

June 20, 1991

Mr. Michael Cherkasky
Chief of the Investigations Division
New York County District
Attorney's Office
One Hogan Street
New York, New York 10007

Dear Mr. Cherkasky:

I have enclosed a copy of our report concerning William Ubiñas, Superintendent of Community School District #1. As there is evidence of possible criminal conduct by Mr. Ubiñas, I am referring the report to your office for consideration of possible criminal charges.

Sincerely,

ED STANCIK
Deputy Commissioner
of Investigation for the
City School District of
the City of New York

ES:m
Enclosure

June 20, 1991

Mr. H. Carl McCall
Vice President
Citibank
425 Park Avenue
New York, New York 10043

Dear Mr. McCall:

I have enclosed the public report my office issued today regarding William Ubiñas, Superintendent of Community School District #1. I look forward to meeting with you again in the near future.

Sincerely,

ED STANCIK
Deputy Commissioner
of Investigation for the
City School District of the
City of New York

ES:m
Enclosure

I N V E S T I G A T I V E R E P O R T

Case #: 91-460

Date of Report: 06/19/91

Subject Name: William E. Ubiñas

Attorney in Charge:
Suzan Flamm,
Assistant Commissioner

Office/School: Community School
District #1

Subject Job Title: Superintendent,
Community School District #1

ALLEGATIONS

The following allegations were made to this office regarding William Ubiñas, the Superintendent of Community School District One (here "CSD 1"):

1. That Ubiñas had failed to disclose to the Board of Education that he had been convicted in Alabama in 1974 of crimes involving the sale of cocaine and marijuana.
2. That Ubiñas created a conflict of interest by subletting his apartment from his Deputy Superintendent, Dr. Anthony Cavanna.
3. That Ubiñas currently uses illegal drugs.

FINDINGS

The investigation confirmed that in 1974, while an 18 year old student at Auburn University in Alabama, Ubiñas was convicted in Lee County, Alabama of the crimes of Sale of Cocaine and Possession of Marijuana, both felonies. Mr. Ubiñas falsely denied these convictions on at least four separate documents: first, in applying for a Massachusetts teaching certificate on June 20, 1984; second, in applying for a Massachusetts teaching certificate on June 5, 1989; third, in applying for a teaching certificate from the New York State

Education Department on June 19, 1990; and fourth in completing a "Fingerprint Processing Referral" form for the Board of Education in the City of New York in connection with his application for the Superintendency on August 2, 1990.¹

The investigation also revealed that although Ubiñas did not enter into a sublease with his subordinate, Cavanna, he had sought, and obtained, a residential lease guaranty from him. The guaranty requires Cavanna to pay the \$2,000.00-a-month rent on Ubiñas's apartment in the event that Ubiñas defaults on that rent. In obtaining this guaranty, Ubiñas entered into a financial relationship with a subordinate and thus violated the Conflict of Interest Provisions of the New York City Charter at Section 2604 (b) (14).²

The allegations concerning current drug use were not substantiated.

The investigation further indicated that the Board of Education procedures concerning background checks, although probably adequate in most instances, were inadequate in the case of Ubiñas. Those procedures require that a job applicant be fingerprinted, and that a criminal records check be completed, before the applicant is accepted for employment. In certain instances, if a specific need is expressed, an applicant may be granted a "conditional clearance" allowing him or her to begin work before the conclusion of the criminal check. The criminal record check procedures also require that the applicant complete a "Fingerprint Processing Referral" form in which the applicant must state whether he or she has ever been convicted of any offense. Besides conducting its own check, the Board of Education also requires that applicants for certain positions, including superintendents, submit to a Department of Investigation background check.

¹The New York City Charter, at section 803 (c) requires that we forward allegations of criminal conduct to the appropriate prosecutorial authorities. Because Mr. Ubiñas's action in completing and filing false documents in New York may constitute criminal conduct in this state, we are referring this report to the New York County District Attorney's office.

²The New York City Charter, at section 803 (c) requires that we forward allegations involving a conflict of interest or unethical conduct to the Board of Ethics. That board has been replaced by the Conflicts of Interest Board and we are referring this report to the attention of that office.

