

August 11, 2010

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

Re: Milciades Pepin
Francesca Pena
SCI Case #2010-0428

Dear Chancellor Klein:

An investigation conducted by this office has substantiated that Milciades Pepin, an assistant principal assigned to A. Philip Randolph High School (“Randolph”) in Manhattan, the Manhattan Center for Science and Math (“Manhattan Center”), and Unity Center for Urban Technologies (“Unity”) in Manhattan, used “FlexiSPY” software to access the e-mail accounts of Randolph Principal Henry Rubio, Manhattan Center Principal J. David Jimenez, Unity Principal Fausto De La Rosa, and then Manhattan High Schools Superintendent Francesca Pena.¹ In the course of conducting this investigation, we learned that Pepin and Pena were involved in a personal relationship.

This investigation began on January 27, 2010, when Principal Rubio contacted the office of the Special Commissioner of Investigation (“SCI”) and lodged a complaint against Milciades Pepin who was also known as Mayo Pepin.

SCI investigators met with Principal Rubio who said that Pepin started as an assistant principal of technology at Randolph in September 2008. Rubio added that Pepin worked for three schools and three principals: once a week at Randolph under Rubio, three days a week at Manhattan Center under Principal Jimenez, and one day a week at Unity under Principal De La Rosa. According to Rubio, all three principals, as well as

¹ Pepin was reassigned during this investigation. Pena has become the Queens High Schools Superintendent.

Superintendent Pena were receiving disturbing e-mail messages from unknown sources and receiving e-mail messages which the purported author never sent.

Rubio provided several e-mail messages that he received between August 2008 and January 2010, which were sent from various Gmail addresses, none of which was familiar to Rubio. Other messages appeared to emanate from Pepin and accused Rubio of having an affair with Pena.²

In June 2009, Rubio received an e-mail message on both his Department of Education (“DOE”) and his personal e-mail accounts, purportedly coming from Pena, which asked what Rubio was doing that evening. When Rubio responded, Pena replied that she had not sent him the message in question. In January 2010, Rubio received an e-mail message, again seeming to emanate from Pena, which advised Rubio to leave her alone and ended their relationship. When Rubio responded to find out what she was talking about, Pena replied that she had not sent that communication.

Rubio reported additional suspicious activity. In his office at Randolph, on one occasion during November 2009, Rubio received three telephone calls from Pena on his DOE-issued BlackBerry device. He did not answer the first two but, upon seeing a third call, he was concerned that something was wrong. When he answered the call from Pena’s phone, Pepin was the caller. Rubio said that Pepin spoke briefly about nonsense and then hung up.

Rubio explained that, in January 2010, he received a new DOE-issued BlackBerry device. Rubio showed the phone to investigators; an icon with Pepin’s DOE e-mail address appeared on it, but there were no e-mail messages in the inbox. Rubio said that he never gave the BlackBerry device to Pepin and he did not understand why Pepin’s icon was on it. Rubio added that when he placed an item on the BlackBerry calendar, it appeared on the DOE BlackBerry device assigned to Elizabeth Hachar, a principal in the Bronx, for whom Pepin had worked.

SCI investigators met with Principal Jimenez who confirmed that, beginning with the 2008-2009 school year, Pepin was assigned to his school three days a week. Jimenez said that, on many occasions, Pepin told him that he hated Principal Rubio. Jimenez added that, one day in early November 2009, he and Pepin were out of the school building having lunch when Pepin showed Jimenez an e-mail message on Pepin’s laptop computer which was addressed to Rubio and discussed the extension of Rubio’s probation. Pepin did not explain how he was able to access Rubio’s e-mail, but he appeared to be very pleased. Jimenez reported that, on several occasions, Pepin commented that “when people mess with technology people, those people will get what they deserve.”

² These messages were in Spanish.

That same day in November 2009, Pepin said that he was going to do something to get Rubio fired, but that it may get Pepin and “higher ups” in the DOE in trouble. According to Jimenez, Pepin then read a document, composed in Spanish, which described a love triangle involving Rubio, Pepin, and Pena. Pepin advised Jimenez that he had sent the document by e-mail, but did not say to whom he had sent it. Jimenez informed investigators that he chastised Pepin for speaking ill of Rubio and, from that point on, his relationship with Pepin took a turn for the worse.

Jimenez explained that he did not use a DOE-issued cell phone and that, sometime in September or October 2008, Pepin took Jimenez’s personal cell phone out of Jimenez’s presence for a short amount of time. Thereafter, it seemed that Pepin always knew what Jimenez was doing. Jimenez said that he would access his e-mail account and find that messages were already opened. Jimenez added that his personal Gmail account, which he shared with his wife, received some odd messages sent from some odd Gmail addresses. Although he recalled his wife commenting about the strange communications, Jimenez had deleted the messages right away, and he could not remember the e-mail addresses or when the messages were sent. Jimenez mentioned the messages to Pepin who said that he thought he knew who was doing it. A few days later, Pepin told Jimenez that he had spoken with the person who had sent the messages and instructed that individual to stop doing so.

