

CITY OF NEW YORK
**THE SPECIAL COMMISSIONER OF INVESTIGATION
FOR THE NEW YORK CITY SCHOOL DISTRICT**

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February 24, 2020

Hon. Richard A. Carranza
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

Re: David A. Hay
SCI Case #2020-0011

Dear Chancellor Carranza:

An investigation conducted by this office has substantiated that former New York City Department of Education (“DOE”) Deputy Chief of Staff David A. Hay entered false written sworn statements in a Background Investigation Questionnaire (“BIQ”) in June 2017 which he then submitted to the New York City Department of Investigation (“DOI”), a requirement of his DOE employment.¹ Hay also made consistent false statements in DOE and the Department of Citywide Administrative Services (“DCAS”) questionnaires when he began his DOE employment in June 2016. The falsehoods concerned the circumstances of his resignation as principal of Kettle Moraine (Wisconsin) High School in February 2011. In truth and in fact, Hay had resigned after he was presented with administrative charges and informed by school district officials that he would be dismissed for failure to obtain the required state principal’s license and for misuse of a school credit card for his personal expenses. Hay’s false and misleading statements related to this matter are detailed herein.

Hay was arrested in Wisconsin in December 2019 and charged with crimes related to his alleged attempts to entice an undercover police officer posing as a 14-year-old boy to meet him at a hotel for sex. The DOE Chancellor fired Hay upon learning of the charges the day after his arrest. The Special Commissioner of Investigation for the New York City School District (“SCI”) initiated this investigation when it was determined that while the DOE vetted Hay’s background, his required DOI background investigation was never finalized. SCI’s investigation included interviews with the two Wisconsin school superintendents who supervised Hay from July 2008 through June 2014. Both superintendents said that they never heard of any sexually inappropriate conduct involving Hay or other information pertinent to the December 2019 criminal charges.² None of the remaining witnesses or documents examined by SCI in this investigation had any such information.

¹ Hay was dismissed by the DOE on December 30, 2019.

² SCI did not receive any complaints involving Hay and sexual misconduct before his December arrest.

I. Investigation and Findings:

On December 29, 2019, Hay was arrested in Wisconsin and subsequently charged in U.S. District Court, Eastern District of Wisconsin, with Coercion or Enticement of a Minor and Possession of Child Pornography, both felonies.³ According to the criminal complaint, in July 2019, Hay posted his photo and profile on Grindr, an online dating app. An undercover Wisconsin police officer who posed as “Colton” responded to Hay. In their initial exchanges, Colton stated that he was 14 years old, to which Hay responded, “Yea I’m good w that.” Intermittently thereafter, through the date of his arrest, Hay sent sexually explicit texts to the undercover officer. The texts showed that Hay planned to meet Colton in Wisconsin for sex, and Hay booked a hotel room for that purpose on the day he was arrested. Police obtained a search warrant to examine Hay’s personal mobile phone and discovered sexually explicit photos of a male, which had been taken when he was under 18 and a student at Tomah High School in Wisconsin, where Hay was principal from 2011 through 2014.⁴ According to the police, the photos were saved to Hay’s phone in 2015.

Hay’s DOI BIQ file was part of a backlog of approximately 6,000 unfinished background checks which were pending when the current DOI Commissioner took office in December 2018. After reviewing the matter, the DOI Commissioner promptly informed the City Council Committee on Oversight and Investigations and discussed a number of plans to address the backlog. These included DOI’s request for 13 new positions for the Background Unit (with three of the positions funded from DOI’s current budget) and assigning newly hired DOI investigators to the Background Unit for a three-month rotation.⁵

The superintendent of the Kettle Moraine School District (“KMSD”) provided details of the events leading to Hay’s 2011 resignation, which are described herein. SCI has determined that neither the DOE nor DOI background procedures would have likely revealed Hay’s false representations. Generally, DOE investigators do not contact past employers absent certain circumstances, which are discussed herein. DOI investigators generally do not verify employment beyond five years prior to the submission of the BIQ. Moreover, the KMSD Board of Education was bound by a written resignation agreement with Hay, which prohibited KMSD from disclosing derogatory information about him.

On January 2, 2020, prior to SCI’s interviews of the Wisconsin school superintendents, the Milwaukee *Journal Sentinel* published an account of the charges against Hay. It also reported that KMSD Superintendent Patricia Deklotz, sent an email to parents in the school district concerning their former principal. Deklotz, in response to SCI’s request, provided a copy of the email on January 3, 2020:

³ 18 U.S.C. §§ 2422 (b) and 2252A (a) (5) (B). The charges remain pending as of February 24, 2020.