The investigation made clear that the existing procedures failed in four important respects. First, Ubiñas was never granted a conditional clearance, yet he was hired by the Board of Education, and began his duties as a superintendent, well before the results of his fingerprint check were received by the Board. Second, although an Office Aide in the Office of Personnel Security learned on November 13, 1991 that Ubiñas had been arrested for the sale of a narcotic, no one in a supervisory position in the Board of Education had that information until Ubiñas himself made it known some five months later on April 18, 1991. Third, the "Fingerprint Processing Referral" form completed by Ubiñas was discarded before the return of the federal records check. And fourth, Ubiñas was never referred, either by CSD 1, or by the Board of Education, to the Department of Investigation for the background check.

SUMMARY

A. UBIÑAS'S FALSE DENIAL OF CRIMINAL CONVICTIONS

The Convictions

On April 29, 1974, while an 18 year old college student at Auburn University in Alabama, Ubiñas was arrested in Lee County, Alabama, for the sale of Cocaine, the Sale of Marijuana and the Possession of Marijuana. On May 22, 1974, Ubiñas applied to the Lee County Circuit Court, where his case was pending, for Youthful Offender treatment as to all the charges against him. That application was denied on the following day, May 23, 1974. On May 30, 1974, Ubiñas pled guilty to the Sale of Cocaine and to Possession of Marijuana, both felonies. The Sale of Marijuana charge was dismissed.

On the day of the plea, Ubiñas was sentenced to the Alabama State Penitentiary for a term of ten years for the sale of cocaine, and to a \$1,000 fine for the possession of marijuana. On September 3, 1974, Ubiñas's prison sentence was reduced to probation for a period of ten years. That probation was terminated early on July 24, 1978.

Copies of the Lee County District Court records are attached here as Exhibit 1.

The False Documents

Ubiñas applied for, and obtained, two Teacher's Certificates from the Department of Education of the Commonwealth of Massachusetts. He falsely denied that he had criminal convictions on both applications. First, on June 20, 1984, in answer to the question "Have you ever been convicted of any crime (excluding minor traffic violations)?", Ubiñas checked "No" and signed his name. He responded to the identical question in the same manner, also signing his name, on a second application dated June 5, 1989. The following statement appears above his signature on both applications: "I have read all the answers given in this application. They are complete and true." Copies of these documents are attached here as Exhibit 2.

Prior to assuming his new job as the CSD 1 Superintendent, Ubiñas applied for a School District Administrator (Superintendent) Certificate from the State Education Department on June 19, 1990. This certificate is required for all superintendents. On this application Ubiñas was again asked about a criminal record in the following question: "Have you ever been convicted of any crime (felony or misdemeanor)?" Ubiñas checked "No". He signed his name under the following statement: "Under the penalties of

perjury, I

declare and affirm that the statements made in the foregoing application, including accompanying statements and transcriptions, are true, and correct." The application was submitted to the State Education Department where it was filed. A copy of the application is attached here as Exhibit 3.

Mr. Ubiñas's term as Superintendent began on July 30, 1990. On August 2, 1990, he reported to the offices of the Board of Education at 65 Court Street to be processed for employment. His fingerprints were obtained on that date by the Office of Personnel Security at which time he also completed a "Fingerprint Processing Referral" form. The following question appeared on that form: "APPLICANT'S STATEMENT OF RECORD: Have you ever been convicted of any offense or is there any criminal action presently pending against you (other than non-moving traffic violations)?" The form containing this question has been discarded. The Personnel Security computer record, however, indicates that Ubiñas answered the question with a "no"

B. UBIÑAS'S RESPONSE TO THE DISCOVERY OF THE ALABAMA CONVICTIONS

The Office of Personnel Security was notified by the FBI on November 13, 1990, that Ubiñas had been charged with the crimes described above. Upon receiving the notification, a clerk in that office sent a form letter to Ubiñas asking for documentation regarding the disposition of those charges. The response to the form letter came from Robert Sackett, Ubiñas's lawyer. Mr. Sackett wrote on three occasions to the Office of Personnel Security stating that he required additional time to secure the requested records. The last date requested by Mr. Sackett was May 1, 1991.

