

State of New Jersey

DEPARTMENT OF EDUCATION

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Commissioner

April 19, 2013

Mr. John Fauta, Superintendent
West New York Board of Education
6028 Broadway
West New York NJ 07093-2802

Dear Mr. Fauta:

SUBJECT: West New York School District – Hiring Practices Review
OFAC #INV-068-12

The Office of Fiscal Accountability and Compliance completed a review of the Hiring Practices Review of the West New York School District. The findings are detailed in the attached Report of Examination. Please provide a copy of the report to each board member.

Utilizing the process outlined in the attached “Procedures for LEA/Agency Response, Corrective Action Plan and Appeal Process,” pursuant to N.J.A.C. 6A:23A-5.6, the West New York School District Board of Education is required to publicly review and discuss the findings in this report at a public board meeting no later than 30 days after receipt of the report. Within 30 days of the public meeting, the board must adopt a resolution certifying that the findings were discussed at a public meeting and the board approved a corrective action plan which addresses the findings raised in the report and/or submit an appeal of any findings in dispute. A copy of the resolution and the approved corrective action plan and/or notice of intent to appeal must be sent to this office within 10 days of adoption by the board. Direct your response to my attention.

Also, pursuant to N.J.A.C. 6A:23A-5.6(c), you must post the findings of the report on your school district’s website. Should you have any questions, please contact Mr. Thomas C. Martin, Manager, Investigations Unit, at (609) 633-9615.

Sincerely,

Robert J. Cicchino, Director
Office of Fiscal Accountability and Compliance

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Attachment

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STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
INVESTIGATIONS UNIT

WEST NEW YORK SCHOOL DISTRICT
HIRING PRACTICES REVIEW
OFAC CASE #INV-068-12

REPORT OF EXAMINATION
APRIL 2013

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
INVESTIGATIONS UNIT**

**REPORT OF EXAMINATION – APRIL 2013
WEST NEW YORK SCHOOL DISTRICT
HIRING PRACTICES REVIEW**

EXECUTIVE SUMMARY

During August 2012, the Office of Fiscal Accountability and Compliance (OFAC) initiated a hiring practices review in the West New York School District (district). The review was initiated based on concerns that some employment decisions were based on political allegiance and a school district employee's willingness to make campaign contributions to municipal officials. The OFAC review was structured to determine if district hiring practices were compliant with applicable educational statute and code and void of undue influence.

The OFAC review included interviews with district administrators and support staff. The OFAC investigators reviewed board policy, board meeting minutes, job postings and descriptions, and applicant responses. The OFAC also reviewed board member financial disclosure forms, employment contracts, payroll records, Election Law Enforcement Commission candidate filings, as well as other documents pertinent to the matter under review.

Based on the information obtained during interviews and the review of official and unofficial documents that support statements made by the interviewees, the current Mayor of West New York, Dr. Felix Roque, has interjected himself into the district's hiring process. Assisted by board members, school administrators and other district employees; family and friends who supported the mayor were hired, promoted or reassigned to more desirable work environments. Likewise, some district employees identified as loyal to the former mayor were identified and selected for termination, demotion or reassignment to less desirable work locations.

The review also confirmed that the Mayor, his aides, board members and district employees actively solicited contributions from district employees who often felt obligated to contribute to ensure continued employment. Individuals interviewed and historical documents that were reviewed by the investigators indicated such a practice has been common place in the West New York school district for many years. However, under the current Mayor, the amount of the contribution solicited from school employees and the method of solicitation raised a new level of concern. According to those interviewed the current Mayor actively solicited school administrators to purchase \$2,000.00 dinner tickets to fund his campaign. Solicitations were conducted on school grounds and during the school day. School administrators stated they were lead to believe that failure to purchase a ticket could adversely affect their employment status.

The OFAC review confirmed several instances of potential retaliation against individuals deemed to be unsupportive of the Mayor. Persons interviewed also indicated board members

appointed by the current Mayor declined to confirm reappointments contrary to the recommendation of the superintendent.

Based on the information obtained during the OFAC review, the district is directed to prepare a Corrective Action Plan indentifying the measures it will implement to ensure compliance with applicable statute and code regarding hiring and promotion. Specifically the board is instructed to comply with the provisions of N.J.S.A. 18A:27-4.1, Personnel Actions.

In reference to the conduct of certain board members, the OFAC lacks jurisdiction to address issues involving possible board member conflicts of interest and code of conduct violations. Such matters are under the purview of the School Ethics Commission (SEC). Aggrieved individuals may submit a complaint directly to the SEC. Information and instructions for the filing of ethics complaints is available at <http://www.state.nj.us/education/ethics/>.

In reference to potential ethics violations and the abuse of office involving the Mayor and/or other Town of West New York administrative staff, a copy of this report will be forwarded to the Office of the Attorney General and to the Division of Local Government Services, Department of Community Affairs for review.

The remainder of this report details the investigative process utilized, as well as the information obtained during the investigation that serves as the basis for the OFAC determinations.

INVESTIGATION, CONCLUSIONS AND RECOMMENDATIONS

During July 2012, the Office of Fiscal Accountability and Compliance (OFAC) was alerted to concerns involving political fundraising and inappropriate political involvement with hiring practices in the West New York School District (district). The concerns were forwarded to the OFAC by the Federal Bureau of Investigation (FBI). The FBI had developed information concerning questionable district fund raising and employment practices during an unrelated investigation involving Dr. Felix Roque, the current Mayor of West New York. The OFAC initiated an investigation to determine if district practices were/are compliant with educational statute and code.