⁴ The DOE issued Hay a mobile phone, iPad, and notebook computer. According to his supervisor, DOE Chief of Staff Edie Sharp, Hay did not use these devices and instead used his personal phone and notebook computer for DOE business. SCI investigators retrieved the iPad from Hay’s DOE desk; it was in its original packaging and apparently unused. The Wisconsin authorities also seized a notebook computer from Hay and provided its serial number to SCI. An SCI investigator gave the number to the DOE DIIT Director, who confirmed that it is not in the DOE inventory of such devices. Finally, SCI investigators examined the CPU of Hay’s DOE desktop computer; it did not contain anything remarkable attributable to Hay.

⁵ *Concerning the Fiscal Year 2020 Preliminary Budget, etc.: Hearing Before the NYC Council Comm. on Oversight and Investigations* (Mar. 26, 2019) (Testimony of Margaret Garnett, Commissioner, NYC Dept. of Investigation).

January 2, 2020

The Kettle Moraine School District became aware of the arrest of a former employee, Mr. David Hay, on the evening of December 30, 2019, through a news story reported by TMJ4. The news was extremely disturbing.

Mr. Hay was a principal for a short time nearly a decade ago. He was hired in January 2005 as a Business and Marketing teacher. He served as a high school principal from 2008 until 2011. In the beginning of the 2010-11 school year, the District determined Mr. Hay no longer held the license necessary for him to hold his position and also discovered he improperly used a district credit card for personal purchases. The District was fully reimbursed for personal charges before Mr. Hay resigned in February of 2011.

The District has no knowledge of any concerns that are of the nature of the investigation leading to the arrest of Mr. Hay. We have been contacted by authorities investigating this matter and we are fully cooperating with their requests.

Patricia F. Deklotz, Ph.D.
Superintendent
Kettle Moraine School District

Hay's suspected false statements to the DOE

Deklotz's email suggested that Hay may have lied or concealed information concerning his past employment to the DOE and DOI. Hay's signed June 28, 2016 City of New York Comprehensive Personnel Document ("CPD-B") filed with the DOE and DCAS contains the advisory that false statements may lead to disqualification or termination from employment, as well as criminal prosecution. Hay answered negatively to the following CPD-B questions:

- 14. Were you ever barred or disqualified from a City, Country,⁶ State or Federal job?
- 15. Were you ever disciplined (i.e., suspended, demoted, reprimanded, fined, fired, terminated, discharged) in any position by either a public or private employer?
- 16. Did you ever resign from a job while disciplinary action was pending against you?

In the online DOE CyberShift Background Questionnaire (the "CyberShift Questionnaire") Hay submitted to the DOE on June 20, 2016, he entered "No" to:

- 9. Have you ever been forced/ asked to resign from a job in lieu of termination?
- 10A. Has an employer ever filed charges against you during the course of your employment?
- 10B. Were you found guilty of the charges?

⁶ So in original. Perhaps intended to be "County."

In the (slightly revised) online CyberShift Questionnaire Hay submitted to the DOE due to his promotion and salary increase in April 2017, he again entered “No” to:

- 9. Have you ever been asked to resign or have you voluntarily resigned from a job in lieu of termination or other disciplinary action?
- 10A. Has an employer ever filed administrative, formal, criminal or legal charges against you during the course of your employment ...?
- 10B. Were you found guilty of those charges OR did you sign a stipulation of settlement in reference to these charges?

Hay’s suspected false statements to the DOI

Hay’s DOI BIQ (also required due to his promotion and salary increase) dated June 30, 2017 contained a similar warning concerning false statements. Hay’s sworn declaration that he “supplied full and complete information in answer to each question” appears above his signature and a notary’s jurat. Hay checked “no” to the following BIQ questions:

- 16A. Have you ever been disciplined, in any manner, in connection with any employment (e.g., suspended, demoted, reprimanded, fined, penalized, or terminated)?
- 16B. Have you ever resigned from any employment while any charge or disciplinary action was pending against you?
- 16C. Have you ever been asked to resign from any employment?
- 16D. Have you ever resigned from any employment to avoid being fired or disciplined, or after having been told that you would be fired or disciplined?
- 17B. Have you ever been barred or disqualified from appointment to a position with any government agency, or disqualified for employment in any civil service position?

