

June 5, 2008

Hon. Joel I. Klein
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

**Re: Karen Nowaski
John Lotito
SCI Case No. 2007-1494**

Dear Chancellor Klein:

An investigation conducted by this office has substantiated that over the course of five years, New York City Department of Education (“DOE”) Custodial Worker Karen Nowaski stole more than \$60,000 in DOE funds from the custodial payroll of Grover Cleveland High School (“GCHS”) in Queens. Nowaski, who functioned as the custodial payroll secretary at GCHS, employed two separate schemes in her thefts. First, acting with DOE Fireman John Lotito, Nowaski stole more than \$30,000 by forging and cashing fraudulent payroll checks. Second, Nowaski stole nearly \$30,000 from the payroll by submitting documents to increase her hourly wage without authorization.¹ In addition to her thefts of DOE funds, we have substantiated that Nowaski extorted \$9,000 from Lotito on the understanding that she would not reveal his involvement in the fraudulent payroll check scheme. Finally, our review of the Nowaski’s DOE compensation records and timecards revealed substantial discrepancies. For example, 35 of her bi-weekly timecards indicated that on 70 workdays, Nowaski did not punch in or out, nor were there any handwritten entries on the cards by Nowaski or her supervisor to indicate her presence. Nevertheless, Nowaski prepared corresponding DOE P.O.1 forms by which she was compensated for a full day’s work – if not more – for each of the dates for which there was no record of her appearance at GCHS. In addition, Nowaski’s W-2 form for calendar year 2004 reported that her net income was \$21,749.61 less than the total reflected in the cancelled checks payable to her (which she drafted) for the same year.

¹ Since the day that investigators first visited her office in connection with this investigation, Nowaski has not appeared at work. According to the current GCHS custodian, she exhausted her sick leave and annual leave, and is no longer on the custodial payroll. Lotito resigned his position on April 3, 2008.

In April 2007, GCHS Custodian Douglas Mendez contacted the Office of the Special Commissioner of Investigation (“SCI”) and reported that Nowaski, who served as his secretary at the school, issued unauthorized checks to herself and to other custodial employees. Mendez estimated the total of the improper payments over the prior 18 months to be \$20,000. Mendez then met with SCI investigators. He was first assigned to GCHS in December 2005 and in 2007 he was examining his banking records in preparation for retirement, when he noticed several irregular paychecks. He provided the suspect cancelled checks, the corresponding banking records, and records concerning the custodial payroll, including the DOE P.O.1 forms.

SCI investigators visited GCHS and separately interviewed five custodial employees whose names and apparent endorsements appeared on cancelled checks drawn on the custodial payroll account and obtained from Mendez: Robert Alers, Thomas Bruggess, Dawn Finkel, Danny Torres and Adeli Perez.² The total value of the five checks was \$5,569.43. The checks bore dates from May 4, 2006 through February 22, 2007. All of the employees denied to investigators that they received the check, that it bore their endorsement, or that they authorized anyone to endorse or cash the checks. One of the checks – payable to Alers – bore a second endorsement, the apparent signature of Lotito. Alers told investigators that he was unfamiliar with the check, that he never authorized Lotito to cash it, and that he did not receive any proceeds from the check.

Nowaski Testifies at SCI

Immediately after the SCI investigators visit to GCHS, Nowaski stopped appearing at work; she initially claimed to be sick, and then drew annual leave. Thereafter, an attorney for Nowaski contacted SCI and offered to present her to be interviewed. She appeared at the SCI office accompanied by two attorneys. Nowaski told investigators that she prepared payroll checks and the corresponding documentation submitted to the DOE, including the P.O.1s, for GCHS Custodian Mendez and his predecessors. Nowaski initially stated that she was solely responsible for forging custodial payroll checks and stealing the proceeds. After being confronted with evidence of Lotito’s involvement in the scheme, Nowaski privately conferred with her attorneys. Approximately 20 minutes later, Nowaski was placed under oath, and was interviewed on a tape recorded record. She testified that Lotito first suggested to her that they forge payroll checks and split the proceeds. According to Nowaski, she and Lotito did so from May or June of 2006 through January 2007. She estimated that they stole approximately \$15,000.