Background

The West New York School District is classified as a Type I district as defined by N.J.S.A. 18A:9-2. Members of the board of education in Type I districts are appointed by the Mayor of the municipality for terms of five years.

The town of West New York is governed by a five-member commission. Commission members are elected at-large in nonpartisan elections to serve four-year terms of office on a concurrent basis. Each Commissioner is assigned responsibility for one of five departments. The Commission selects one of its members to serve as Mayor.

From 2007 through 2011, Silverio Vega served as Mayor while also maintaining full-time employment as athletic director for the district. Also serving as a Commissioner was Michelle Lopez Fernandez, also a full-time employee of the district.

In the May 10, 2011, municipal election, a slate of five candidates, led by Dr. Felix Roque, won all five seats on the Town Council, replacing the incumbents. At the May 16, 2011, town council reorganization meeting, the five newly elected Commissioners unanimously voted to appoint Dr. Roque to a four-year term as Mayor of West New York.

On May 13, 2011, outgoing Mayor Vega appointed two members to the school board. The appointments were contested by Mayor-elect Roque and were subsequently voided by the Commissioner of Education. The newly elected Mayor was then able to appoint two members of his choosing to serve on the board. Mayor Roque was also successful in obtaining town Commissioner approval to expand the number of board members from five to seven. He then appointed two more members of his choosing. These appointments effectively provided the Mayor with a majority voting block on the school board. The newly structured school board supported a reorganization of the district that included new positions, promotions, transfers and demotions of district staff.

Federal Indictment of Mayor Feliz Roque

On May 16, 2011, Mayor Roque and a group of his supporters became disruptive in their opposition to certain members of the Board of Education (board). Minutes of the May 16, 2011 board meeting, as well as a video posted on the internet document activities that were disruptive to the orderly conduct of the business of the board. The meeting was disrupted by unruly and threatening individuals. During the administration of the oath of office for a board member, a member of the crowd grabbed the oath of office from the hands of a board member. Other people in the crowd shouted and threw papers and water bottles at the board members.

These actions and rumors that individuals who did not support the Mayor would be retaliated against led to a recall movement against the Mayor. An internet website, wwwrecallroque.com, was established anonymously supporting the recall. Threats were received by an individual who supported the website and without authorization from the registered owner of the website, the site account was terminated.

The threats and interference with the website prompted an investigation by the FBI. On May 24, 2012, as a result of the FBI investigation, Mayor Roque and his son were arrested as the individuals responsible for terminating the website. Mayor Roque and his son were subsequently indicted on August 9, 2012, on three counts of computer hacking.

During the FBI investigation, district employees claimed the current Mayor utilized school employees to assist in fund raising activities. School employees distributed tickets to co-workers for events planned to raise campaign funds for the Mayor. The solicitations were conducted on school grounds during the school day. Employees indicated it was understood that failure to support the Mayor could result in adverse employment actions. Interviewees reported the Mayor provided a list of employees he wanted terminated, demoted or transferred. Town Hall personnel, reportedly upon the instruction of the Mayor, directed and/or requested friends and supporters be offered jobs with the district.

Following interviews with various individuals it was determined the issues identified did not warrant FBI involvement. The FBI determined the identified concerns should be forwarded to the New Jersey Department of Education for review.

The OFAC Investigation

The OFAC initiated an investigation of the allegations and concerns on August 16, 2012. The investigation included interviews with district administrators and support staff. Board policy, board meeting minutes and video, job postings and job descriptions, and applicant responses were reviewed. The OFAC also reviewed board member financial disclosure forms, employment contracts, payroll records, personnel files, state mandated Financial Disclosure forms as applicable, Election Law Enforcement Commission candidate filings, a criminal complaint titled, United State of America v. Felix Roque and Joseph Roque, as well as other documents pertinent to the matter under review.

The comprehensive review confirmed certain district employees were persuaded to support requests from the Mayor, town officials and school staff to acquiesce to actions they did not necessarily support and in some instances were deemed not to be in the best interest of the district. Individuals stated they were requested to financially support Mayor Roque or be subject to adverse employment actions. The investigation also confirmed certain individuals were apparently hired based upon political affiliation and support of the Mayor rather than ability and/or based upon district need.

The following listing is a synopsis of the information obtained by the OFAC investigators during their investigation.

1. Issuance of Mayor's Hit List¹.

After results of the May 2011 municipal election confirmed that Dr. Roque and his slate were the successful candidates, the outgoing Mayor, Silverio Vega, appointed two members to the board of education with terms that extended through the term of the Mayor-elect. The Vega appointments would maintain the balance of power on the board as it was structured by Mayor Vega. It would prevent the new Mayor from appointing individuals of his choosing, effectively precluding him from obtaining control of the board.

Dr. Roque vehemently opposed the action taken by Mayor Vega and he initiated a successful legal challenge to the appointments. The successful legal challenge provided the opportunity for Mayor Roque to appoint two individuals of his choosing to the board. Mayor Roque was also successful in obtaining Town Commissioner approval to increase the number of board members by two. The four appointments made by the Mayor provided him with a majority of the board members reportedly pledging allegiance to the Mayor. This majority provided the Mayor with the opportunity to influence the employment decisions presented to the board for approval.