According to Gary Barton, the Deputy Executive Director of the Office of Pedagogical Personnel, on April 16, 1991, Frank Arricale, the Superintendent of Community School District Eleven, called James Stein of the Office of Appeals and Review to request a meeting to discuss a confidential matter. On April 18, 1991, Arricale and Ubiñas met with Stein. Arricale explained that the confidential matter concerned the fact that Ubiñas had a criminal record, at which point Stein asked Barton to join the meeting. Until the date of this meeting, no one in the Board of Education other than the clerk handling Ubiñas's file in the Office of Personnel Security knew of the arrest. At this meeting Ubiñas told Barton and Stein that he had been convicted of charges involving narcotics. He also told them that he had not disclosed these convictions to the Office of Personnel Security on any form. He then signed an affidavit which is attached here as Exhibit 4. Thomas Ryan, the Executive Director of the Division of Human Resources, informed Chancellor Fernandez of Ubiñas's statements. The Chancellor

immediately informed this office.

On April 25, 1991, Ubiñas requested an opportunity to discuss the matter of his prior convictions with the Office of the Deputy Commissioner of Investigation. A meeting was set for April 26, 1991 at which time Ubiñas appeared in this office with his lawyer, John Horan, and produced copies of the Lee County Circuit Court papers concerning his 1974 convictions. During this meeting he stated that he was a young student at the time of the convictions and that he had become involved with the "wrong crowd". He made a mistake but felt that the mistake should not follow him around for the rest of his life. He had simply put the matter behind him which is why he had denied any criminal convictions when he was fingerprinted. He admitted that he had falsely denied the convictions at the time he was fingerprinted in August of 1990, and admitted further that he had made a similar false statement in applying for his certificate from the State Department of Education. He stated that he had not been asked about prior convictions in connection with the education related positions he held in Massachusetts.

Mr. Ubiñas was again interviewed on June 19, 1991. On this occasion he reviewed the Massachusetts Teacher's Certificate applications and the "Fingerprint Processing Referral" form, copies of which are attached here as Exhibits 2 and 3 respectively. He acknowledged having answered the inquiries about criminal convictions in the negative and having signed his name to the documents.

C. THE LEASE GUARANTY

Dr. Anthony Cavanna is the Deputy Superintendent of CSD 1, having assumed that position at the time that Ubiñas became Superintendent. He was interviewed on May 7 and May 10, 1991. He stated that he met Ubiñas shortly before the two started in their new jobs on August 1, 1990. On August 30, 1990, while in the CSD 1 office, Ubiñas approached Cavanna and asked him to sign a guaranty for a \$2,000-a-month lease Ubiñas was hoping to obtain for an apartment at 377 Rector Street in Manhattan. Cavanna already knew from prior conversations with Ubiñas that Ubiñas was living in an apartment pursuant to a sublease that was about to expire, and that Ubiñas was thus under some pressure to find a new residence.

On August 30, 1990, Cavanna signed the lease guaranty.³

The next day Cavanna asked Ubiñas for a copy of the guaranty but did not receive one. A day or two later, Ubiñas told Cavanna that he would not need the guaranty after all as Ubinas's brother had lent him \$6,000 to use in place of the guaranty. Ubiñas told Cavanna that he would have the guaranty returned to him, but Cavanna never received it.

Diane Keris is a Management Agent with Milford Management, the company that manages 377 Rector Street. She stated that she had required a lease guaranty from Ubiñas after receiving a credit check showing that Ubiñas owed substantial sums of money. She accepted the guaranty signed by Cavanna and considers it binding, requiring Cavanna to pay Ubiñas's rent in the event Ubiñas fails to do so. Keris cannot recall any conversations with Ubiñas in which she was asked to return the guaranty.

When interviewed on June 19, 1991 Ubiñas confirmed having requested the lease guaranty from Cavanna. Ubiñas stated that Cavanna had helped him find the apartment and so Ubiñas had turned to Cavanna when he was told that he would need a guaranty. He recalled telling Cavanna that he was attempting to avoid the necessity of the guaranty by offering an additional security deposit on the apartment. Although that attempt was ultimately unsuccessful he does not recall having any further conversation with Cavanna about the lease guaranty.

The New York City Charter clearly proscribes the transaction between Ubiñas and Cavanna. The Conflict of Interest provisions at section 2604 (6)(14) prohibit a public servant from entering into any business or financial relationship with another public servant who is either a superior or subordinate of such public servant.