Nowaski testified that she and Lotito began the scheme when she made an error on a payroll check which Mendez signed along with the remaining paychecks. After noticing the error, Nowaski asked Mendez to sign a second check in the correct amount. She said that Lotito saw the incorrect check on her desk and inquired about it. According to Nowaski, after she explained her mistake, Lotito suggested that he could cash the erroneous check, and that they could split the proceeds. She testified that she first resisted but later agreed to Lotito’s plan. Thereafter, when preparing the payroll, Nowaski obtained Mendez’s signature on redundant checks by explaining to the custodian that she neglected to include an

² One check was made out for each of these employees.

employee's overtime in her calculation (or that she made a similar error), and needed a replacement check. Nowaski testified that she gave most of the redundant checks to Lotito, who forged endorsements before cashing most of the checks at MMR Check Cashing ("MMR"), which is located near GCHS, and sharing the cash with her. She said that she personally forged the payees' endorsements on "one or two" such checks and cashed them at MMR. The secretary said that she entered "VOID" on the check register next to the number of the stolen checks, and that she shredded the cancelled copies when they arrived in the mail from the bank.

Nowaski appeared for a second interview with her attorneys at the SCI offices and was interviewed under oath. She was shown a number of cancelled payroll checks issued over the course of one year beginning in March 2006 which SCI obtained from the GCHS custodial bank account. Nowaski identified 21 of the checks as fraudulent ones which she had prepared and from which she and Lotito had stolen the proceeds. The total value of the checks exceeded \$30,800. Nowaski appeared as the payee on nine of the checks (total: \$12,899.10) and Lotito appeared as the payee on five (total: \$10,652.95). The remaining seven checks were payable to other custodial employees. Nowaski said that she or Lotito forged endorsements on these checks.³ Five of the seven custodial employees whose names appear on the checks were interviewed by SCI investigators as noted above; each of the five denied any knowledge concerning the check in his or her name, thereby confirming Nowaski's admission.

Nowaski's Call to Lotito

Nowaski said that she became aware of this investigation when SCI investigators first visited GCHS to question custodial employees concerning checks, and had stayed away from work since that time. She reported that since leaving GCHS, she had approximately eight telephone conversations with Lotito. While at the SCI offices with her attorneys, Nowaski consented to make a recorded call to Lotito, and did so in the presence of SCI investigators.

In the recorded conversation, Nowaski informed Lotito that she planned to meet with her attorney and with SCI investigators and wished to tailor their stories regarding the payroll checks. Lotito said that he cashed checks for a lot of people, including Nowaski. He stated that he took envelopes of paychecks from Nowaski, cashed them, and returned the envelopes to Nowaski with the proceeds. Lotito asked Nowaski if she intended to tell investigators of his involvement, and urged her not to do so. He claimed that he would lose his job, and that his wife would divorce him. Nowaski asked him if he was willing to take "half" the responsibility for the scheme. He replied that he "gave [her] the money." He continued, "That's what we talked about. That's why I gave you the money, to try to straighten everything out – to pay it back." Lotito said that he had given Nowaski \$9,000, and that if she needed more money, he would get it for her.

After reviewing Nowaski's recording, SCI investigators requested that she return to SCI with her attorney. She was asked to explain Lotito's statement that he had paid her \$9,000, and that portion of the recorded conversation was played for her. Nowaski initially

³ Nowaski and Lotito appear as co-endorsers on two of these seven checks.

denied that Lotito paid her any money (aside from proceeds from the forged checks at the time they were cashed). She then privately conferred with her attorney and returned to announce that Lotito had recently visited her home and given her \$200, telling her that it was "a little something" to help her until her next paycheck. Nowaski said that Lotito added, "If you need anything more, let me know." Lotito's statement on the tape recording notwithstanding, Nowaski denied that he paid her \$9,000.