Following his appointment as Mayor-elect, Dr. Roque initiated specific actions to reorganize the board and have them implement district staffing changes. To accomplish his objective, the names of certain individuals, referred to as the Mayor's hit list, were forwarded to the district's Human Resources Department and presented to the superintendent by Clara Brito-Herrera, who was then a school principal in the district. Ms. Herrera had been appointed as a director, but was demoted to principal in a reported cost savings action when Mayor Vega took office. Ms. Herrera served as the campaign treasurer for Dr. Roque during his campaign. After the election, she was named liaison between the district and the Mayor-elect.

In her capacity as liaison, she delivered personnel action requests sought by the Mayor elect. One such action was to promote Ms. Herrera to the title of assistant superintendent with an

¹ During interviews with district administrators and staff, the OFAC investigators were informed that a list of names submitted to the superintendent for employment action was commonly referred to as the Mayor's Hit List.

increase in annual compensation totaling \$45,500. Another requested action included a restructuring of the district organization chart that placed Ms. Herrera as second in command. Two existing assistant superintendents who previously reported to the superintendent were now listed as subordinate to Ms. Herrera.

The hit list included the names of the individuals the Mayor-elect reportedly wanted terminated, transferred, demoted or promoted. Interviewees stated the Mayor had openly indicated his election was a mandate from the voters to ensure change was implemented in the district. The Mayor expressed the opinion he was empowered to provide advice regarding budget and personnel decisions, based on his appointment as a member of the Board of School Estimate. As part of the Mayor's employment status revisions, the superintendent was instructed to issue Rice notices to five employees. The Rice notices would alert those individuals their employment with the district would be discussed at a board meeting. It's the perception of district employees being the recipient of a Rice notice is often indicative of an adverse employment action.

As directed, the superintendent did issue Rice letters to several employees, but advised the employees he would ensure no adverse action would be implemented. Despite considerable pressure applied by Mayor-elect Roque, the superintendent refused to recommend terminations.

Mayor Roque, via district intermediaries including Ms. Herrera and Allan Roth, assistant to the director of special education, forwarded a request to certain district employees to meet with the Mayor. The requests were channeled through the Town Administrator, Joseph DeMarco. The individuals were instructed to contact Mr. DeMarco who would schedule an interview with the Mayor. The individuals slated for interviews indicated they felt intimidated and believed they had to acquiesce to the request to maintain their employment status. The OFAC was unable to determine any legitimate basis for requiring employees to submit to be interviewed by the Mayor.

In addition to directing the superintendent to implement specific status changes to existing employees, it was reported the Mayor directed the superintendent to hire specific individuals. Additional instruction was given as to the titles the individuals should be given. At least four recommendations were structured to provide compensation that was above the normal entry level compensation. Recommendations were submitted regarding the employment status and compensation for Rueben Vargas, Clara Perez, and Edelma Acosta. Their employment actions are discussed in more detail in the remainder of this report.

2. Directive to Interview with the Mayor.

The OFAC investigators were informed by district administrators and staff that individuals whose names appeared on the "hit list" were instructed to contact Mr. DeMarco at Town Hall to schedule a meeting with the Mayor.

During the interviews, the Mayor indicated he wanted to determine if the employees were supportive of his efforts to improve the district. Most interviewees expressed the opinion the Mayor was using the authority of his office to ensure employees supported his candidacy. It was noted the relationships between the district administration and the Mayor had become extremely adversarial. A movement was initiated to seek the Mayor's recall.

3. Political fund raising activities involving school district employees.

School administrators told the investigators they are routinely asked to contribute to political campaigns. The persons interviewed indicated such solicitations have been commonplace in the district for many years. While some district employees stated they willingly contributed, others indicated they did so under the perception that failure to contribute would negatively impact their employment. This concern was greatest when the contributions were solicited for or by a district administrator or a district employee. Some recipients of the solicitations complained to the superintendent. The superintendent issued three memorandums to all district employees reminding them such activity on school grounds and during the school day violates school policy.

The OFAC investigators were told the dollar value of the contribution corresponds to the compensation received by the individual or the employment status of the contributor. The solicitations were generally in the form of purchasing tickets to various affairs. Ticket prices for Mayor Roque affairs were as little as \$150.00 for support personnel and \$2,000.00 for administrators.

Regarding senior administrators, individuals who did not respond were personally contacted by the Mayor during the school day via their district issued cell phones. The conversation included a reminder the individual had been sent an invitation and the Mayor was expecting the individual to attend the event.

Interviewees told the OFAC investigators some district employees conducted sales of the tickets during working hours despite the board policy prohibiting the sales on school grounds. The investigators obtained a memorandum issued by the superintendent to all employees reminding them board policy prohibits such fund raising activities on the school grounds.

4. Appointment of Clara Brito-Herrera.

Upon appointment as Mayor, Dr. Roque was able to expand the number of members who serve on the board of education. The expansion, along with two prior appointments he selected provided him with effective control of the board. Since the board has the authority to approve or disapprove the superintendent's employment recommendations, his influence over decisions, can have a dramatic effect on district operations.

After Dr. Roque was appointed Mayor, he instructed Superintendent Fauta to appoint Clara Herrera as the Assistant Superintendent for Educational and Personnel Services. As a result

of the appointment, her annual salary was increased by approximately \$45,000.00. The superintendent accepted the instruction and recommended the personnel action under the presumption such action would appease the Mayor and result in a reduction of hostilities.

