

THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD and
THE CITY OF NEW YORK
DEPARTMENT OF EDUCATION

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In the Matter of :
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GRACE ANN DEFALCO :
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:
Respondent. :
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DISPOSITION

COIB Case No. 2019-411

WHEREAS, the New York City Department of Education (“DOE”) served disciplinary charges against Grace Ann DeFalco (“Respondent”) alleging violations of the City’s conflicts of interest law, found in Chapter 68 of the New York City Charter (“Chapter 68”);

WHEREAS, given that related disciplinary charges were pending at DOE, the New York City Conflicts of Interest Board (the “Board”) referred this matter to DOE pursuant to Section 2603(e)(2)(d) of Chapter 68; and

WHEREAS, the Board, DOE, and Respondent wish to resolve this matter on the following terms,

IT IS HEREBY AGREED by and between the parties as follows:

1. In full satisfaction of the above-captioned matter, Respondent admits to the following:
 - a. I have been employed by DOE since March 11, 1992, most recently as a Payroll Secretary at Gaynor McCown Expeditionary Learning School. During this time, I have been and am a “public servant” within the meaning of and subject to Chapter 68.
 - b. As part of my official duties as a Payroll Secretary, I am responsible for entering time and leave records into the DOE Employee Information System (“EIS”) for all Gaynor McCown staff members.
 - c. My son is a Paraprofessional at Gaynor McCown.
 - d. On September 19 and September 20, 2017, I recorded medically certified sick leave without supporting documentation into EIS for my son.

- e. On December 15, 2017, January 2, 2018, and January 8, 2018, I failed to enter absences into EIS for my son.
- f. My actions resulted in my son receiving pay to which he was not entitled, which he paid back to DOE.
- g. I acknowledge that, by failing to enter absences and by recording medically certified sick leave without documentation into the payroll system for my son, I used my City position to benefit my son in violation of City Charter § 2604(b)(3), which states:

No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

City Charter § 2601(5) defines "associated" to include "a spouse, domestic partner, child, parent or sibling."

2. DOE has determined that the appropriate penalty for Respondent's Chapter 68 violations and unrelated disciplinary charges is retirement. The Board, considering prior cases involving City employees who entered false information to obtain a benefit for their associates to which they were not entitled, and that Respondent's son paid the money back to DOE, has decided that the penalty imposed by DOE is sufficient to resolve Respondent's Chapter 68 violations and imposes no additional penalty.

3. In recognition of the foregoing, Respondent agrees to the following:

- a. I agree to retire from my DOE employment by June 30, 2020, or my employment will be terminated as of that date.
- b. I agree that this Disposition is a public and final resolution of the Board's action against me.
- c. I also agree to the terms set forth in the separate Stipulation of Settlement, which is the final resolution of the DOE disciplinary action against me.
- d. I knowingly waive on my behalf and on behalf of my successors and assigns any rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political subdivision, or office of the City or the State of New York or the United States, and to contest the lawfulness, authority, jurisdiction, or power of the Board or DOE in imposing the penalty which is embodied in this Disposition, and I waive any right to make any legal or equitable claims or to initiate legal proceedings of any kind against the Board or DOE, or any members or employees thereof relating to or arising out of this Disposition or the matters recited herein.

- e. I confirm that I have entered into this Disposition freely, knowingly, and intentionally, without coercion or duress, and after having been represented by an attorney of my choice; that I accept all terms and conditions contained herein without reliance on any other promises or offers previously made or tendered by any past or present representative of the Board or DOE; and that I fully understand all the terms of this Disposition.
- f. I agree that any material misstatement of the facts of this matter, including of the Disposition, by me or by my attorney or agent shall, at the discretion of the Board, be deemed a waiver of confidentiality of this matter.

4. The Board and DOE accept this Disposition and the terms contained herein as a final disposition of the above-captioned matter only, and affirmatively state that, other than as recited herein, no further action will be taken by the Board or DOE against Respondent based upon the facts and circumstances set forth herein, except that the Board and DOE shall be entitled to take any and all actions necessary to enforce the terms of this Disposition.