Additional suspected misleading statements by Hay

In the course of this investigation, additional written submissions by Hay were scrutinized by SCI:

- In the CPD-B employment section, Hay reported his KMSD job title as “Principal – R & D Dir,” and stated as his reason for leaving this job: “Relocated to Tomah, WI.”
- With respect to his academic record, Hay declared in response to BIQ Question 13, that he was awarded a master’s degree by the University of Wisconsin, Milwaukee (“UWM”) in January 2011.

Hay's employment with the Kettle Moraine School District

An SCI attorney interviewed KMSD Superintendent Deklotz by telephone. She was accompanied on the call by Kristi Foy, Staff Attorney and Director of Human Resources for the KMSD. Deklotz was Hay's direct supervisor when he was a principal at KMSD.⁷ In a second scheduled phone call, the assigned SCI attorney spoke with Foy, who had Hay's personnel file at hand and referred to it for specifics first discussed in the initial conference call with Foy and Deklotz. KMSD subsequently provided redacted personnel documents concerning Hay in response to SCI's request pursuant to the Wisconsin Public Records Law.⁸ The information garnered from the two calls and the personnel documents is detailed below.

Concerning Hay's licensing issue referenced in her email to parents, Deklotz explained that under Wisconsin statutes and administrative rules at the time, a local Board of Education ("Board") was allowed to request that the Wisconsin Department of Public Instruction ("WDPI") issue a one-year principal's license to a candidate otherwise lacking the necessary credentials. Such Board-requested licenses could be renewed only once, for an additional one-year term. Hay was granted such a license for the 2008-2009 school year; it was renewed for the following school year, and then scheduled to expire on June 30, 2010. Hay was enrolled in a master's degree program at UWM since September 2005, and it was expected that he would acquire the necessary credentials for a regular license. Foy described documents in support of Hay's temporary license and renewal. These included:

- For the initial license, a June 11, 2008 letter from UWM informing the WDPI that Hay was enrolled in an M.S. program and would complete the required course work "well before" August 31, 2009.
- In connection with the second and final renewal of Hay's one-year WDPI license for the 2009-2010 school year, an October 2009 letter from UWM confirming that Hay was enrolled in the M.S. program and would complete the required course work by May 2010.

Hay did not complete the UWM M.S. program until May 2011.

SCI also obtained a redacted copy of Hay's WDPI license file pursuant to the Wisconsin Public Records Law. It included his UWM transcript and a verification from the university that Hay completed the program on May 22, 2011. According to Deklotz, she had repeated communications with Hay, the KMSD Board, and the WDPI regarding Hay's status around the time of its expiration, but Hay failed to obtain a permanent license, or document that he had the necessary degree or credits to be granted one by the WDPI.

⁷ Foy was not employed by the school district during Hay's tenure.

⁸ Wis. Stats. §§ 19.31-19.39. The statute is similar to the Freedom of Information Law (N.Y. Pub. Off. Law §87 et seq.). Before producing the records, KMSD notified Hay of SCI's request (as required by the Wisconsin statute) in order to allow him to file any objections in State court. He did not do so within the statutory period.

Hay's administrator's employment contract with the KMSD Board for July 1, 2010 through June 30, 2012 (the "Administrator's Agreement") included the following provisions:

- Each year, this Agreement shall automatically be renewed on July 1 for an additional year unless the Administrator is notified by the Board in writing prior to February 1 that it has decided not to renew the Agreement for the additional year pursuant to the provisions in Section 118.24 of Wisconsin Statutes.
- The Administrator shall maintain on file in the District Office a valid certificate, properly registered and issued by the State of Wisconsin, sufficient to lawfully permit the Administrator to perform such duties as may be assigned under this Agreement.

In December 2010, at Hay's request, the KMSD Board granted him a medical leave of absence. Hay never worked as a KMSD principal thereafter. Deklotz was assigned as the acting high school principal, in addition to her duties as KMSD superintendent.

Deklotz discovered Hay's credit card misuse in December 2010. According to Foy, "the wheels were coming off the bus" that month with respect to Hay, and Deklotz, while reviewing the high school's business records, saw that Hay had impermissibly used the school's credit card for purchases such as lunch or gas for his personal car. The review showed that Hay did not fully reimburse the school, and there was a deficit of approximately \$300.⁹

By certified letter on January 3, 2011, Deklotz informed Hay:

As you know, under PI 34.32, the principal license is required for a person to serve as a principal in an elementary, middle, or secondary level school. Your principal license expired on June 30, 2010, and you currently do not have a principal license. We have spoken about this several times since then, and I have reiterated that you are required to obtain your principal license. We have worked with you and given you latitude and time to obtain your license, but ultimately this is your responsibility. At this point, I am notifying you that you are required to present me with your principal license by no later than January 21, 2011. If you do not, then the School District of Kettle Moraine cannot employ you as an administrator.