The investigators noted the board approved a November 9, 2011 resolution establishing the position of Assistant Superintendent for Educational and Personnel Services. The same resolution appointed Ms. Herrera to the new position in an acting capacity as the superintendent completes interviewing candidates for permanent selection.

The position was listed in the district as a vacancy on November 17, 2011. The application submission deadline was December 9, 2011. Also on November 17, 2011, the district posted an in-district vacancy announcement for Ms. Herrera's position as Principal.

Ms. Herrera was the only person to apply for the assistant superintendent's position. On December 14, 2011, the board approved a resolution appointing Ms. Herrera to the position with a pro-rated salary of \$185,000 and an effective date of December 16, 2011 through June 30, 2012.

5. Accelerated Tenure award for Clara Brito-Herrera.

On April 11, 2012, the board approved a resolution granting tenure to Ms. Herrera in her newly appointed position as Assistant Superintendent for Educational and Personnel Services with an effective date of April 12, 2011. The resolution indicated such action was permissible under provisions of N.J.S.A. 18A:28-6(a).

The investigators questioned the validity of the board resolution granting tenure to Ms. Herrera. The superintendent initially indicated that based upon information he received from human resources, such action was permitted under the provisions of the statute. However, upon further review, and under existing circumstances, the superintendent stated the statute did not allow for tenure. As such, the resolution had no meaning or effect.

6. Employment of Reuben Vargas.

Following Dr. Roque's appointment as Mayor, he directed the district to hire Town Commissioner Reuben Vargas in some capacity. The request was channeled through district employee Allan Roth. According to statements made by Mr. Roth and Superintendent Fauta, the Mayor was adamant that Mr. Vargas obtain employment with the district.

The superintendent stated he was fearful that unless he agreed to hire Mr. Vargas it would be extremely difficult to properly manage the district. He explained the Mayor had considerable influence over the majority of the board members who must approve his recommendations.

The superintendent felt it best to choose the battles he would fight and he agreed to hire Mr. Vargas. He discussed employment positions with Mr. Roth and Mr. Gagliardi who was the

director of human resources. It was decided Mr. Vargas would be offered a position as a secretary to the supervisor of transportation. Although this would be a new position, it could be justified since the supervisor of transportation did not have any support staff. The OFAC investigators interviewed the supervisor of transportation; he confirmed the need for the position.

On August 22, 2012, the OFAC investigators interviewed Mr. Vargas concerning his employment with the district. Mr. Vargas stated his title is, assistant to the supervisor of transportation. He became aware of the position through a friend who is a bus driver and was obtaining employment with the district. He visited the board office and obtained an application, was interviewed by the superintendent and received his job orientation from Ms. Herrera. The December 14, 2011 board minutes indicate Mr. Vargas was hired as the Administrative Assistant to Transportation effective December 16, 2011 through June 30, 2012. He was approved to receive an annual prorated salary of \$40,000.00. Although at the time of the interview he had been employed for seven months, he had difficulty articulating his job responsibilities and hours of employment. It should be noted Mr. Vargas was placed on unpaid administrative leave for 21 working days starting March 23, 2012, when it was determined he had not received the required criminal history approval to work in the district. The lack of approval was due to a procedural error. When corrected by Mr. Vargas, he received approval and resumed working in his assigned title.

District staff provided a copy of the job description for Mr. Vargas' title. The job description is titled, Secretary Clerk. Qualifications for the position include: High school diploma or equivalent, good word processing skills, knowledge of automated office equipment and efficient office procedures, and the ability to communicate effectively. Mr. Vargas stated he does not possess a high school diploma. He has not obtained a GED. He is not computer literate other than his ability to access the Internet. He has not held a prior position that would provide him with the experience needed for his current position. Mr. Vargas was unable to identify any experience, special skills or licenses that would support his selection for the position. He stated he does not have a New Jersey bus driver endorsement. As such, he does not serve as a substitute driver. He also lacks any familiarity with school transportation issues.

The investigators obtained a copy of pertinent sections of the West New York Education Association salary guide listing the salaries for secretarial positions such as that held by Mr. Vargas. The union salary guide indicated a new employee hired at step one of the salary guide would receive a salary of \$36,716.00. A 12 month employee would not receive a salary of \$40,000 until the employee had attained step eight on the guide.

Superintendent Fauta, Human Resources Director Gagliardi and Administrative Assistant Alan Roth indicated Mr. Vargas was appointed to a position with a non-union title. As such, the administration could recommend a higher salary than the salary listed in the guide.

The OFAC was also informed on occasion Mr. Vargas left his assigned work station at the transportation office on 53rd Street without authorization to engage in activities outside his

area of responsibility. Superintendent Fauta stated he informed Mr. Vargas if he needed to leave his work site he was to inform his supervisor and duly record his absence on his daily attendance record. The investigators obtained photocopies of the cards utilized to verify attendance. The reliability of the attendance records are in question since the records, signed by Mr. Vargas are missing dates, indicate hours of employment in July that do not match the hours the office was open, and on the date of the review, August 29, 2012, included dates for September 16, 2012, through September 29, 2012.

During the fall of 2012, the superintendent asked Mr. Vargas to resign or face termination under the 60 day termination clause in his contract. The superintendent explained the basis for the recommendation to board members in closed session. The board did not approve the recommendation. The board directed the superintendent to allow Mr. Vargas reasonable time to present proof of his qualifications.