Lotito Interviewed at SCI

In the week following Nowaski's final SCI interview, investigators visited Lotito at GCHS. He agreed to come to the SCI offices for an interview, which was tape recorded, and he was placed under oath. Lotito, who was not advised of Nowaski's disclosures or of their recorded conversation, promptly admitted to participating in a fraudulent check-cashing scheme with the secretary. However, Lotito differed with her as to some significant details concerning their respective roles, and (consistent with the recording) he flatly refuted Nowaski's denial that he recently paid her \$9,000. Lotito said that Nowaski first approached him with the idea of cashing a redundant check and splitting the proceeds, saying, "It's nobody's personal money, and it won't be a problem." He surmised that Nowaski solicited him because he regularly cashed paychecks for their colleagues at MMR, where he was known to the tellers. Lotito said that he agreed to her request, cashed the check, and returned half of the cash to Nowaski. He stated that he believed that no one else was aware of their scheme.

Lotito was shown the same checks as had been identified by Nowaski without being informed of that fact. He admitted to splitting the proceeds of five checks (totaling \$10,652.95) made payable to him with Nowaski. Lotito further admitted that he forged endorsements and cashed four checks payable to Alers, Brugess, Torres, and Perez (totaling \$4,576.59), and divided those proceeds with Nowaski. He stated that he did not forge any endorsements on the nine checks payable to Nowaski (totaling \$12,899.10), and did not believe that he received any proceeds from these checks. With respect to the remaining three checks (totaling \$2,715.45), Lotito said that he did not sign two of them, and did not believe he signed the third (on which Carmelo Fasitta was the payee). Lotito said that he was uncertain if he received any proceeds from the three checks.

According to Lotito, in April 2007, when the custodial staff learned that Mendez planned to retire, Nowaski nervously told Lotito that the custodian would notice that money was missing from custodial funds when finalizing his records for the DOE. She suggested that she could explain the matter to Mendez, repay the money, which she estimated at \$9,000, and persuade the custodian to not report her. Nowaski asked Lotito to help her with the money, and said that she would not reveal his involvement. Lotito said that he agreed to her request, borrowed \$8,000 from two relatives, added \$1,000 from his own funds, and gave the cash to Nowaski.⁴ He reported that he believed that \$9,000 represented the total sum that he and Nowaski had diverted, of which he received half. Lotito said that Nowaski wanted the \$9,000 to "quash everything," and that he gave her the full amount in the expectation that she would be able to resolve the matter with Mendez without implicating him. He claimed that

⁴ Lotito identified the relatives, who confirmed his account in separate interviews with SCI investigators.

after SCI investigators visited GCHS in May and inquired about the checks, he asked Nowaski if she had addressed the problem with Mendez. She replied that she had not, and Lotito said that he tried to encourage her to speak with Mendez, before the matter became a bigger problem. She again told Lotito that she would “keep [him] out of it.”

Lotito told investigators that he had met with Nowaski three or four times since her departure from GCHS, and that he had spoken with her by telephone approximately weekly. In one meeting, Lotito said that he delivered Nowaski’s mail from GCHS to her. She informed him that she had met with a lawyer concerning her situation, but that the attorney could not do anything until he learned more.

SCI investigators did not tell Lotito that they knew of his recent recorded conversation with Nowaski, or that it had been recorded. Nevertheless, he described the conversation, generally accurately, and said that he attempted to persuade Nowaski to not implicate him. Lotito said that Nowaski “screwed up” by starting this scheme, after which he tried to help by giving her what he believed to be the full amount of the stolen money. She then failed to attempt to settle the matter with Mendez.

Lotito told investigators that he was willing to make full restitution for the money to which he was not entitled.