Foy described Deklotz's letter as "a line in the sand." Hay made no written response to the Superintendent's January 3rd letter.

On January 26, 2011, by certified mail, the KMSD Board President issued a notice to Hay stating that the Board "will be convening on February 15, 2011 to consider whether you should be dismissed as an employee of the District." The notice specified seven charges of misconduct in support of Hay's dismissal and described a procedure similar to the New York State Education Law disciplinary process, specifically:¹⁰

⁹ Hay reimbursed KMSD in full at the time he resigned in 2011.

¹⁰ N. Y. Educ. Law §3020a et seq.

At this meeting, the School Board will conduct an evidentiary hearing at which it will take testimony and receive evidence in support or defense of the below listed charges. You have a right to be present, to be represented, to bring witnesses, or to produce any evidence at the evidentiary hearing. At the meeting, the School board can take action and dismiss you as an employee as a result of its findings at the evidentiary hearing.

On the day following the KMSD Board President's notice, Deklotz advised Hay by certified letter:

This is to notify you that as of January 31, 2011, you will be placed on administrative leave with full pay and benefits, pending Board action at the School Board meeting scheduled for February 15, 2011. Effective immediately, you are not authorized to appear on School District premises. To that end, your access to KMSD computer systems and your office will be restricted. If you need any personal items from your office, please contact me and we can make those arrangements.

A February 7, 2011 email by Deklotz produced to SCI recounts a discussion she had with a WDPI official who said that in October 2010 Hay informed WDPI that he completed his course work at UWM. In the email, Deklotz reported, "This is not true."

On February 23, 2011, the KMSD Board President sent an amended notice to Hay. It stated that the Board's meeting to consider his dismissal would now take place on March 11, 2011, and that it would be an open meeting (per Hay's request) to consider three charges (pared from the seven charges in the January notice):

1. Breach of trust and confidence that the Superintendent has placed in you in your position as principal of the high school.
2. Failure to be truthful and forthcoming about and failure to complete contractual requirement to obtain principal certification.
3. Disregard of policy by improperly using the district credit card for personal use and failure to reimburse the district in a timely manner.

On February 28, 2011, Hay submitted a resignation letter to Deklotz. According to Deklotz and Foy, under Wisconsin law, the KMSD Board would have been required to fire Hay had he not agreed to resign were the Board to uphold the charges. Deklotz said that Hay was aware of this, and that he had not secured a new job at the time of his resignation.

On March 3, 2011, Hay and the KMSD entered into a signed "Complete and Permanent Release and Settlement Agreement." It stated that the Board was planning to convene to consider whether Hay should be dismissed. It specified that, among other things:

- o The parties agree that the [KMSD] solicited Hay's resignation in lieu of termination.
- o In response to inquiries, [KMSD] shall tell prospective employers his position, his dates of employment, and his last salary. Hay agrees to remain away from schools, offices [etc.] of [KMSD] at any time.

During Hay's medical leave and after his February 2011 resignation, Deklotz served as Acting Principal of Hay's former high school (while retaining her superintendent duties) through the end of the school year in June 2011.

Deklotz reported that no one from New York City (including the DOE or DOI) contacted her or her office concerning Hay's background. Nor did anyone from the Harvard University Graduate School of Education ("Harvard GSE"), where Hay enrolled in August 2014. According to Deklotz, she received a voicemail from a representative of the Tomah Area (Wisconsin) School District ("TASD"), which hired Hay as a high school principal in August 2011. Deklotz said that when she returned the call, Hay had already been hired by the TASD.

Asked about Hay's title of "Principal and R & D Director" at KMSD as he stated on his DCAS questionnaire, Foy said that Hay "made up" the "R & D Director," title, which does not exist at KMSD.

Hay's employment with Tomah Area School District

An SCI attorney interviewed Cindy Zahrte, Superintendent of the TASD by telephone concerning David Hay, whom TASD hired as a high school principal in August 2011, during Zahrte's tenure.

Zahrte learned of the Hay's December 2019 arrest and some of the related allegations from Wisconsin news media accounts. She was aware that investigators reported that Hay's mobile phone contained sexually explicit photos of a former male student at Hay's assigned TASD high school, and that the student was a minor when the photos were taken. Zahrte said that prior to these disclosures, she never heard of any sexually inappropriate conduct involving Hay or other information pertinent to the criminal charges against him.