7. Request for preferential treatment.

On or about Friday, September 21, 2012, Rueben Vargas contacted a member of the custodial staff and requested the office provide at least three days of substitute custodian work to a particular individual. Mr. Vargas has no authority to make such a request whether it is based on his district employment as the Administrative Assistant to Transportation or as a Commissioner for the Town of West New York.

The procedure to assign substitute custodians has been in place for approximately five years. The procedure requires vacancies to be filled on a rotating basis so as to afford each substitute custodian an equal opportunity to obtain work.

8. Mayor Roque's threats for failure to promote Reuben Vargas.

In early December 2012, Rueben Vargas contacted the superintendent and requested appointment as the Warehouse Manager. The position was vacant due to the death of the former manager who had been with the district for many years. The former manager possessed skills specific to the appointment and due to his longevity was receiving annual compensation totaling \$90,000.00.

The superintendent informed Mr. Vargas the annual compensation for the warehouse manager position would be \$40,000, the same amount he was paid in his current title. Mr. Vargas was also informed he lacked the skills necessary for the position.

On Thursday, December 13, 2012, Town Administrator Joseph DeMarco called Allan Roth, assistant to the director of Special Services, and informed him the Mayor wanted Commissioner Rueben Vargas appointed as district warehouse manager with annual compensation of \$90,000.

Mr. DeMarco informed Mr. Roth the Mayor wanted the board to appoint Mr. Vargas as Warehouse Manager. Mr. DeMarco identified the request as a “final test” and if not complied with Mr. Roth would be terminated along with Clara Herrera and the superintendent. Additionally, Ms. Adrienne Sires would be removed as board president at the May 2013, reorganization meeting.

9. Mayor’s request to meet with the superintendent.

On September 14, 2012, the OFAC investigators conducted a telephone interview with Superintendent Fauta. During the interview, the superintendent provided some historical information regarding items placed on the agenda for the September 13, 2012 board meeting.

Superintendent Fauta indicated the Mayor was angry, claiming Ms. Herrera had become disloyal and was distancing herself from the Mayor. She served previously as campaign treasurer for Dr. Roque’s campaign, served as his liaison to the district when he was candidate elect, and received a \$45,521.00 increase in basic compensation when she was appointed as an assistant superintendent after the election.

The claim of being disloyal to the Mayor is presumed to have occurred after Ms. Herrera resigned as campaign treasurer in June 2012 and had been distancing herself from the Mayor. Her resignation as treasurer and disassociation with the Mayor coincided with the timing of the FBI investigation and a series of confrontations between the Mayor, the Mayor’s supporters and the district. Interactions between the superintendent and the Mayor became more adversarial as the superintendent chose not to comply with the Mayor’s attempts to control certain personnel decisions, including suggestions as to staff hires.

Prior to the September 13, 2012 board meeting, the Mayor indicated he sought to ensure the board awarded professional services contracts to firms of his choosing. The Mayor also wanted the board to withhold approval of the contract renewals for the three assistant superintendents, to deny the superintendents’ request to hire a specific individual as a security officer, and not modify the district organization chart.

Despite the Mayor’s request, the superintendent included agenda items recommending the approval of the three contracts, a modified organization chart and a recommendation to hire a particular individual as District Security Officer. The recommendations, if approved by the board, would include increases in annual compensation for each assistant superintendent. The modification to the organization chart would have altered the lines of authority in the district among the assistant superintendents. The position of director of security was requested as a cost saving measure.

During the September board meeting, Board Vice-President Vilma Reyes obtained approval to remove the three assistant superintendent’s employment contracts renewal recommendations from the consent agenda. Ms. Reyes also obtained approval to remove the organization chart from the agenda. As such, each of those matters was to be voted on

separately. The contracts were approved with four ayes, two nays and one abstention. The resolution to approve a new organization chart failed when only three members voted to approve, three voted against and one member abstained. The final matter to approve the employment of the director of security was withdrawn by the superintendent based on concerns that it would fail. The superintendent explained to the OFAC the individual he selected for the position had fallen into disfavor with the Mayor.

On the morning of September 13, 2012, district employee Allan Roth received a telephone call on his cell phone from Mayor Roque. According to Mr. Roth, as a result of his various district duties and his association with the Mayor, it was not unusual for the Mayor to contact him directly concerning district matters. The purpose of the call was to discuss topics on the agenda of the September 12, 2012, board meeting.

Mr. Roth indicated the Mayor was upset over the re-affirmation of the contracts for the assistant superintendents, the submission of the organization chart and the recommendation to hire a particular individual as director of security. The Mayor asked what the superintendent was doing. He stated he wanted to meet with him (Mr. Roth) and the superintendent to discuss personnel and budget issues.

Mr. Roth expressed the belief the Mayor either said or implied that as a member of the board of school estimate, he had some control over personnel hiring and the budget process. The Mayor indicated, as he had done in prior conversations, he could have some input as to the need for personnel and salaries.

Mr. Roth informed the Mayor he had the right to sit with the superintendent; however, Mr. Roth's schedule would not accommodate such a meeting. The Mayor was upset and aggressive in his tone so Mr. Roth did not comment as to whether the superintendent desired to sit with him or to indicate the superintendent was not obligated to meet with the Mayor.

After a brief reference to the possibly the FBI recorded conversations, the Mayor asserted he was doing nothing illegal. The Mayor also asked how much longer Ms. Sires would serve as president of the Board of Education.