5. This Disposition shall not be effective until all parties have affixed their signatures below.

Dated: January 23, 2020




Grace Ann DeFalco
Respondent

Dated: January 23, 2020



Deena Mikhail
Associate Counsel
Office of Robert T. Reilly
Attorney for Respondent

Dated: 2/4, 2020



Karen Antoine
Director, Administrative Trials Unit
NYC Department of Education

Dated: 2/4, 2020



Richard Briffault
Chair
NYC Conflicts of Interest Board

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

80 MAIDEN LANE, 20TH FLOOR
NEW YORK, NEW YORK 10038

ANASTASIA COLEMAN
SPECIAL COMMISSIONER

TELEPHONE: (212) 510-1400
FAX: (212) 510-1550
WWW.NYCSCI.ORG

June 14, 2019

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

Re: Grace Ann DeFalco, [REDACTED]
SCI Case #2018-0122

Dear Chancellor Carranza:

An investigation conducted by this office has substantiated that New York City Department of Education ("DOE") employee Grace Ann DeFalco ("G. A. DeFalco"), a payroll secretary assigned to Gaynor McCown Expeditionary Learning School ("Gaynor McCown") on Staten Island, inaccurately recorded sick leave and failed to enter absences in the DOE Employee Information System ("EIS") for her son, Paraprofessional [REDACTED] which may have enabled him to receive pay to which he was not entitled. The investigation also substantiated that [REDACTED] altered a note that he submitted for medically certified sick leave.¹

I. Investigation and Findings

This investigation began in January 2018, when Gaynor McGown [REDACTED] contacted the office of the Special Commissioner of Investigation for the New York City School District ("SCI") to report missing, and questionable entries of medically certified sick leave, in EIS for [REDACTED] made by G. A. DeFalco, and that a medical note submitted by [REDACTED] appeared to have been altered.

[REDACTED] spoke with [REDACTED] by phone who said that [REDACTED] became aware of [REDACTED] absences when [REDACTED] complained that he was frequently absent, and no substitute paraprofessional was assigned to replace him. [REDACTED] told [REDACTED] that [REDACTED] checked [REDACTED] time records and noticed that although he was listed as absent on several dates, he was "not docked any pay," and [REDACTED] also found entries of medically certified sick leave for

¹ G. A. DeFalco and [REDACTED] remained in their positions during the course of this investigation.

██████████ in EIS, but no supporting medical notes had been placed in his file. ██████████ added that there was a note in ██████████ file for medically certified sick leave taken in December 2017, but ██████████ believed it had been altered to include additional dates.² ██████████ told the ██████████ that G. A. DeFalco was responsible for entering time and leave into EIS for all staff members, and that G. A. DeFalco was ██████████ mother.

SCI investigators met with ██████████ who reiterated the information given to the ██████████ explained that G. A. DeFalco was responsible for recording the staff's time and leave into EIS, and that she kept a record of staff absences in a monthly planner, and on an "absent list" that she submitted to ██████████ on a daily basis. ██████████ told investigators that the procedure concerning the use of certified medical leave required the staff member to submit a medical note to G. A. DeFalco when they returned to work, who would then update EIS, and file the note in the employee's personnel file. ██████████ added that the procedure was included in the staff handbook, which all employees received.³

██████████ said that after ██████████ received the ██████████ complaint regarding ██████████ absences, ██████████ compared EIS entries for ██████████ with the absent lists and monthly planner entries. ██████████ found that ██████████ name was on the absent lists for December 15, 2017, January 2, 2018, and January 8, 2018, but there were no EIS entries for ██████████ on those dates. ██████████ said that ██████████ submitted a doctor's note for an absence on December 11, 2017, and on the bottom of the note next to the doctor's signature, the dates "12/6-12/12" were hand written.⁴ ██████████ told investigators that ██████████ believed ██████████ wrote the dates on the note. ██████████ added that according to EIS, ██████████ used medically certified sick leave on September 19 and 20, 2017, but there were no medical notes placed in his file to support the use of medically certified sick leave.

Investigators spoke with ██████████ who confirmed that ██████████ was seen by Dr. ██████████ on December 11, 2017, however, she could not verify whether the dates written on the letter were written by someone from the office. ██████████ said that she would have to verify the note with ██████████⁵ ██████████ told investigators they would not be able to see the doctor since he was not scheduled to be in the office that day.