Nowaski’s Unauthorized Pay Raises

After Nowaski’s appearances at SCI, investigators examined her salary history. Retired DOE custodian Joseph Stigliano, who was assigned to GCHS from February 2003 through May 2005, was interviewed by SCI investigators. Nowaski served as custodial payroll secretary during this period. The P.O.1s for this period indicate that Nowaski was paid \$18.20 per hour when Stigliano arrived at the school. The records also show that in April 2003 her hourly compensation increased to \$19.02, and that in June 2003, it was hiked again to \$20.47. Stigliano told investigators that he did not believe that he approved these raises. The P.O.1s for 2004 show three wage increases for Nowaski that year: Her hourly rate rose to \$21.47 in January, \$22.47 in April and \$23.47 in September. Stigliano said that he may have approved Nowaski’s January raise, but he did not approve the two subsequent raises. In calculating Nowaski’s compensation during Stigliano’s tenure, investigators assumed that the \$1.00 per hour raise in January was authorized, and that the custodian intended to boost her rate from the \$18.20 she was receiving when he arrived at the school. On this basis, investigators determined that from February 2003 through May 2005, Nowaski received \$21,182.76 to which she was not entitled.

An SCI investigator interviewed Joseph Relling, now retired, who was the temporary care custodian assigned to GCHS from October 21, 2005 through December 1, 2005, immediately prior to Mendez. Relling said that he did not grant pay increases to Nowaski or any other custodial employee at GCHS. He reported that he retained copies of his staff salary records which indicated that Nowaski’s compensation was \$20.46 per hour.

DOE records and P.O.1s which she prepared indicate that just before Mendez was assigned to the school in December 2005, Nowaski received a raise of 87 cents per hour. The

following month, she was paid an additional raise of \$1.00 per hour. Three months later, she received another raise of \$2.00. Cumulatively, these pay increases represented a nearly 19 percent raise over less than four months. The records showed without explanation that in October 2006, Nowaski's hourly wage was reduced to \$21.79 (still \$1.32 above her initial wage).

In August 2007, Mendez told SCI investigators that he never gave Nowaski – or any other custodial employee – a pay raise during his tenure as the GCHS custodian. He said that when he arrived at the school, he discussed the payroll with Nowaski, who advised him that “nobody is making above scale” – that is, all employees were being compensated at the rate specified by their respective union contracts. Mendez said that Nowaski continued to prepare the custodial payroll and draft the paychecks. He reported that Nowaski stapled each check to the corresponding employee's earnings report before forwarding them to Mendez for his signature on the checks. According to Mendez, the stapled checks concealed the portion of the reports which list the hourly wages of the employees, and he did not examine the reports when signing the paychecks.

Mendez said that in May 2006, he noticed that Nowaski's compensation, then \$24.34, was higher than union scale, and he questioned her concerning the matter. He reported that she replied that her hourly wage reflected the “engineers' rate,” and was her regular pay. He did not inquire further about the matter.⁵

From February 2003 through May 2007, Nowaski's unauthorized raises resulted in cumulative excessive payments to her of \$29,976.70.

Nowaski's Undocumented Compensation

After she appeared at SCI, investigators also reviewed the available GCHS custodial payroll records concerning Nowaski's own work hours and compensation and determined that she was paid for a substantial amount for hours not reflected on her timecards. Investigators obtained from the DOE Division of School Facilities the P.O.1s prepared by Nowaski over the preceding four years, and examined her work hours as recorded on the forms, which were used to determine her compensation. These sums were then compared with the Nowaski's corresponding timecards.⁶ During this period, Nowaski recorded 843 more hours on the P.O.1s than appeared on her corresponding timecards.⁷ The undocumented compensation paid to Nowaski for these unrecorded hours was in excess of \$24,000.

⁵ Mendez said that custodial secretaries are paid at the engineers' rate per the collective bargaining agreement. However, according to Timothy George, the DOE Director of School Facilities for Manhattan, the engineers' rate in May 2006 was \$22.33 per hour, two dollars less than Nowaski's pay at that time.