10. Employment of Clara Perez.

Ms. Herrera recommended the superintendent hire Clara Perez as a matron assigned to work at the board office as a confidential employee. The OFAC was informed Mrs. Perez is the mother of the Mayor's fiancée. The superintendent indicated designating an individual as a confidential employee, a non-union title, provides latitude to establish a starting salary higher than the established starting salary for a secretary.

A current employee was transferred from the board office to another position to accommodate the request. The rationale presented for the transfer was because a female employee was needed at the middle school to monitor the girls' locker room. The Superintendent agreed to

the transfer and the new hire stating the assignment would placate the Mayor and would serve a legitimate district need. The superintendent indicated Ms. Perez was qualified and since being hired has met district performance requirements.

The OFAC reviewed payroll information and noted the individual who was transferred had been with the district for 12 years, served in a union title and received annual compensation totaling \$26,202.00. Ms. Perez was hired in a non-union title and awarded a starting salary of \$28,403.00.

11. Request to employ the wife of the Deputy Mayor.

The superintendent stated to the OFAC investigators that shortly after Mayor Roque won election; he received a request from Deputy Mayor, Silvio Acosta as to the possibility of obtaining district employment for his wife. The Mayor and Ms. Herrera may also have suggested the hiring of Mrs. Acosta.

The superintendent instructed the Human Resources Department to process the individual for employment as a secretary. The individual submitted the paperwork required as part of the hiring process during the later part of March and early April 2012. An employment start date was scheduled for May 1, 2012.

Prior to the approach of the employment start date, the superintendent reviewed district staffing needs. He did not want to spend education dollars on a non-education position; as such, he decided this particular appointment was unnecessary. The individual was not hired.

12. Denial of Re-Appointment of Roberto Sanchez and Stacey Olivero.

As stated previously, when Silvio Vega was appointed as Mayor, he eliminated the director's position held by Clara Herrera. Two other assistant superintendents, Roberto Sanchez and Stacy Olivero were not affected. With the appointment of Dr. Roque as Mayor, the board was restructured and a third assistant superintendent position was added. The district organizational chart was amended to reflect the new position and the lines of authority and reporting responsibility were redrawn.

Under the new organization, Assistant Superintendents Sanchez and Olivero were now subordinate to Ms. Herrera. It also became apparent that Ms. Herrera, with her close ties to the Mayor and the Mayor's new control over the board, wielded considerable authority in the district.

13. Denial of Re-Appointment of Scott Cannao.

Mr. Scott Cannao has been employed with the West New York School District since the 2003-2004 school year. During the 2010-2011 school year he was employed as the principal

of the high school and was renewed in that capacity for the 2011-2012 school year. Mr. Cannao anticipated receiving tenure in his position as principal.

Following Dr. Roque's successful campaign, the names of certain non-tenured staff members were submitted to the superintendent. The instructions that accompanied the submitted names were the non-tenured personnel were to receive a non-tenure letter. The letter would place them on notice they would not be offered tenure in their current position with the district.

Upon his appointment as Mayor, Dr. Roque scheduled public events to fund his political activities. Tickets to attend the events were circulated in the district and information circulated among staff members included statements to the effect non-tenured employees who failed to buy a ticket to Mayor Roque's fundraising event would probably not receive reappointment for the following year. Specifically, Clara Herrera commented to the district's supervisor of human resources that such action was likely.

Mr. Cannao is of the opinion he was selected for non-renewal as principal since he questioned the assignment of two individuals who were closely tied to the Mayor. One employee was selling tickets for the Mayor's events on-site during school hours. The other individual is the former Mayor's ex-wife. She works as a teaching staff member and although she is paid over \$100,000.00 per year, she is not assigned to teach any classes. The superintendent indicated the individual is a longtime employee who is a permanent substitute. Her salary is commensurate with her degree and longevity.

Mr. Cannao also declined a request to purchase a \$2,000.00 ticket to the Mayor's political dinner. The ticket was handed to him by another school principal. Prior to the ticketed event, he received a text message from the Mayor on his district issued cell phone that was a follow-up to the ticket he was given by the principal. The message was a reminder he should attend.

He declined another political solicitation. This solicitation involved a request to support Congressman Albio Sires. The congressman's wife, Adrienne Sires, was appointed as board president after Mayor Roque's election. When Mr. Cannao failed to purchase the ticket he received a voice message from Congressman Sires' aid seeking confirmation that he would be attending the congressman's event.

Mr. Cannao stated to the best of his knowledge six or seven names were on the non-tenured hit list. Only two individuals declined to purchase tickets to the political events, he and Ms. Michelle Lopez. Coincidentally, he and Ms. Lopez were the only individuals that were non-renewed. As such, he and Ms. Lopez have submitted complaints to the Department of Education's Office of Controversy and Disputes.

Mr. Cannao also asserts he received information from different sources that town hall, meaning the Mayor's office, wanted him removed as principal. The Mayor's office and Ms. Sires wanted another individual appointed as the principal.

Despite pressure from the Mayor's office, Superintendent Fauta stated to the OFAC investigators he saw no reason not to recommend the reappointment of Mr. Cannao. He did so on three separate occasions; however, the board failed to approve his recommendation and Mr. Cannao was returned to his prior position as assistant principal with an annual loss of about \$17,000 in compensation.

