



## Ken Burke, CPA

CLERK OF THE CIRCUIT COURT AND COMPTROLLER  
PINELLAS COUNTY, FLORIDA

Clerk of the County Court  
Recorder of Deeds  
Clerk and Accountant of the Board of County Commissioners  
Custodian of County Funds  
County Auditor

## Division of Inspector General

510 Bay Avenue  
Clearwater, FL 33756  
Telephone: (727) 464-8371  
Fax: (727) 464-8386  
Fraud Hotline: (727) 45FRAUD (453-7283)

### REPORT NO. 2017-10

July 31, 2017

The Honorable Chairman and Board Members  
of the School District of Palm Beach County  
3300 Forest Hill Blvd., Suite C-316  
West Palm Beach, FL 33406

Re: Referral of Complaint Pursuant to the August 12, 2014 Interlocal Agreement Provision of Inspector General Services Between the School Board of Palm Beach County (SBPBC), Florida and the Office of the Clerk of Circuit Court and Comptroller of Pinellas County, Florida Division of Inspector General (Division)

The Division's Investigation of a Complaint filed on June 13, 2016 for Misconduct or Other Wrongdoing Involving the SBPBC Inspector General and/or Employee of the SBPBC Inspector General (Respondents)

### A. PROCEDURAL

On June 16, 2016 via U.S. Mail from the Chairman of the Board of the SBPBC, the Division received the following allegations related to Ms. Christina Seymour, Audit Supervisor (Seymour/Complainant), Mr. Randy Law, Director of Audit (Law/Respondent 1), and Mr. Lung Chiu, Inspector General (Chiu/Respondent 2).

The Complainant states and alleges:

1. The District's Office of the Inspector General (OIG) management violated federal protected rights under the Family and Medical Leave Act (FMLA) and the School District of Palm Beach County policies in the execution of her 2016 annual performance evaluation and in how she had been treated by its management team since September 2014.



An Accredited Office of  
Inspectors General

## **B. FACTUAL BACKGROUND**

The investigation revealed the following relevant and material facts:

1. On February 20, 2014, Ms. Seymour received a performance evaluation (for Fiscal Year ending June 30, 2013) with an overall rating of "At Expectation." We noted a significant delay in providing the employee this performance evaluation. (See *Seymour 2013 Performance Evaluation*.)
2. On May 8, 2014, Ms. Seymour received a performance evaluation with an overall rating of "At Expectation." (See *Seymour 2014 Performance Evaluation*.)
3. During the first week of July 2014, Ms. Seymour advised her supervisor, Randy Law (Law), Director of Audit, of her pregnancy and plans to take twelve weeks of "maternity leave" at the end of November 2014. (See *Statement to Professional Standards dated June 20, 2016, Page 1, Background Info, Section A, Paragraph 1.*)
4. On August 25, 2014, Mr. Chiu presented the proposed 2014-2015 OIG Work Plan during the School Board Audit Committee meeting. (See *2014 – 2015 OIG Work Plan*.)
5. Ms. Seymour emailed Mr. Law on September 2, 2014 to notify of an unexpected hospitalization and that she would be starting her maternity leave as of this date. (See *Email from Seymour to Law dated September 2, 2014, paragraph 1.*)
6. Ms. Seymour returned to work (light duty) on September 16, 2014 in order to remain in a paid status to ensure no disruption of her health insurance coverage. Per the District's benefits' guidelines, in order to remain eligible for benefits, employees must have been in a paid status the majority of the duty days in any given month. However, the District's FMLA policy clearly states the use of FMLA leave cannot result in the loss of any coverage under the group health plan. (See *Seymour's letter to Dr. Elvis Epps dated June 6, 2016, page 2, paragraph 5, School Board Policy 3.76 Family and Medical Leave Act Policy, Page 2, Item 6. Maintenance of Health Benefits, and School Board Intermittent Family Medical Leave Act page 1, information box at bottom of page.*)
7. Ms. Seymour received notice from Human Resources on November 25, 2014 that her intermittent FMLA has been approved for November 24, 2014 through March 2, 2015. (See *Intermittent FMLA Approval Email from Seymour to Chiu dated November 25, 2014.*)
8. Ms. Seymour provided Mr. Chiu a written notice dated November 24, 2014 of her intent to take leave beginning December 1, 2014, with an anticipated return to work

*Statement to Professional Standards dated June 20, 2016, page 4, section Closing Remarks, Paragraph 1.)*