The provision protects a subordinate from any real or imagined pressure he may feel as a result of a superior's request for financial assistance; and, similarly, protects a superior from any feeling of obligation to give an employee with whom he has entered a business relationship preferential treatment. This conflict is all the more apparent here because Ubiñas barely knew Cavanna at the time he sought the guaranty. A guaranty such as this might typically be expected to come from a close friend or relative of the tenant.

³ The guaranty is attached here as Exhibit 5. In what appears to be a clerical error, the leased property is described as apartment 24C at 1271 Avenue Las Americas. The lease is actually for apartment 24C at 377 Rector Street. The owner of the building, Mariner's Cove Site J Association, is located at 1271 Avenue of the Americas.

Someone in Cavanna's position could justifiably conclude that Ubiñas's request was based on their relationship as superior and subordinate as there was virtually no other relationship between them.

D. ALLEGATIONS OF CURRENT DRUG USE

On March 27, 1991, individuals associated with CSD 1 told investigators with this office that they, and others affiliated with CSD 1, suspected that Ubiñas used drugs. Allegations of a similar nature, which were made publicly, were reported in April and May of 1991. Ubiñas was described as "behaving erratically", as being "verbally abusive" to his staff, as experiencing sudden nose bleeds, and as having refused to take a drug test when that was requested of him by board members of CSD 1.⁴

Dr. Cavanna stated on May 10, 1991, that in August of 1990, when Ubiñas was notified that he would have to submit to a physical examination as part of his personnel processing, Ubiñas asked Cavanna whether the examination included a drug test. Cavanna responded that he did not know, at which point Ubiñas asked Cavanna to call the Board of Education to find the answer. Cavanna learned that the examination did not, in fact, include a drug test, and conveyed that information to Ubiñas.

When interviewed on April 26, 1991, Ubiñas denied having used or possessed any illegal drug since the incident in Lee County, Alabama which led to his arrest in 1974. On June 19, 1991, Ubiñas stated that shortly after he started as Superintendent he asked Cavanna to learn what would be involved in his personnel processing. Ubiñas explained that while still living in Massachusetts he remembered reading that the New York City Board of Education required drug tests of its employees. He thus specifically asked Cavanna to find out whether a drug test would be required. He also asked Cavanna to find out, among other things, about the fingerprint requirement.

A federal, New York State and Massachusetts criminal records check on Ubiñas did not reveal any convictions other than those described above. Mr. Ubiñas lived in Cambridge while attending

⁴ In reporting on these allegations, we are mindful of the need to protect the reputations of people vulnerable to unfounded charges of drug use. Because these allegations have been made and challenged publicly, and because there is understandable public concern regarding these allegations, we feel it is in the best interest of all concerned to fully air our findings.

Harvard University, and while working in Boston, between 1979 and 1990. A check with the Harvard University Police and the Cambridge Police yielded negative results.

Investigators with this office interviewed several individuals affiliated with the CSD 1 office. Additionally, they conducted interviews in Boston with individuals associated with Ubiñas and with the Blackstone School where Ubiñas worked as a principal between 1984 and 1990. No one interviewed had ever seen Ubiñas use drugs, nor did they know of anyone who had. They had also not seen him in possession of any drug related paraphernalia.

On June 10, 1991, Ubiñas was asked by this office, through his attorney, to submit to a drug test that day. He declined to take the test. Ubiñas explained, through his attorney, that he declined on the grounds that he was being "unfairly targeted" and that there was "no reasonable basis to support the allegation" that he used drugs.

E. THE BOARD OF EDUCATION'S PROCEDURES
CONCERNING BACKGROUND

CHECKS

The Board of Education's Division of Human Resources has responsibility over all the relevant departments which were involved in the personnel processing of William Ubiñas. The Division's Office of Pedagogical Personnel processes the employment of teachers, superintendents and other pedagogical employees. The Office of Personnel Security handles security checks for all personnel but answers directly to the Office of Pedagogical Personnel.

Ubiñas is Placed on the Payroll with a Conditional Clearance

The first key error in the processing of Mr. Ubiñas occurred when he was placed on the payroll without either a completed criminal records check or a formal exception to the requirement for such a check.