⁶ SCI investigators obtained 36 of Nowaski's timecards from GCHS; 26 of her timecards were missing from the school. Of the 36 timecards reviewed, 20 differed from the corresponding P.O.1s.

⁷ In calculating this sum, SCI investigators resolved any uncertainties in Nowaski's favor, and did not count any illegible markings or ambiguities on the timecards against her. For example, if a timecard did not signify the time at which Nowaski began or ended her workday, investigators credited her with eight hours for that day.

SCI investigators also discovered that for calendar year 2004, Nowaski's W-2 form reported that she was paid \$58,820.71 in net income for her custodial position, according to the DOE payroll database. However, an examination of the cancelled checks payable to Nowaski (which she drafted) for the same year, showed that she actually received \$80,570.32, or \$21,749.61 more than the sum reported to the tax authorities.

Conclusion and Recommendations

Karen Nowaski used practically every deceptive means at her disposal to defraud the DOE and enrich herself. She abused the trust of successive employers and with her knowledge of the custodial payroll system, arranged for pay raises to which she was not entitled. She enlisted the help of Lotito in creating and cashing bogus checks in the names of colleagues and taking the proceeds. She exacted \$9,000 from Lotito with the promise that she would make amends with their employer and use the money as restitution. Finally, Nowaski clearly lied under oath concerning her account of this matter, and continued to do so even when confronted with a contrary conversation which was recorded with her full knowledge and consent. Nowaski's cumulative gain from her various and repetitious frauds was \$69,000.⁸ We recommend that Nowaski, who is "off the DOE payroll," be placed on the ineligible list and barred from future employment with the DOE or its affiliates.

John Lotito was complicit in one part of Nowaski's scheme. He assisted her in forging and cashing redundant DOE paychecks from which, by his admission, he gained at least \$7,000. In contrast to Nowaski, he appeared to be forthright when confronted by investigators, and he admitted to his participation in their fraud. We recommend that Lotito, who has resigned as a DOE custodial helper, also be placed on the ineligible list and barred from future employment with the DOE or its affiliates.

With respect to Nowaski and Lotito, we are referring this matter to Queens County District Attorney Richard A. Brown for whatever action he deems appropriate.

Concerning Nowaski's false sworn testimony at the SCI offices, we are also referring this matter to New York County District Attorney Robert M. Morgenthau for whatever action he deems appropriate.

We further recommend that the DOE pursue civil remedies against Nowaski to recoup the funds she stole from the DOE, and that the Office of the Auditor General undertake an audit concerning Nowaski's unrecorded hours for which she was nevertheless compensated.

Nowaski's frauds were enabled, in part, by a lack of meaningful oversight by her successive custodian employers. Apparently, neither Stigliano nor Mendez reviewed Nowaski's payroll activities in any ongoing manner. It was only upon Mendez's retirement, when he was required to reconcile his accounts with the DOE, that some of Nowaski's fraud was discovered. We recommend that the DOE implement specific policies requiring that

⁸ Nowaski may also have deceived her bosses by inflating the number of hours she claimed to have worked at GCHS in the records used to determine her compensation, and thereby obtained more unearned income.

custodians conduct scheduled examinations of their payroll accounts and certify the ir findings in writing. We further recommend that the DOE Office of Auditor General conduct periodic audits of custodial payrolls to ensure compliance.

Should you have any inquiries regarding the above, please contact Deputy Commissioner Gerald P. Conroy, the attorney assigned to the case. He can be reached at (212) 510-1486. Please notify Deputy Commissioner Conroy within 30 days of receipt of this letter of what, if any, action has been taken or is contemplated concerning Karen Nowaski and John Lotito. Thank you for your attention to this matter.

Sincerely,

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

By: _____

Gerald P. Conroy
Deputy Commissioner

RJC:GPC:lm

c: Michael Best, Esq.
Theresa Europe, Esq.