14. Transfer of Michelle Lopez.

Ms. Michelle Lopez had been employed by the West New York School District for 11 years. She had been appointed as the supervisor of the Gifted and Talented Program but was demoted after Mayor Roque was elected. When interviewed on August 29, 2012, she was assigned as a third grade teacher. She was one of the individuals on the hit list.

Ms. Lopez was a former commissioner with the town, serving from May 2007 until her defeat in May 2011 election. Following the appointment of Dr. Roque as Mayor, she learned her name was included on the mayor's hit list. She also stated her husband who worked for the town was demoted and his working hours were reduced. He has subsequently been terminated.

Her sister, who worked in the district for 13 to 15 years, was transferred in December 2011 from her position as a secretary in the board office. Her new assignment is a door monitor at School #1.

Ms. Lopez stated while at School #2, she was approached with a request she purchase a ticket to the Mayor's political fundraiser. She declined. Subsequently, she received a Rice letter in June, 2012. Despite favorable evaluations and recommendations from the superintendent for reappointment, similar to Mr. Cannao, she failed to gain approval from the board for reappointment.

The demotion resulted in a reduction of approximately \$27,000.00 in annual compensation. After her demotion, she was informed that if she would call the Mayor and pledge her allegiance she may get her job back. She declined and has submitted a complaint to the Department of Education's Office of Controversy and Disputes alleging her transfer was arbitrary and capricious.

15. Allan C. Roth, Administrative Assistant to the Director of Special Education Services.

During the OFAC review it became apparent a district employee, Allan C. Roth, was actively involved in district employment decisions. The OFAC investigators were informed Mr. Roth is a practicing attorney who has been employed by the district since the 2004-2005 school year.

The OFAC investigators were informed Mr. Roth has a special employment relationship with the district. His duties include appointment as the affirmative action officer, evaluation of

special education IEP's, and providing an analysis and review of legal expenses. On occasion he has served as an interim board secretary.

His current employment contract requires he work a minimum of 20 hours per week. Mr. Roth indicated he often works well in excess of 20 hours and has documented the time he devotes to district issues by the submission of time reports to Mr. Patrick Gagliardi, Director of Human Resources.

Mr. Roth was interviewed on August 22, 2012 and provided information regarding his employment actions and his knowledge regarding organizational changes that were attempted or implemented following the successful appointment of Dr. Rogue as Mayor. Mr. Roth also provided information concerning the restructuring of the board to afford the Mayor a controlling majority of members.

Mr. Roth indicated when the Mayor appointed new members to the board, Adrienne Sires was elected president. Ms. Sires wanted changes made in the district's organization chart to reflect the structure in place when she was the assistant superintendent. It should be noted that during various interviews with other staff members, it was represented that Ms. Sires and Ms. Herrera are close friends, as well as friends of the Mayor.

Mr. Roth's recollection of events was, the Mayor or as it was sometimes represented, town hall, requested specific actions regarding certain employment decisions. Those requests involved the termination, demotion, promotion and transfers of specific individuals. One immediate action involved the appointment of Clara Herrera as assistant superintendent. She was to be the right hand to the superintendent. At the same time she was closely aligned with the new Mayor and was named as the liaison between the district and town hall.

Mr. Roth explained that historically changes would be implemented with a change in the administration at town hall. With Mayor Roque's appointment and his successful restructuring of the board that included the removal of individuals the Mayor thought were disloyal, numerous recommendations were provided.

Among the initial actions called for by the Mayor's office was the issuance of non-renewal letters to non-tenured staff members. Mr. Roth stated the superintendent was extremely uncomfortable issuing the letters to many of the individuals, especially in midyear. He recalled many conversations with the superintendent and other staff members as how the district could properly balance the specific requests while not harming qualified employees.

The superintendent complied with the request to issue the letters in a manner that would place the least number of employees in jeopardy. Mr. Roth stated while Ms. Herrera served as liaison to town hall, she arrived at the board office with a list of about one-half dozen names. His name was on the list with a big question mark. Ms. Herrera asked what specific position the individuals held and whether or not they could be demoted or fired. In addition to individuals targeted for termination or demotion, the superintendent indicated the Mayor's

office was seeking employment positions for several individuals. Beside Ms. Herrera's appointment as assistant superintendent, he was familiar with positions sought for Rueben Vargas, a Town Commissioner and Edelma Acosta, the wife of the deputy Mayor.

Mr. Roth also indicated he was aware some of the individual's whose name appeared on the list were directed to contact town hall and make an appointment to meet with the Mayor. He did not know how many people met with the Mayor. He is unaware of anything happening after the meetings. He did not meet with the Mayor, but has spoken with him regarding district operations. He was involved in discussions concerning employment positions for Mr. Vargas and Mrs. Acosta. He was also responsible for determining Mr. Vargas' title, duties, salary and the development of his job description.

Mr. Roth was questioned about Mr. Vargas' qualifications for the position he was appointed to fill. The job description required a high school diploma or equivalent. When asked how Mr. Vargas could be hired when he did not meet that requirement, Mr. Roth indicated the job description allowed for equivalent training as a substitute. He explained equivalent training as business office experience.

In reference to solicitations to purchase event tickets, Mr. Roth stated that has purchased tickets to various events. During 2011 he spent \$4,000.00 when he purchased two \$2,000.00 tickets to attend the Mayor's dinners. He was of the opinion that his purchases were, "the cost of doing business."