17. On June 20, 2016, Ms. Seymour provided a written statement to the EEO Coordinator within the Office of Professional Standards, Ms. Wellings. (See *Statement to Professional Standards dated June 20, 2016.*)
18. On June 28, 2016, Ms. Wellings issued a letter to Ms. Seymour to advise her no action will be taken on her complaint by the Office of Professional Standards as there is an active investigation of her complaint pending with Pinellas County's Inspector General. (See *Letter from Wellings to Seymour dated June 28, 2016.*)
19. On or around October 25, 2016, Ms. Seymour was assigned to work on an investigation under the direction of Ms. Angelette Green (Green). Due to the pressing nature of the investigation, Ms. Seymour was advised to suspend any other projects she currently had active while she worked on this investigation. (See *Seymour IG Investigative Contact Memo dated April 15, 2017, page 1, paragraph 3, Green IG Investigative Contact Memo dated April 15, 2017, page 1, paragraph 3, and Law IG Investigative Contact Memo dated April 15, 2017, page 3, paragraph 1.*)

### **C. ANALYSIS**

#### **Family and Medical Leave Act (FMLA)**

Christina Seymour is an Audit Supervisor with the Office of the Inspector General (OIG) for the School Board of Palm Beach County (SBPBC). The position is noted to be exempt under the Fair Labor Standards Act (FLSA). Salaried executive, administrative, and professional employees of covered employers who meet the FLSA criteria for exemption from minimum wage and overtime under the regulations, 29 CFR Part 541.300, do not lose their FLSA exempt status by using any unpaid FMLA leave. This special exception to the salary basis requirements for FLSA's exemption extends only to an eligible employee's use of FMLA leave per 29 CFR Part 541.602.

FMLA does not require an employer to reduce its performance expectations for an employee who is taking leave intermittently or on a reduced schedule. However, an employer may be required to make adjustments to productivity requirements and quotas to avoid penalizing an employee for absences that qualify as protected FMLA leave. *Page1 v TIN, Inc., 695 F.3d 622 (7<sup>th</sup> Cir., 2012)*. Additionally, the FMLA 29 CFR Part 825.123, holds the position that during the time the employee is at work, the employee must be capable of continuing to perform the essential functions of the job.

Per the *FLSA Things to Know* informational document retrieved from the School District of Palm Beach County's website, "*exempt employees are salaried employees and, as*

Seymour contends that the Director of Audit (Law) violated federally protected rights under FMLA by creating the evaluation document as retaliation because she is on re-certified intermittent FMLA and unable to work the number of hours other employees work. A review of Seymour's annual evaluations for 2013, 2014, 2015, and 2016 reflect she has consistently received an overall rating of "At Expectation."

- The performance evaluation dated February 20, 2014, (for Fiscal Year Ending June 30, 2013) reflects that she was rated as "At Expectation" for all 11 competencies listed. She received an overall rating of "At Expectation."
- The performance evaluation dated May 8, 2014 reflects that she was rated as "At Expectation" for nine of the eleven competencies and "Above Expectation" in two of the eleven competencies. She received an overall rating of "At Expectation."
- The performance evaluation instrument dated July 6, 2015 reflects that she was rated as "At Expectation" for eight of the eleven competencies and "Above Expectation" in three of the eleven competencies. She received an overall rating of "At Expectation."
- The performance evaluation instrument dated May 24, 2016 does not have ratings based on the individual competencies, but does provide an overall rating of "At Expectation."

Based on these consistent ratings, there is no indication of adverse action pertaining to the performance evaluations created before, during, or after leave was taken under FMLA.

Seymour contends that the Inspector General (Chiu) intimidated her into making up work hours for the time taken to care for her infant sons while using earned sick leave, annual leave, or approved intermittent FMLA. Seymour was assigned to Case No. 16-474 – Gardens School of Technology Arts on October 25, 2016. Upon her assignment to the case, Ms. Seymour was provided specific objectives and a work plan for the investigation and was advised that the completion timeframe was critical due to a pending contract status with the school under investigation. Ms. Seymour was instructed to suspend any other active projects and to solely focus on this investigation until completed. The original deadline provided to her was November 30, 2016, but Ms. Seymour did not complete the financial review until February 16, 2017 (78 days after the initial deadline). On January 19, 2017, management met with Ms. Seymour to discuss the preliminary findings and to redirect Ms. Seymour from further deviation into areas outside of the project's scope and objectives. On February 2, 2017, Ms. Green advised Ms. Seymour that the draft report had to be submitted to Mr. Chiu and Ms. Elizabeth McBride (McBride) by February 8, 2017. The first week of February 2017, Ms. Seymour was instructed to pursue nothing further, but to complete her portion of the draft report. On February 16, 2017, Ms. Seymour was advised that if she does not finish her portion of the report, she would not be allowed to attend a continuing education session she had scheduled for later that week.