All Board of Education applicants must be fingerprinted for a New York State and federal criminal records check before they are hired. Most applicants cannot be hired, and placed on the payroll, before the results of that check have been obtained, a process which can take several months. In some instances, however, an exception is made and an applicant is granted a conditional clearance and begins working before the conclusion of the criminal check. These exceptions are made on the basis of need, which the hiring entity must express in a letter to Thomas Ryan or Gary Barton, Deputy Executive Director of the Office of Pedagogical Personnel. The

applicant for whom the clearance is sought must also fill out and sign an affidavit stating whether he or she has ever been convicted of a criminal offense or has any pending criminal charges. Mr. Ryan, in consultation with Mr. Barton, then either grants, or denies, the request for a conditional clearance. Without the conditional clearance, an applicant may not be hired, and placed on the payroll, before the results of the criminal records check are obtained.

Barton stated that if a clearance is granted, Ryan signs the letter, and the clearance is communicated to the Office of Personnel Security by the forwarding of the letter and affidavit to that office. Only one individual in Personnel Security, a secretary, is then allowed to make the relevant entry of "cc", for "conditional clearance", in the Personnel Security records concerning the applicant.

Ubiñas never received a conditional clearance from Thomas Ryan, yet he was placed on the payroll three and a half months before the FBI check was completed. Barton and Ryan both stated that they did not meet with Ubiñas on the day he was processed for employment, that they do not remember considering a request for a conditional clearance on his behalf, or granting one for him. There is no letter requesting a clearance, or affidavit regarding criminal charges signed by Ubiñas, in the Personnel Security files. Moreover, no entry of "cc" was ever made in the Personnel Security computer records concerning Ubiñas.

According to Barton, the placing of Ubiñas on the payroll without the required clearance was the result of Ubiñas having been placed on the "administrative" rather than the "pedagogical" payroll. This allowed Ubiñas to receive his paycheck every other week instead of bi-monthly. Barton stated that the option of choosing a payroll is only granted to superintendents. Barton stated further that, as a pedagogue, had Ubiñas been placed on the "pedagogical" payroll, the individuals responsible for that payroll would have followed their procedures and examined the Personnel Security records to determine whether Ubiñas had either cleared the criminal records check, or received a conditional clearance. Similarly, had he been placed on the administrative payroll because he technically belonged on that payroll, the individuals responsible for that payroll would have followed the same procedure.

Instead, Ubiñas was placed on the administrative payroll without any check of Personnel Security records. Two other offices of Human Resources were involved in the placing of Ubiñas on the administrative payroll. The Office of Pedagogical Status and Records is responsible for, among other things, movements of personnel on the pedagogical payroll. The Certification and Appointment Unit handles, among other things, movements of personnel on the administrative

payroll. According to Barton, Roberto Fuentes, Administrator of Pedagogical Status and Records, called Thomas Seluga, Director of the Certification and Appointment Unit, and requested that Seluga place Ubiñas on the administrative payroll, which is exactly what occurred. Barton stated that he did not have any direct involvement with the personnel processing of Ubiñas, and did not tell Fuentes that Ubiñas had obtained a conditional clearance. In any event, according to Barton, Fuentes should have checked for a clearance before making the payroll request of Seluga, and Seluga should have directed that the same check be made before the placement of Ubiñas on the administrative payroll.

Fuentes has a different recollection of the events surrounding the hiring of Ubiñas. He recalls meeting with Ubiñas on the day that Ubiñas was processed for employment and recalls being told by Gary Barton to place Ubiñas on the payroll. He recalls asking Barton if Ubiñas had a clearance to which Barton replied "yes". At that point, Fuentes placed the call to Seluga and requested that Ubiñas be placed on the administrative payroll.

Seluga remembers a request being made to his unit to place Ubiñas on the payroll, but does not know who made that request. He stated that usually requests of that nature were made by Fuentes. Upon receiving requests to place pedagogues on the administrative payroll it was, and is, his practice to comply without independently checking for a conditional clearance. His assumption upon receiving these requests is that Fuentes has already determined that the applicant is eligible in all respects for employment.

Barton stated that he has requested Carl Holz, the Director of Administrative Systems, which is within the Division of Computer Information Services, to examine the feasibility and expense involved in making certain changes in the payroll computer programs. These changes would preclude the placement of an applicant on the payroll without an indication within the Personnel Security computer records that an applicant had actually completed the criminal records check, or had received a conditional clearance.