Zahrte said that after she and members of the TASD Board of Education interviewed Hay and other candidates, Hay was hired as principal in the summer of 2011. This is corroborated by the TASD Board minutes, obtained by SCI, which state that at a July 19, 2011 meeting, the Board agreed to offer Hay the position contingent upon additional reference checks. The appointment was confirmed by the TASD Board at a special meeting on August 2, 2011.

Zahrte was unaware that Hay resigned in lieu of being fired by the KMSD Board or of the surrounding circumstances. In his interview with Zahrte, Hay told her that he was exhausted at KMSD, took a medical leave in December 2010, and when he returned to work in early 2011, he discovered that he was “out of favor” with the Superintendent and decided to resign. Hay was unemployed at the time he applied for the T ASD position. Hay shared his KMSD performance evaluations with Zahrte, which she described as positive.

SCI obtained Hay’s T ASD personnel file in response to a Wisconsin Open Records Law request. The documents arrived after Zahrte’s SCI interview, and included Hay’s online application for the ASD principal position, dated July 14, 2011. Hay responded “No” to the question:

Have you ever failed to be rehired, been asked to resign a position, resigned to avoid termination, or terminated from employment?

Zahrte said that Hay was given a full background check before he was hired by T ASD. WDPI’s website showed that he had a permanent principal’s license (obtained after Hay resigned from KMSD), effective July 1, 2011, before T ASD offered him a job. Zahrte was unaware of the previous gaps regarding Hay’s license status. Zahrte said that she telephoned Deklotz, her KMSD counterpart, and contrary to Deklotz’s account, spoke with her before T ASD hired Hay. According to Zahrte, Deklotz gave limited information about Hay – none of it derogatory – and said that he had done “nothing illegal or immoral” while at KMSD.

A T ASD professional reference form regarding Hay was among the documents produced by T ASD to SCI after Zahrte’s interview. The form requests one-to-five ratings of the candidate across six categories. Deklotz’s name appears on the form, but the ratings were not entered. Instead, a handwritten notation appears across the columns: “Not able to respond – Pat Deklotz can only say began 2005 – effective June 20 \$105,000.” The notation suggests that it was a summary of a telephone conversation with Deklotz. An apparently rubber-stamped date, “Sep 28 2011” appears at the bottom of the form.

Hay’s Wisconsin Department of Public Instruction license file

Records from Hay’s WDPI license file and the T ASD website generally corroborate the accounts of Deklotz, Foy and Zahrte. The documents also demonstrate that Hay was on notice as to the requirements and deadlines concerning renewal of his license while at KMSD. These include:

- An August 11, 2008 WDPI license notification addressed to Hay enclosing a 2008-2009 principal’s license. It states: “You may renew this license one time for one year after we receive ...,” among other things, satisfactory evidence from [UWM] “that you can complete their program requirements by **August 31, 2010**.” [Emphasis in original].
- An October 19, 2009 WDPI license notification addressed to Hay enclosing a 2009-2010 principal’s license. It states: “**This license is non-renewable.**” [Emphasis in original]. The notice includes application instructions for a permanent license upon Hay’s completion of the UWM program, which he represented would be by May 2010.

- A November 8, 2010 WDPI notice to Hay that his application for a regular (permanent) license could not be processed. The UWM certifying officer reported to WDPI that Hay has “not completed all requirements for a regular principal license even though [Hay’s] previous one-year administrator license was non-renewable.”
- The July 19, 2011 minutes of the Tomah Board of Education meeting indicating that the Board agreed to offer Hay a principal position pending background checks.

The WDPI file also shows that from February 2008 through July 2011, Hay filed seven completed WDPI “Conduct and Competency Review” questionnaires in connection with license applications. Hay signed each of these under oath before a notary. The documents are similar to the DOI BIQ and the DOE CyberShift Questionnaire in that any affirmative responses require a written explanation by the applicant and further review. Hay checked “no” to all 11 questions on the seven documents, thereby denying any past criminal conduct or sexual misconduct. However, Hay also contradicted Deklotz and Foy and provided false denials after his forced departure from KMSD. Hay answered “no” to the following questions on the form he signed on July 14, 2011, approximately five months after his resignation agreement with the KMSD Board:

- 2. Have you ever resigned, been disciplined, from any teaching or other school position, in part, for alleged immoral conduct or incompetence?
- 11. Have you (or a school district where you worked) ever been a party to a civil settlement, award, or agreement of any kind that involved an allegation concerning your conduct as an educator or in an educationally related position?