available hours less the average leave and non-project related time, such as holidays, training attendance, meetings, administrative functions, etc. This average productivity hour is then multiplied by the number of budgeted positions to obtain total office anticipated productivity hours available. From this total productivity number, the calculation is further reduced by other anticipated gaps, such as expected absences or unfilled vacant positions. The work plan indicates an anticipated reduction of available hours for an "Anticipated Maternity Leave" and "Two Positions Vacant for 3 Months." The document does not disclose the identity of the individual(s) requesting and/or taking "Anticipated Maternity Leave."

Using the term "Anticipated Maternity Leave" is not a HIPAA violation or an unlawful disclosure of medical information. The "maternity leave" and/or "paternity leave" term is a label applied for specific types of leaves of absence. Furthermore, it is not HIPAA violation to disclose the type or duration of leave that is expected as long as the employee disclosed the information directly to the employer. Per Seymour, the first week of July 2014, she met with Law to advise him of her plan to take 12 weeks of maternity leave in November 2014.

#### **Loud Interrogation of Employee**

Seymour contends that on or around December 8, 2015, Chiu was shouting at her to ask why a project assigned in July 2015 was taking six months to complete. She stated he addressed her in the form of a "loud interrogation" in her office doorway where other employees could overhear. Seymour stated as she attempted to provide an explanation to Chiu, he stormed out of the doorway.

We interviewed staff within the OIG to inquire on what they have seen or heard as it pertains to negative doorway chats or instances of employees being criticized or reprimanded in the open. Some staff members indicated that instances of doorway chats or open reprimands and/or criticisms have been seen and/or heard on occasion. It was emphasized that it does not happen all the time, but has occurred a few times. Some staff members stated it could be due to a language barrier or perhaps a cultural influence. It was additionally stated that the communications are possibly misinterpreted as intimidating, scolding, or critical. Other employees within the office do not recall incidents of supervisors being critical of any staff members. None of the staff interviewed indicated Chiu performed these actions.

One common observation discussed during the interviews is that the atmosphere within the office is normally extremely quiet and can be uncomfortable at times. The office layout and audit assignments may have some influence on the lack of interaction between the staff members. One former employee was cited to have left the OIG due to the degree of tension that existed within the environment. The environment is said to be quiet, stressful, serious, and that there is little interaction between the individuals. Nonetheless, the office atmosphere does not support or refute Ms. Seymour's allegation against Mr. Chiu.

that Law's note about her falling asleep during work hours to be incorrect; she only stated there was no opportunity to provide documentation. To date, Seymour has not provided any information or documentation on the matter. This investigation cannot speak to Law's intent, but the content and context of the information does not indicate any attempt to demean or intimidate, but to inform the employee of a performance issue.

Seymour also pointed out within Law's notes that as an Audit Supervisor, she should "*be working with the Director of Audit to improve the effectiveness and efficiency of the audit functions*" and "*complete all the proposed in the Annual Work Plan in a timely manner.*" Seymour stated it is an unrealistic expectation set for her due to being excluded from IG management meetings, Audit Committee meetings, candidate interviews, and not supervising staff. Due to the intermittent leave (FMLA and non-FMLA) being requested by Seymour, management has made accommodation by reducing her workload to a single project. While Seymour holds the title of Audit Supervisor, she does not currently supervise employees and was not supervising staff even prior to taking FMLA in 2014. Law's emphasis was that Seymour is not completing projects timely.

According to Mr. Law and Ms. Green, even while working a single project, Ms. Seymour was still missing important deadlines and not completing projects timely. The need for extensions on the projects were not based on her FMLA absences, but rather due to frequent episodes of deviating from the project objectives and scope. Seymour only utilized 30.5 hours of FMLA leave during the several months she was assigned the Case No. 16-474 – Gardens School of Technology Arts project, yet still required multiple extensions to the project. The additional research, records' reviews, and analysis spent on items outside the scope and objectives of the project resulted in the need to address timeliness as a performance matter.