Jimenez reported that, in November 2009, several e-mail messages he sent – including some important communications – were erased without reaching the intended parties. Jimenez then removed his e-mail access from his cell phone. Around the same time, Pepin left his laptop open and Jimenez saw the sign in screen for FlexiSPY.com which asked for Pepin’s account number and password. Thereafter, Jimenez denied Pepin access to his computer and phone, which caused Pepin to confront him. Jimenez got into a heated discussion with Pepin and told him that he knew what Pepin was doing with his phone and e-mail messages.

SCI investigators met with Principal De La Rosa who confirmed that Pepin worked at his school every Tuesday as a technical liaison. De La Rosa said that he had a personal Gmail account, but did not receive odd Gmail messages or see strange icons on his phone. De La Rosa recalled one out of the ordinary e-mail message, “I know what you were doing yesterday,” but he paid no attention to it.

SCI investigators met with Superintendent Pena who said that she had held that position since 2004, and was the Manhattan High Schools superintendent until December 14, 2009, when she was appointed the Queens High Schools superintendent. At that point in the interview, Pena denied that she was romantically involved with Pepin.

Pena reported that fictitious e-mail messages in her name had been sent over the past year, including one sent to the Chancellor's Office. Pena said that an investigation was performed, but it was never discovered who had sent the messages in her name. Pena reviewed messages which she purportedly sent to Principal Rubio and confirmed that she never sent them. Pena denied ever being romantically involved with Rubio.

Pena informed investigators that, more than a year earlier, she lost her DOE-issued BlackBerry device which was never found. Pena added that, shortly after losing it, she received an e-mail message which indicated that the loss of her BlackBerry was just the first of many bad things that were going to happen to her.

Pena explained that, in September 2008, she gave her DOE-issued computer broadband card to Pepin because she had received a new computer and the card did not fit its configuration. Pena admitted that she had given Pepin access to her DOE-issued cell phone on several occasions for Pepin to fix it or update it. Pena added that, although she was close with Pepin personally, she felt that Pepin knew more about Pena's business than he should, including matters which Pena had never discussed with Pepin.

Pena reviewed three e-mail messages, written in Spanish, which Principal Rubio had provided to SCI. In the first, from Pepin to Pena, copied to Rubio, Pepin admitted that he had sent an e-mail message to Rubio in Pena's name and suggested that Pena should report Pepin to SCI for improperly entering Pena's account. Pena did not remember receiving that message. The second, from Pepin to Rubio, copied to Pena, indicated that Pepin, Rubio, and Pena were involved in a love triangle which needed to stop or everyone would lose their job. Pena recalled that message and said that she questioned Pepin about it. In response, Pepin advised Pena that he sent the message to get back at Rubio for a bad joke that Rubio, Jimenez, and De La Rosa had played on Pepin. According to Pena, Pepin was very upset about it, he considered Rubio to be the ring leader and, therefore, he sent the e-mail message to get back at Rubio. The third message, from Pepin to Pena and Rubio, indicated that Pepin was going to talk with both Pena and Rubio and, if necessary, it would take place in front of everyone. Pena did not remember receiving that communication.

SCI investigators questioned Pena about the call from her phone to Rubio, which occurred at about 9:00 p.m. on Friday, November 13, 2009, apparently made by Pepin. Pena admitted that she was with Pepin on that date at that time at his apartment. Pena said that she did not see Pepin use her phone, but acknowledged that he could have done so. Pena then disclosed that she had been involved in a romantic relationship with Pepin for the past two years, but had broken off the relationship near the start of 2010. Pena reported that they remained friends. Pena asserted that she did not have a romantic relationship with any other DOE employee. She specifically denied having a relationship with Rubio, Jimenez, and De La Rosa.

In an interview with investigators from this office, conducted in the presence of his union representative, Milciades Pepin confirmed his assignment to the three Manhattan high schools. Pepin maintained that his relationships with Principal Rubio and Principal Jimenez were good.

Pepin said that he previously had a FlexiSPY account, but claimed that he had disabled it two years ago. Pepin added that he had used the software on his own cell phone, but denied that he had placed it on Rubio's cell phone or Jimenez's cell phone. Pepin claimed that he used it to keep track of his phone and that it functioned as a GPS would. Pepin had no explanation for not placing a GPS on his cell phone through his carrier, which would be less expensive than FlexiSPY software.

To explain why his e-mail icon appeared on Principal Rubio's DOE-issued cell phone, Pepin claimed that his attempts to re-synchronize Rubio's cell phone were not working so, to determine whether the phone was working at all, he uploaded his e-mail account on to it. Pepin asserted that, upon confirming that the phone was working, he disabled the account, but apparently not the icon which was in the phone's memory. Pepin denied that he tried to hack into Rubio's phone.

Pepin disputed Principal Jimenez's account of seeing the FlexiSPY account information on Pepin's computer in November 2009. Pepin reiterated that he no longer had a FlexiSPY account in November 2009, and asserted that he had never used it in Jimenez's school. Pepin denied showing Jimenez a copy of an e-mail message sent to Rubio advising the principal that his probation had been extended. Pepin claimed that he showed Jimenez a template of a standard memo used by the DOE to let an employee know that probation had been extended.