DOE OPI Backgrounding

DOE Office of Personnel Investigations (“OPI”) background investigations of DOE pedagogical and administrative applicants are required by Chancellor’s Regulation C-105, which appears to allow OPI some discretion concerning verification of work history: “Where appropriate, the OPI will verify educational credentials, certification status, and previous work history.” Chancellor’s Reg. C-105 (5) (2/11/2003) (Emphasis added). Managerial employees and those remunerated at or above \$100,000 must, in addition to an OPI investigation, complete a BIQ and undergo a DOI background investigation per Chancellor’s Regulation C-115.

SCI investigators interviewed DOE Executive Director of Employee Relations Katherine Rodi, who oversees OPI. She reported that four or five OPI investigators conduct background investigations of prospective and certain current (generally, newly promoted) DOE employees. Rodi explained that after potential DOE employees are nominated for a position, they are emailed a link to a background questionnaire and other employment documents online that must be completed and returned. Next, the nominees are directed to be fingerprinted at the DOE Brooklyn office, which sends the fingerprints to the New York State Division of Criminal Justice Services (“DCJS”) which checks for any New York or federal criminal convictions in New York State or the federal system. DCJS emails the results to OPI.¹¹

¹¹ DOE fingerprints its job candidates; all other City agencies and entities serviced by the DOI Background Unit send their candidates to DOI for fingerprinting.

According to Rodi, OPI will clear a candidate unless the background process reveals one of three “triggers:” (1) a criminal conviction reported by DCJS; (2) a “yes” response to any of the 16 questions in the CyberShift Questionnaire or DOI BIQ questionnaire; or (3) a problem code or other derogatory information in the DOE database (generally pertaining to former DOE employees or vendors). Rodi added that Chancellor Carranza recently directed that preliminary background checks are to be done prior to nominating any high level DOE executives. Rodi said that in 2019, OPI conducted background checks on 2,238 individuals, approximately ten percent of whom were managerial employees.

Rodi said that newly-hired DOE employees must complete additional background documents, including the DCAS DP8-B Questionnaire. The DCAS materials are not sent to OPI for every employee, but OPI may access them should background issues arise. Consistent with Chancellor’s Regulations, Rodi reported that certain managerial employees, depending on job title or salary, are required to complete a DOI BIQ after they begin their DOE employment.¹²

Concerning David Hay, Rodi said that OPI followed the prescribed DOE procedures in conducting the background investigations of Hay when he was hired and later promoted. Hay was initially hired by the DOE in June 2016 and paid a stipend under a fellowship program with Harvard GSE, where he was then enrolled.¹³ Hay’s salary and job title – confidential strategy planner – did not require submission of a DOI BIQ.¹⁴ Rodi noted that Hay was not hired as a pedagogue, and so a license check with the New York State Education Department (“NYSED”) was unnecessary.¹⁵ Referencing Hay’s DOE file, Rodi described Hay’s initial vetting by DOE. Hay answered “no” online to all of the CyberShift Questionnaire background inquiries, and subsequently gave similar responses to DCAS in the CPD-B form; he was fingerprinted, and DCJS reported that he passed their State and federal checks. As there were no “triggering” disclosures from the questionnaires or fingerprint checks, Hay was cleared for employment.

In May 2017, Hay (who completed his studies that month at Harvard GSE) was promoted to the DOE title of administrative education officer, a managerial position, and was given a pay raise. According to Rodi, this required Hay to complete and submit a DOI BIQ and a second Cybershift Questionnaire. Hay did so, and again gave negative responses concerning his departure from KMSD. Rodi said that if Hay had answered any of the triggering questions affirmatively, he would have been required to specify the particulars on the CyberShift Questionnaire. Rodi noted that OPI would not learn of any triggering responses in the DOI BIQ until DOI completed its investigation. She explained that DOE applicants

¹² The regulation, promulgated in 2000, requires a DOI BIQ and background investigation of individuals assigned to approximately two dozen titles including Chancellor, Deputy Chancellor, Chief Executive, and Assistants to the Chancellor, Deputy Chancellor, and Chief Executive, as well as Superintendents; some of the titles were applicable to the former Board of Education or are no longer in use. In addition to the specified title, the requirement extends to “Managerial Employees” remunerated at or above \$100,000 (a sum “adjusted from time to time in accordance with city policy”). Chancellor’s Reg. C-115 (1) (a) (Sept. 5, 2000).

¹³ From June through August 2015, Hay was assigned to the DOE Chancellor’s Office as a Harvard GSE fellow; he was not compensated by the DOE.

¹⁴ Hay also held the Civil Service title, “Community Associate.”