16. Patrick Gagliardi - district employment.

Mr. Gagliardi has been employed by the district for more than 19 years. When interviewed on August 20, 2012, he served as the Director of Human Resources.

Mr. Gagliardi stated after the May 2011 election, there was a campaign of harassment and bullying by town hall to gain influence in the district. The board office received phone calls and visits from personnel from town hall in an attempt to direct district employment actions. The individuals generally responsible included Joseph DeMarco, Town Administrator and Allan Roth who has worked in the district for 20 years.

Mr. Gagliardi stated he received daily phone calls from the superintendent regarding requests for terminations, transfers, and new hires. He was informed by the superintendent the requests were coming from the Mayor's office.

During his employment he was also provided tickets for various fund raisers. He was asked to contribute to the Mayor Roque's political fund. He attempted to contribute by issuing a \$1,000.00 check. The check was not accepted and was returned to him. He was told since he was a friend of the former Mayor he was not welcome at the Mayor's dinner.

17. Modification to the district organization chart.

The OFAC reviewed the district organization charts as they existed and were modified for the time period prior to the election of Mayor Roque to the present day, February 2013. It was noted that initially, the two individuals assigned as assistant superintendent had lines of authority connected to the superintendent. Both individuals were on the same level.

The chart was revised after the election of Mayor Roque to add Clara Herrera as a third assistant superintendent. Each assistant had a line of authority that connected to the superintendent. Each assistant superintendent was on the same level.

Subsequently, on December 14, 2011, the board modified the organization chart to indicate that Ms. Herrera was a direct report to the superintendent. The remaining superintendents reported to Ms. Herrera.

The superintendent informed the OFAC he was not aware of the modification until after the agenda was prepared. Human Resources indicated the modification was prepared under the direction of Mr. Roth who was serving as Board Secretary.

The superintendent recommended and the board approved a recent revision of the organization chart on December 14, 2012. The organization chart now indicates each assistant superintendent has equal authority and each has a direct line of authority and communication to the superintendent.

18. The conduct of Mayor Roque and Commissioner Vargas may violate the New Jersey Criminal Code.

As stated in the preceding paragraphs, Mayor Roque sought, requested, and pressured the superintendent of the West New York School District in an effort to obtain approval for adverse employment actions against individuals who supported the prior Mayor and/or individuals who failed to support his candidacy.

Similarly, Rueben Vargas used his position as Commissioner of the Town of West New York to seek employment positions with the district knowing he lacked the required qualifications.

New Jersey Statutes Annotated, specifically N.J.S.A. 2C:30-2 addresses conduct of a public servant that is illegal. The statute reads in part, “A public servant is guilty of official misconduct when, with purpose to . . . injure or to deprive another of a benefit:

- a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or,

- b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a crime of the second degree.

19. Mayor Roque and Commissioner Vargas' district interventions appear contrary to N.J.S.A. 40A:9-22.5, governing the conduct of local government officers.

N.J.S.A. 40A:9-22.5 reads in part, Local government officers . . . shall comply with the following provisions:

- c. No local government officer . . . shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

Jurisdiction to determine violations of N.J.S.A. 40A:9-22.5 are under the purview of the Local Finance Board in the Division of Community Affairs.

Conclusion

For the reasons set forth in this report the OFAC investigators have confirmed the West New York Board of Education permitted the Office of the Mayor to unduly influence district employment decisions. Based upon information divulged during interviews with district staff and other corroborating information, the Mayor utilized his authority and influence to direct board actions concerning employment decisions in the district. The OFAC concluded the superintendent acquiesced to the wishes of the Mayor based upon fear noncompliance with Mayor Roque's requests would adversely affect district employees and operations.

The information obtained as a result of employee interviews also established a pattern of coercion of staff to contribute to fund the Mayor's campaign or face possible retribution. Such action may have violated provisions of the School Ethics Act.

The OFAC has also concluded sufficient verifiable evidence exists to support a referral to the Office of the Attorney General and the Local Finance Board in the Department of Community Affairs Division of Local Government Services. The Office of the Attorney General has jurisdiction over matters involving violations of the criminal code. The Local Finance Board has jurisdiction over matters involving the conduct of local government officers.

Recommendation

The district is directed to prepare a Corrective Action Plan indentifying the measures it will implement to ensure compliance with the provisions of N.J.S.A. 18A:27-4.1, Personnel Actions.

In reference to the conduct of certain board members, the OFAC lacks jurisdiction to address issues involving possible board member conflicts of interest and code of conduct violations.

Such matters are under the purview of the School Ethics Commission (SEC). Aggrieved individuals may submit a complaint directly to the SEC. Information and instructions for the filing of ethics complaints is available at <http://www.state.nj.us/education/ethics/>.

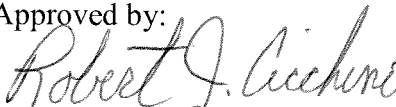
In reference to potential ethics violations and abuse of office involving Mayor Rogue and Commissioner Vargas, and/or other Town of West New York administrative staff, a copy of this report will be forwarded to the Office of the Attorney General and the Division of Local Government Services, Department of Community Affairs for review.

Submitted by:



Thomas C. Martin, Manager
Investigations Unit

Approved by:



Robert J. Cicchino, Director
Office of Fiscal Accountability and Compliance

Investigator

Dino P. Dettorre

Karl T. Feltes

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