Mr. Holz stated that the program changes described above had certain drawbacks but were possible. He noted, however, that efforts are currently being made to integrate all of the Board of Education computer records. This is scheduled to be completed sometime in 1992. Once this is accomplished, the payroll records and the Personnel Security records will all be part of the same computer system. According to Holz, this will automatically preclude the placement of an applicant on the payroll without an indication that he or she has a conditional clearance, or has completed the records check.

Clerical Staff Failed to Notify Supervisory Staff of Ubiñas's Criminal Record

Some 50,000 applicants are processed each year by Personnel Security, and each of these undergoes a criminal records check. When the check reveals an applicant to have a criminal record, typically a Personnel Security office aide sends the applicant a form letter asking for documentation regarding the disposition of those charges. Given the vast number of applicants, positive record checks are not uncommon and superiors are not normally notified. If the positive record check involves an employee, however, superiors are to be notified.

On November 13, 1990, the FBI notified the Office of Personnel Security of Ubiñas's 1974 arrest. At this point, Personnel Security should have determined that Ubiñas was already on the payroll. Instead, a clerk in Personnel Security apparently treated Ubiñas as merely an applicant and not an employee, with the result that five more months passed before persons in authority became aware of Ubiñas's arrest record.

No one interviewed had a specific recollection of having reviewed the Personnel Security computer records at the time of the FBI notification to determine whether Ubiñas was an employee or an applicant. On seeking to determine how the error most likely came about, we found a discrepancy among Human Resources employees regarding applicable procedures. According to Barton, the mistake again concerned the fact that Ubiñas was on the administrative, and not the pedagogical payroll. Barton stated that upon receipt of notice of a criminal record, Personnel Security clerks are required not only to check Personnel Security computer records to determine whether a conditional clearance had been granted to the individual concerned, but also to check the applicable payroll screen to determine whether, by some fluke, the individual appears on the payroll even without a clearance. According to Barton, since Ubiñas was technically a "pedagogue", the clerk would have checked that payroll screen, and, of course, would not have found Ubiñas's name. Had the clerk checked the administrative payroll screen he would have, in fact, found that Ubiñas was an employee.

Vera Holder, the Deputy Director of Personnel Security, and Charles Bewalder, a Personnel Security office aide who handled the Ubiñas file, recall the relevant procedures differently. Both stated that although they occasionally check the payroll screens, it is not done on every occasion that a criminal records check reveals that an applicant has a criminal record. In determining whether an "applicant" is actually already an employee, their usual course is to rely on the Personnel Security computer records which would indicate

a "cc" in those cases where a clearance had been granted. Thus, by the accounts of Holder and Bewalder, Ubiñas would most likely have been viewed as an applicant regardless of whether he was on the pedagogical or administrative payroll.

In any event, the result of this error was that five more months passed before Human Resources personnel became aware that a currently employed district superintendent had previously been charged with narcotics sales.

Ubiñas is not Referred to the Department of Investigation for a Background Check

By a regulation of the Chancellor dated December 11, 1984, C-115, Superintendents are required to submit to a Department of Investigations background check. Although this check does include an inquiry as to whether the applicant has a criminal record, it does not ordinarily include a criminal history check unless the applicant indicates that he or she does have a record.

According to both Ryan and Barton, Ubiñas was never referred to the Department of Investigation by either Human Resources or CSD 1 and thus, no background check was conducted. Ryan stated that in the case of Ubiñas, Human Resources relied upon the Community School Board to make the referral. He stated further that as a result of the Ubiñas oversight, procedures have now been implemented to ensure that the referral is made by Human Resources.

The "Fingerprint Processing Referral" Form is Discarded

According to Ryan and Barton, Ubiñas's fingerprints were submitted to New York State and federal law enforcement authorities for a criminal records check. The New York State check was completed first, and the results of that check, which were negative, were submitted to the Office of Personnel Security. Barton stated that upon seeing the negative result, a clerk in that office discarded the "Fingerprint Processing Referral" form that Ubiñas had completed. As the form used in August of 1990 has been amended, no blank copy of the form Ubiñas signed is available. Ryan and Barton stated that the clerk violated the procedures governing a criminal records check which do not include the disposal of any documents.

