget them.

²⁴ Ahmad provided SCI investigators with a copy of her attendance book entry, a copy of her log book entry, and a copy of her "rough draft" written statement.

told investigators that she attempted to call Student A's mother later that day, but the phone appeared to be out of order. Sabater acknowledged that she never called Student A's mother again.

SCI investigators advised Sabater that her version of the events contradicted Thorne's account. After being informed about Thorne's statement, Sabater stated that "now having heard Thorne's recall of the incident," Sabater remembered that it happened as Thorne had indicated. Sabater admitted that she took no action on this matter, she never discussed the situation with Shaffren, and she simply assumed that Shaffren had taken care of it. Sabater further stated that she did not tell Smith about this incident. Sabater added that, to her knowledge, Student A did not make an official complaint to anyone prior to March 21, 2011.

Sabater recalled that, on May 17, 2011, Student A's mother arrived at the school to collect Student A's belongings. Sabater stated that Student A's mother was very angry and upset and was not listening to what Sabater was saying. According to Sabater, Student A's mother wanted to know why she had not been contacted and wanted to know the whereabouts of the statements which Student A claimed she had written since October 2010.

Investigators then questioned Sabater about the circumstances surrounding the police visit to the school on May 19, 2011. According to Sabater, on that day, Shaffren advised Smith that Student A had made a complaint and a statement regarding inappropriate touching by two male classmates. When the NYPD detectives requested Student A's statement, Shaffren claimed that she had given the document to Sabater. However, Sabater maintained that she never received a statement from Shaffren and did not even know that Student A had made a statement. Investigators again asked Sabater to explain why she did not take any action in response to Student A's complaint. Sabater's only response was that she thought it had been handled. When asked whether she now realized that she had mismanaged the situation, Sabater nodded her head in the affirmative. Sabater reiterated that Principal Smith had no idea what had happened because no one had ever told her.

At a later date, Sabater contacted the assigned investigator to amend her statement. At the time of her initial interview, Sabater told investigators that she did not have any conversation with Shaffren about the matter. Sabater now remembered that she did speak with Shaffren who advised Sabater that she had spoken to Student A and

another student and there was “nothing to the complaint,” and that the children were playing around.²⁵ According to Sabater, she asked Shaffren several times whether there was anything to be concerned about and was told that there was no issue. Sabater added that she advised Shaffren to contact the children’s parents.

SCI investigators subsequently notified Sabater that she was to appear at SCI to be interviewed under oath. Sabater’s attorney initially informed SCI that Sabater would appear voluntarily. The attorney then informed SCI that she would not appear which resulted in SCI issuing a *subpoena ad testificandum*. On May 3, 2012, Sabater appeared with her attorney and was placed under oath. After answering background questions seeking her address, cellular phone number, and Department of Education (“DOE”) file number, Sabater refused to respond to any additional questions, claiming her right as a tenured pedagogue not to answer questions about her conduct.²⁶ SCI’s Special Counsel announced the interview was concluded for the day, and that Sabater was subject to recall since she had failed to satisfy the terms of the subpoena.

SCI then petitioned the Supreme Court, New York County for an order to show cause to compel compliance with the subpoena.²⁷ After submission of papers, the Supreme Court issued an order and judgment that denied SCI’s petition to compel Sabater to comply with the *subpoena ad testificandum* issued by SCI.²⁸ SCI subsequently appealed this decision to the Appellate Division of the New York Supreme Court, First Department. The Appellate Division’s order affirmed the decision of the Supreme Court. SCI then sought leave to appeal to the Court of Appeals which was denied.²⁹

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

It is the recommendation of this office that Patricia Sabater’s employment be terminated, that she be made ineligible for work with the DOE, and that this matter is considered should she apply for any position with the New York City school system, with one of its vendors, or in one of its facilities in the future.

²⁵ Sabater told investigators that after her initial interview she had been “thinking about the whole matter,” and then remembered her conversation with Shaffren.

²⁶ *Bd. of Ed. of the City of New York v. Mills*, 250 A.D.2d 122 (3rd Dep’t 1998), *lv. denied*, 93 N.Y.2d 803 (1999). *Mills* held that tenured pedagogues have a right not afforded to any other public employee in New York State. That is, they are not required to answer questions about their own conduct.

²⁷ SCI argued that *Mills* was wrongly decided and sought to overturn the decision.

²⁸ The action was commenced at the end of May 2012. An order and judgment was entered on this matter in January 2013.

²⁹ The Appellate Division’s decision was rendered in December 2013. Leave to appeal to the Court of Appeals was denied in February 2014.

It is the further recommendation of this office that appropriate disciplinary action be taken against Rebecca Shaffren for her failure to report and properly address Student A's March 21, 2011 complaint of sexual abuse.

We are referring our findings to Kings County District Attorney Kenneth P. Thompson for whatever action he deems appropriate.

We are forwarding a copy of this letter to the Office of Legal Services. We are also forwarding our findings to the State Education Department for whatever action it deems appropriate. Should you have any inquiries regarding the above, please contact Special Counsel Valerie A. Batista, the attorney assigned to the case. She can be reached at (212) 510-1417. Please notify Ms. Batista within 30 days of the receipt of this letter as to what, if any, action has been taken or is contemplated regarding Patricia Sabater and Rebecca Shaffren. 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:VAB:gm

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