¹⁵ SCI accessed NYSED’s public database of certified teachers and administrators; Hay was not listed. (Last visited Jan. 30, 2020).

submit the completed DOI BIQ in a sealed envelope to DOE Human Resources, which delivers the envelope to DOI; OPI is not copied on the contents.

Had Hay disclosed derogatory information concerning his past employment, an OPI investigator would have sought further explanation from Hay or the pertinent employer. Rodi explained that one who resigned a job in lieu of being terminated must disclose that fact, and is not excused from that obligation where the employer has agreed to not disclose derogatory information. Told of the information SCI obtained from KMSD, she said that Hay should have answered “yes” to question 9 in the Cybershift Questionnaire, and a further investigation by OPI would have been undertaken. Rodi added that the agreement between Hay and KMSD could have prevented OPI from getting any further information from Hay’s employer. Rodi stated that depending upon the circumstances, a “yes” response to question 10A might have been required of Hay.

DOI Backgrounding

SCI investigators interviewed Alan Lefkof, director of the DOI Background Investigation Unit (“BIU”) since January 2014.¹⁶ Lefkof reported that there are approximately 20 employees assigned to the BIU that conduct background checks on City employees. BIU is currently divided into two groups – one dedicated to background requests received after July 1, 2019, and a second group focused on the backlog of requests received before that date.

Lefkof produced and described a December 2016 memorandum from the then DOI Commissioner directing that in addition to City managers and those with certain specified duties, City employees salaried at \$100,000 or more shall be subjected to a DOI background check.¹⁷

Lefkof reported that depending on the requirements of the position, DOI, among other things uses a candidate’s name and pedigree information to run searches in eight to ten government and commercial databases to verify matters such as past employment, academic credentials and professional licenses.

The DOI BIQ Hay completed in June 2017 was received by DOI on August 30, 2017. It contained 59 questions or specific directives, compared to 16 questions or directives on the DOE CyberShift Questionnaire. The DOI BIQ includes questions that essentially replicate the 16 DOE CyberShift questions. DOI revised the BIQ in June 2018; it now contains 77 questions and directives and a checklist of applicable documents to be submitted by the candidate.¹⁸ Lefkof noted that while the BIQ instructions required the candidate to list the most recent 10 years of employment history, unless something adverse is discovered in DOI’s investigation, DOI typically does not reach beyond five years when seeking employment verification. He said that DOI does not receive the DCAS background questionnaires for City employees, but can access them if the need arises.

¹⁶ Lefkof was accompanied by DOI BIU Associate Director Rochelle Chester.

¹⁷ The previous salary threshold requiring a DOI background investigation -- \$80,000 – was set in 2003.

¹⁸ Among the information required by the revised DOI BIQ is a listing of the candidate’s social media accounts, including user name, screen name, and profile name.

Lefkof believed that Hay met two of the requirements for a DOI background check – his salary was over \$100,000, and he was promoted to a DOE management position. Referencing the DOI file, Lefkof reported that on May 21, 2017, Hay signed a DOI Terms and Conditions of Employment form, which authorized DOI to conduct a full background investigation. Hay completed the BIQ and signed and swore to it before a notary public on June 30, 2017. After these documents were received at DOI on August 30, 2017, the matter was assigned to a DOI investigator on September 15, 2017.¹⁹ DOI sent Hay's federal and New York State income tax releases to the tax authorities at that time and requested Hay's tax filing status from them, but because of the backlog, no verifications were completed.²⁰

Lefkof stated that as part of Hay's background investigation, DOI would have contacted the T ASD because it was within the five years of his employment with the DOE. He added that unless DOI received pertinent adverse information regarding Hay, investigators would not have contacted KMSD, as it was more than five years from his employment by that school district.

SCI investigators informed Lefkof of the information they obtained concerning Hay and the KMSD. Based on this, Lefkof said that Hay, "in a broad sense" should have answered question 16A of the BIQ in the affirmative with an explanation, and that Hay was not truthful in his negative responses to questions 16C and 16D. Lefkof stated that had Hay answered any of the questions affirmatively, a DOI investigator would have followed up with the KMSD, and possibly requested an explanation from Hay.

While the license check printout from the WDPI website accessed by DOI noted that Hay's School Board Requested (one-year) license expired in June 2010, a separate WDPI panel stated that he was granted a regular license in July 2011, and that his was enhanced to a "Lifetime License" in September 2017.²¹ Hay's license gap for the 2010-2011 school year is not readily apparent.²² It was beyond DOI's five-year employment verification. Hay's reported work history states that he was continuously employed as a Wisconsin principal from 2008 through 2014, and even if KMSD officials had been questioned, Hay's resignation agreement limited the information it was allowed to disclose.