Holder described the procedures differently. According to Holder, prior to July, 1990, the procedure was to discard the "Fingerprint Processing Referral" form upon receipt of a state criminal records check which showed no criminal record.

In July, 1990, Personnel Security began submitting fingerprints not only to state, but also to federal authorities. Thus, beginning in July, the procedure was to retain the form until the return of the federal records check, at which point it would be discarded if there was no

criminal record. Charles Bewalder described the procedures in the same manner. Both Bewalder and Holder recall that they were recently instructed by Barton to maintain the form in their files regardless of the results of the criminal record check.

RECOMMENDATION

Ubiñas, of course, does not deserve further punishment for the crimes he committed in 1974. His repeated concealment of those crimes, however, as well as his obtaining of a lease guaranty from Cavanna, constitute separate, and recent wrongdoings. We recommend that strong disciplinary action be taken against him, which could appropriately include the termination of his employment and the revocation of his teaching certificate by the New York State Education Department.⁵

Like all Board of Education applicants, Ubiñas was asked whether he had a criminal history. An honest response to that inquiry would have allowed his prospective employer, CSD 1, to make an informed judgment regarding his qualifications for the superintendency. Certainly any district, not only CSD 1, would reasonably have found information concerning a prospective superintendent's prior drug sale, no matter how removed in time, material and relevant to its decision to entrust the children of their district to his care.

Ubiñas purposefully hid that piece of significant information on at least four occasions, on four separate documents, completed during a period spanning six years, 1984 to 1990. In concealing that information he has affirmatively lied. He has justified his decision to do so in stating that he had "put the matter behind him"; knowing the circumstances of his arrest and conviction it could be that the board members of CSD 1 would have been willing to "put the matter behind" them as well and go forward with Ubiñas's appointment as superintendent. Ubiñas, however, unilaterally decided that the school district would not have the opportunity to consider the issue by concealing his criminal record.

Certainly, if an inquiry concerning an applicant's criminal past is to mean anything at all, then a knowing misstatement in response to that inquiry cannot pass without penalty. Should no punitive action be taken by any of the appropriate authorities in response to Ubiñas's lies, then others with criminal records would not only not be deterred from concealing this relevant information, but would be all the more encouraged to follow suit; those individuals with criminal histories would certainly know that they would stand a better chance at the job if they concealed their past, and, in any event, would know they would go unpunished if they were caught.

⁵ It was not a goal of this investigation to assess the quality of Ubiñas's performance as an educator generally, or as the Superintendent of CSD 1.

It is our recommendation that Mr. Ubiñas's misconduct in obtaining a lease guaranty from Dr. Anthony Cavanna be considered in determining the appropriate action against him. Mr. Ubiñas holds a highly responsible position. Seeking this guaranty from his deputy and exposing him to a potentially serious financial loss was highly improper .

Board of Education Procedures Concerning Criminal History Checks and Background Checks

The Board of Education undertakes the arduous task of fingerprinting all of its applicants precisely because there are individuals with criminal pasts who will lie about their pasts to get jobs. Understandably, in some instances, the Board exercises some flexibility, granting a conditional clearance to an applicant if a specific need has been expressed and if the applicant has stated in writing that he or she has not been convicted of any crimes and is not facing any criminal charges. The decision to grant the clearance is made at a high level, presumably because of the risk involved in unwittingly allowing an individual who has committed certain crimes to have access to children. Yet, the Board of Education procedures concerning background checks failed to prevent the employment of Ubiñas before the return of his criminal check even though he had never been granted a conditional clearance. Moreover, once the criminal record was discovered, that information was never communicated beyond the office aide level of Personnel Security, and might still not be known beyond that office if it were not for Ubiñas's own disclosure of the matter to individuals outside of Personnel Security.

The most significant problem revealed by the interviews concerning background check procedures concerns the fact that these procedures were, or are, understood differently at different levels of administration within the Division of Human Resources. We thus recommend that the significant procedures be clearly and concisely described and disseminated to all relevant personnel. Clearly, the best solution is the planned integration of all Board of Education computer records so that it will be impossible to place an individual on the payroll without a conditional clearance or successful completion of the criminal record check. Until that is accomplished, however, tight controls over this process, beginning with a clear understanding at all levels of personnel as to the mandated procedures, must be instituted by the Division of Human Resources.