Investigators interviewed ██████████ who said that, generally, when he called out sick he contacted G. A. DeFalco, his mother, to notify her whether he would use self-treated or medically certified sick leave. He added that medically certified sick leave required that he submit a medical note to G. A. DeFalco upon his return to work. ██████████ said that he called out sick from December 6th through December 11th, using medically certified sick leave, and when he returned, he

² ██████████ provided SCI with copies of the absent lists, monthly planner entries, and EIS records. A copy of the medical note submitted by ██████████ which ██████████ believed was altered, was also provided

³ Changes were subsequently made to the school's time and leave policies as a result of this investigation.

⁴ The note was from Dr. ██████████ of ██████████ Medical Office. ██████████ returned to work on December 12, 2017, although the writing on the note stated "12/6-12/12."

⁵ In a letter subsequently sent by email to the assigned investigator, ██████████ stated that they were not able to verify the authenticity of the handwritten dates on ██████████ note.

submitted a letter from [REDACTED] to G. A. DeFalco. [REDACTED] said that he wrote dates on the bottom of the letter because either the doctor or the receptionist told him it was “okay to do so.” [REDACTED] said that he could not remember if he used medically certified sick leave on September 19th and 20th, and he did not remember if he submitted a letter from the doctor to G. A. DeFalco for those dates. [REDACTED] did not remember whether he was absent on December 15th, or January 2nd and January 8th. He added that he did not keep a record of his absences, and that the school did not use time clocks or timesheets to record staff time and leave.

Investigators interviewed G. A. DeFalco who confirmed that she was responsible for entering the staff's time and leave into EIS. She told investigators that, per the school's procedure, when a staff member was absent, they were required to call her in the morning to notify her of the absence, and which type of leave they would use. G. A. DeFalco would then request a substitute for the day, or adjust the staff schedules accordingly. She then wrote the names of the absent staff members in her monthly planner and later submitted a daily staff “absent list” to [REDACTED]. G. A. DeFalco said that she usually entered staff absences into EIS on the day they were called in, however, she had until the end of the pay period to make the entries. G. A. DeFalco told investigators that [REDACTED] was her son, and that she could not account for the three missing EIS entries for his absences on December 15, 2017, January 2, 2018, and January 8, 2018. She stated “I must have forgot. It's my mistake.” G. A. DeFalco said that when a staff member called out from work using medically certified sick leave, they were required to submit a letter from a doctor, which she would place in their personnel file. G. A. DeFalco said that she had, in the past, entered medically certified sick leave for staff members in EIS prior to obtaining their doctor note, and had later changed the status in EIS if a letter was not subsequently submitted. She added that there may have been times when she forgot to adjust EIS information that was previously entered, and that may be the reason that [REDACTED] medically certified absences for September 19th and 20th remained in EIS.⁶ G. A. DeFalco denied giving “special treatment” to [REDACTED]

II. Conclusion and Recommendation

G. A. DeFalco failed to make accurate entries, or adjust incorrect entries, in the EIS system on more than one occasion for her son, [REDACTED] which may have resulted in his receiving pay to which he was not entitled. We recommend that the DOE take disciplinary action regarding G. A. DeFalco, and that she be reminded of her responsibilities concerning EIS, employee attendance procedures, and follow up. [REDACTED] admitted to altering a letter that he submitted for certified medical sick leave. Additionally, he may have received pay to which he was not entitled, as a result of G. A. DeFalco's failure to properly enter his attendance in EIS. We recommend that disciplinary action be taken with regard to [REDACTED] and that an accounting of his attendance be performed to determine whether he received overpayment. If overpayments were made, he must be required to reimburse the DOE.

⁶ The medically certified sick leave entries for [REDACTED] for September 19th and 20th were adjusted in March 2018 to self-treated sick leave. In May 2018, a self-treated sick leave entry was made in EIS for [REDACTED] absence on January 8, 2018, which was adjusted again in June 2018 to an unauthorized absence. [REDACTED] absences on December 15, 2017, and January 2, 2018, had not been entered in EIS at the time the investigation concluded.

June 14, 2019


We also note that the conduct of G. A. DeFalco may have violated 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 to the Office of Legal Services. Please notify SCI within 30 days of receipt of this letter of what, if any action has been taken or is contemplated regarding G. A. DeFalco and [REDACTED]. Should you have any inquiries regarding the above, please contact First Deputy Commissioner Daniel Schlachet at (212) 510-1418. Thank you for your attention to this matter.

Sincerely,

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

By:


Daniel Schlachet
First Deputy Commissioner

AC:DS:ss

cc: Howard Friedman, Esq.
Karen Antione, Esq.
Katherine Rodi, Esq.