In January 2020, prior to Lefkof's SCI interview, he agreed to a request by SCI and arranged for Hay's pedigree information to be checked in the verification databases used by DOI. SCI wished to learn whether the DOI background backlog may have contributed to the fact that nothing derogatory was learned about Hay until his December 2019 arrest. Lefkof produced the results of the search and SCI determined that with respect to Hay, the backlog was not a factor – nothing in the reports was specifically derogatory or significantly contrary to Hay's BIQ disclosures.

¹⁹ Lefkof noted that DOI distributes special return envelopes for DOI BIQs to the DOE and City agencies. They instruct the user to "Submit the sealed envelope to your agency's personnel liaison." The envelopes are marked "confidential" and direct: "This envelope is to be opened only by the Department of Investigation."

²⁰ The responsive tax information was delivered by the authorities to DOI in October and November 2017 and was not remarkable.

²¹ The WDPI website noted Hay's License Status as "Under Investigation." This is based on Hay's December 2019 arrest.

²² The Work Number Employment Verification database accessed by DOI had no entries for Hay after October 2004, and only two listed jobs before that date. These were apparent part-time or seasonal jobs while Hay was a student.

II. Analysis, Conclusion and Recommendations:

SCI found nothing in David Hay's background involving sexual misconduct or inappropriate behavior with children. However, SCI has substantiated that Hay made more than a dozen false statements in various government filings to conceal that in 2011 he was forced to resign as a KMSD high school principal for (1) failing to obtain the required state education license, (2) misusing a school credit card and failing to reimburse the school approximately \$300 in personal expenses, and (3) losing the trust of the KMSD superintendent. Specifically, Hay made five false statements to the DOE in the CyberShift Questionnaire. He made two similar false statements in the DCAS CPD-B questionnaire. Hay's DOI BIQ, subscribed under oath, contained at least four false statements about his resignation. These were preceded by three similar false declarations to the Wisconsin licensing authorities and Hay's subsequent school district employer, T ASD. Hay thereby deprived DOI and DOE of critical information with which to evaluate his suitability for the high position he occupied at the DOE. Hay's deceptions would likely not have been revealed by the DOE OPI or DOI backgrounding procedures, primarily because his resignation agreement with KMSD prohibited the school district from disclosing derogatory information. In addition, because Hay's tenure at KMSD was more than five years prior to his DOE application, neither DOE OPI or DOI investigators would have contacted KMSD unless Hay had been truthful about the circumstances of his resignation, or they somehow learned of it from another source.

It is the recommendation of this office that the DOE undertake the following concerning candidates for specified DOE high-level titles, including those on the Chancellor's staff, superintendents, and other sensitive positions:

1. Chancellor's Regulation C-115 concerning required DOI background investigations of certain DOE employee candidates, issued in September 2000, should be revised, primarily to update the covered DOE titles first determined by the Board of Education in 1984.
2. DOE OPI investigators should communicate with past employers of at least the previous five years for verification for all candidates – not limited to those who provided an affirmative "triggering" response in a questionnaire. OPI should, where warranted, make such inquiries beyond five years.
3. The DOI BIQ contains more than four times the number of questions and directives as a DOE candidate must provide in the DOE CyberShift Questionnaire. DOE should consider an enhanced or supplemental questionnaire to be scrutinized by OPI investigators. OPI should establish strict protocols to safeguard the confidentiality of these documents.
4. The DOE should require candidates to provide a notarized release and waiver of confidentiality to OPI to facilitate disclosure of information from former employers.
5. OPI should be provided with sufficient resources and personnel to implement these recommendations.

We are sending a copy of this letter to the Office of Legal Services. In addition, we are sending a copy of this letter to New York County District Attorney Cyrus R. Vance, Jr. for whatever action he deems appropriate.


We are also sending our findings to the New York State Education Department for whatever action it deems appropriate. Should you have any inquiries concerning this matter, please contact Deputy Commissioner Gerald P. Conroy, the attorney assigned to this case. He may be reached at (212) 510-1486.

Please notify Deputy Commissioner Conroy in writing within 30 days of receipt of this letter of what, if any, action has been taken or is contemplated with respect to these recommendations. Thank you for your attention to this matter.

Sincerely,

ANASTASIA COLEMAN
Special Commissioner of Investigation
for the New York City School District

By:



Gerald P. Conroy
Deputy Commissioner

AC:GPC:lr

c: Howard Friedman, Esq.
Karen Antoine, Esq.
Katherine Rodi, Esq.