Pepin reviewed the Spanish language e-mail messages which seemed to come from his account. Pepin did not remember sending the message to Pena in which he reported having sent a message in her name. Regarding the message which threatened to expose the fact that he, Rubio, and Pena were involved in a love triangle and the message that the three of them needed to clear the air or be exposed by him, Pepin said that he sent them as a prank to get back at Rubio for a prank which Rubio, Jimenez, and De La Rosa had played on Pepin.

Pepin described using Pena's cell phone on November 13, 2009. Pepin said that Pena was at his residence and was using the bathroom when, as part of the earlier prank, Pepin called Rubio from Pena's cell phone, held a brief conversation with Rubio, and then hung up. Pepin acknowledged having a conversation with Pena who advised him to leave her out of whatever problem he had with Rubio. Pepin admitted that he had a

physical relationship with Pena, which ended in December 2009. Pepin confirmed that, in mid-2008, Pena gave him a DOE-issued broadband card, which he used on and off for a period of time. Pepin claimed that he no longer had possession of it.

The assigned SCI investigator spoke with Principal Jimenez to follow up on some of the assertions made by Pepin. Jimenez remembered seeing the FlexiSPY web page on Pepin's computer in November 2009, and also recalled that it was the log in page, which asked for Pepin's account number and password. Jimenez added that the e-mail message which Pepin showed him in November 2009, was specifically addressed to Rubio and was not a template as Pepin claimed.

SCI investigators re-interviewed Superintendent Pena who had contacted the assigned investigator to advise him that she had further information regarding this investigation. Pena referred to her earlier statement that she had not seen Pepin on the FlexiSPY website and reported that, although she never actually saw Pepin on that site, her answer was not entirely forthcoming. Pena explained that, about two years earlier, she felt that her husband might be having an affair with another woman, she confided her suspicions to Pepin, and asked Pepin whether there was a way to check her husband's phone to catch him cheating. Pepin advised Pena about FlexiSPY and gave her an informational booklet about it. Pena added that all of her credit accounts were held jointly with her husband, so Pepin purchased the FlexiSPY program for her, met her after DOE hours, and gave her the software with instructions on how to download it on to a phone. Pena did so, on her husband's cell phone, and caught her husband cheating.³ Pena said that she reimbursed Pepin \$200 or \$300 in cash for the FlexiSPY program and, shortly thereafter, she began the personal relationship with Pepin.

Pena explained that Pepin performed work for her in connection with their membership in a fraternal organization, the American Dominican Association of Supervisors and Administrators ("ADASA"). Pena had given Pepin her DOE-issued broadband card to conduct that work. Asked to explain why she gave Pepin DOE equipment to perform non-DOE functions, Pena responded that their association with ADASA and its workshops were done to assist ADASA members within the DOE to succeed; so, in her mind, the work that Pepin was doing for ADASA was also benefiting the DOE. Pena confirmed that ADASA was not a DOE organization; members paid annual dues of \$100.⁴

A second interview with investigators from this office, conducted in the presence of his union representative, occurred because Milciades Pepin had asked to clarify his previous responses about the FlexiSPY software. Pepin said that, about two years earlier,

³ Pena may have committed a crime, such as illegal eavesdropping.

⁴ Rubio, Jimenez, and De La Rosa also belonged to ADASA.

Superintendent Pena asked him whether there was something on the market which she could put on her husband's cell phone so that she could hear her husband's conversations. In response, Pepin advised Pena about FlexiSPY and Pena asked Pepin to obtain the software for her. Pena could not purchase it herself because she shared finances with her husband.

Pepin continued that he purchased the FlexiSPY software for Pena, met her one day after school at a gas station across the street from her office, gave her the software, and provided instructions on how to download it. Pepin confirmed that Pena reimbursed him in cash. Pepin admitted that, shortly thereafter, he began a personal relationship with Pena.

Pepin denied having a recent discussion with Pena about the FlexiSPY software. Pepin did not respond when the assigned investigators pointed out that it was hard to believe that he and Pena had not discussed this matter but, in the same time frame, both had decided to contact SCI and then told the same story about something that took place two years ago.

Pepin confirmed that the work that he did for Pena revolved around ADASA, the fraternal organization to which they both belonged. Pepin claimed that he never used Pena's DOE broadband card for ADASA projects because that work did not require Internet access. Pepin maintained that he had Pena's DOE broadband card to make it easier for him to access e-mail messages.

It is the recommendation of this office that Milciades Pepin's employment be terminated, that he be made ineligible for work with the DOE, and that this matter be considered should he apply for any position in a New York City public school in the future.

It is the recommendation of this office that appropriate disciplinary action be taken against Francesca Pena.

We are referring our findings to New York County District Attorney Cyrus R. Vance, Jr., for whatever action he deems appropriate.

We note that some of the conduct described here may violate the conflicts of interest provisions of the New York City Charter which is administered by the New York City Conflicts of Interest Board.

We are forwarding a copy of this letter and of our report concerning this investigation 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 this investigation. 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: Michael Best, Esq.
Theresa Europe, Esq.