#### **D. CONCLUSION**

The Division uses the following terminology for conclusion of fact/finding(s):

**Substantiated** – An allegation is substantiated when there is sufficient evidence to justify a reasonable conclusion that the allegation is true.

**Unsubstantiated** – An allegation is unsubstantiated when there is insufficient evidence to either prove or disprove the allegation.

**Unfounded** – An allegation is unfounded when it is proved to be false or there is no credible evidence to support it.

We conclude *no violation of the Family and Medical Leave Act (FMLA)* has occurred pertaining to the allegation the District Office of Inspector General's management violated federal protected rights under the FMLA and the School District of Palm Beach County policies. It is the finding of this investigation that the employer has never denied the employee a requested FMLA absence. The employer has made adjustments to

Inspector General's investigation of retaliation has determined the allegation is **unfounded**.

We conclude *no violation of the Health Insurance Portability and Accountability Act (HIPAA) or unlawful disclosure of personal medical information* has occurred pertaining to the allegation that the Inspector General (Chiu) disclosed Complainant's high-risk pregnancy in a public record. The use of the term "Anticipated Maternity Leave" is not a HIPAA violation or an unlawful disclosure of medical information. The term "maternity leave" and/or "paternity leave" is a label applied for specific types of leaves of absence. Using the term "Anticipated Maternity Leave" is not a HIPAA violation or an unlawful disclosure of medical information. The "maternity leave" and/or "paternity leave" term is a label applied for specific types of leaves of absence. Furthermore, it is not a HIPAA violation to disclose the type or duration of leave that is expected as long as the employee disclosed the information directly to the employer. Per Ms. Seymour, the first week of July 2014, she met with Mr. Law to advise him of her plan to take 12 weeks of maternity leave in November 2014. Therefore, the Division of Inspector General's investigation of unlawful disclosure of personal medical information has determined that the allegation is **unfounded**.

We are unable to prove or disprove the allegation that Mr. Chiu *violated School Board Policy 3.19 or 3.03* by shouting at Ms. Seymour in the manner of a "loud interrogation" in her office doorway where it could be overheard by other employees on or around the date of December 8, 2015. Of note is that Ms. Seymour stated she brought the matter to the attention of the Human Resources Department, but declined their offer to intercede on her behalf. In our discussions with staff members, some indicated that instances of the doorway chats, open reprimands, and/or criticisms have been seen and/or heard on occasion. It was emphasized that this does not happen all the time, but it has occurred a few times. Some staff members stated it could be due to a language barrier or perhaps a cultural influence. It was additionally stated that the communications are possibly misinterpreted as intimidating, scolding, or critical. Other employees within the office do not recall incidents of supervisors being critical of any staff members. None of the staff interviewed indicated Chiu performed these actions. Therefore, the Division of Inspector General's investigation has determined the allegation is **unsubstantiated**.

We conclude *no violation of the School Board Policy 3.19 or 3.03* has occurred pertaining to the Director of Audit (Law) reading the evaluation document with demeaning commentary. The content of the evaluation document included statements that the Complainant alleges were demeaning and intimidating. This investigation cannot speak to Law's intent, but the content and context of the information does not indicate any attempt to demean or intimidate, but to inform the employee of a performance issue. Therefore, the Division of Inspector General's investigation of retaliation has determined the allegation is **unfounded**.



The Honorable Chairman and Board Members  
of the School District of Palm Beach County  
July 31, 2017  
Page 15

We appreciate the cooperation shown by the staff of The School District of Palm Beach County during the course of this investigation. We commend management for their responses to our recommendations.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Hector Collazo Jr.', with a long horizontal flourish extending to the right.

Hector Collazo Jr.  
Inspector General/Chief Audit Executive

cc:

Ken Burke, CPA  
Pinellas County Clerk of the Circuit Court and Comptroller  
Ex Officio County Auditor

Dr. Robert Avossa, Superintendent  
School District of Palm Beach County  
3300 Forest Hill Blvd., Suite C-316  
West Palm Beach, FL 33406

Lung Chiu, Inspector General  
Office of Inspector General  
3318 Forest Hill Blvd., C-308  
West Palm Beach, FL 33408

Randy Law, Director of Audit  
Office of Inspector General  
3318 Forest Hill Blvd., C-308  
West Palm Beach, FL 33408

Christina M. Seymour