



MARYLAND OFFICE OF THE INSPECTOR GENERAL FOR EDUCATION



Investigative Report Summary

OIGE Case 21-0006-I

Issued: August 10, 2023



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INSPECTOR GENERAL FOR EDUCATION
Richard P. Henry, Inspector General



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To the Citizens of Maryland and Baltimore City,

The General Assembly, at its First Session after the adoption of the Maryland Constitution, established throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.¹ The Maryland Office of the Inspector General for Education (OIGE) plays a vital role in safeguarding State funds provided to local school systems. Our primary mission is to prevent and detect fraud, waste and abuse, and educational mismanagement within School Boards, the Maryland State Department of Education (MSDE), the Interagency Commission of School Construction (IAC), the twenty-four (24) local education agencies (LEA), and non-public schools who receive State funding throughout the State of Maryland. Except under limited exceptions, the Inspector General may not disclose the identity of the source of a complaint or information provided.

EXECUTIVE SUMMARY

The OIGE initiated an investigation after receiving a complaint alleging inflated student enrollment data and ghost students at the Augusta Fells Savage Institute for Visual Arts (AFS). Based on this complaint, information derived from OIGE case 20-0003-I, Baltimore City Public Schools (BCPS) Grade Changing, and significant media attention, the OIGE initiated this investigation on April 21, 2021, but did not continue the investigation due to an ongoing BCPS internal investigation. Instead, the OIGE investigated the lack of use and practice of advising employees of their constitutional rights under *Garrity v. New Jersey*, 385 U.S. 493 (1967) (hereinafter *Garrity*) during the BCPS internal investigation.

The OIGE found that the BCPS SIU's lack of a written policy regarding *Garrity* and other protections against self-incrimination potentially places employees at risk during internal investigations and could hinder the chance of any criminal prosecution in cases deemed appropriate.

BACKGROUND

After initiating this investigation, the OIGE learned that the BCPS Staff Investigations Unit (SIU) had already conducted an extensive investigation into the alleged misconduct at AFS. The OIGE

¹ Constitution of Maryland, Article VIII, Education, Section 1

obtained a copy of their final report and their publicly available summary report. A review of the SIU's summary report indicated their findings stemmed from "a data review that raised serious concerns about grading integrity, as well as the validity of student enrollment, attendance, and credit recovery program."

The OIGE comprehensively investigated BCPS grading integrity in the investigative report 20-003-I. BCPS student enrollment and attendance were previously addressed in OIGE Investigative Audit Report 21-0005-A. Therefore, the OIGE did not further investigate Augusta Fells Savage Institute grading irregularities, nor AFS student enrollment and attendance.

Based on the nature of the misconduct, financial loss, and employees' actions in the BCPS report, OIGE presented this case for prosecutorial consideration to local, state, and federal prosecutors' offices.² During this process, all of the prosecutors were immediately concerned with the lack of Garrity Warnings³ provided to the subjects of the investigation. This triggered the need for a filter team to review the investigation, creating a lengthy delay in the case's final disposition. The delay further complicated the process when the statute of limitations for certain criminal violations expired. Ultimately, all the prosecutors declined the case citing the lack of Garrity Warnings as their primary reason.

The SIU's Investigation

The SIU interviewed over 30 employees, some of them on multiple occasions. They used various venues, including in-person, telephonic, virtual, and written interviews. The SIU also conducted extensive data analysis and reviewed emails, policies, and other electronic media. Their investigation was conducted during the height of the COVID-19 pandemic.

The SIU's lead investigator determined that four members of the school's executive staff were the primary subjects of the investigation, referred to as "Accused" by SIU. The OIGE found that on September 11, 23, and 26, 2019, the SIU's lead investigator interviewed an individual noted as "Accused" as a witness. On September 9, 2020, the SIU lead investigator again interviewed this individual for a fourth time. During this interview, the individual was referenced as the "Accused." The OIGE determined that this individual was not provided with any Garrity Warnings. In response to an OIGE inquiry, the BCPS Office of Legal Counsel sent a letter dated May 4, 2023, advising that, as a result of their investigation, the individual in question resigned from BCPS.

The OIGE further found that on September 23, 24, and 26, 2019, another school employee was interviewed by SIU's lead investigator as a witness. On March 11, 2020, this employee was interviewed a fourth time as the "Accused." The OIGE again determined that the employee was

² The BCPS Office of Legal Counsel presented this case to the local prosecutor's office for criminal prosecution at a later date.

³ *Garrity v. New Jersey*, 385 U.S. 493 (1967) – The Supreme Court, in this ruling, established that statements given by a public employee under the threat of removal from office are considered compelled statements, and as such, prosecutors are prohibited from using them in any subsequent criminal proceedings due to the Fifth Amendment's protection against self-incrimination.

A Garrity warning must effectively convey three essential points to the employee: 1) The employee cannot decline to answer the employer's questions based on their right not to self-incriminate, 2) If the employee chooses not to answer, the employer may take disciplinary action, including termination, and 3) The employee's answers cannot be utilized against them in any future criminal proceedings.

not provided with any Garrity Warnings but did have a union representative present. BCPS advised the OIGE that this employee was terminated because of their investigation.

On July 14, 2020, a school executive was interviewed by SIU's lead investigator. The OIGE determined that this individual was only interviewed on one occasion and was considered the "Accused." The school executive was not provided with any Garrity Warnings but did have a union representative present. BCPS advised the OIGE that the school executive was terminated because of their investigation.

Lastly, the SIU lead investigator unsuccessfully attempted to interview a second school executive. BCPS advised that this employee retired due to a disability before the conclusion of the investigation.

BCPS Garrity Policy

The OIGE reviewed BCPS Policies and the SIU Steps To Conducting An Investigation (BCPS, 2019) and could not locate any policy regarding Garrity Warnings.

The OIGE interviewed the SIU's lead investigator, inquired why they did not read Garrity Warnings before his interviews, and the investigator responded, "I just never do."

The OIGE inquired with the BCPS, Office of Legal Counsel, about any Garrity Policy, and they provided the following response,

There are no City Schools policies that require warnings be provided pursuant to *Garrity v. New Jersey* or *Kalkines v. United States* during the course of a SIU investigation. Rather SIU reviews these matters on a case-by-case basis, informed by applicable law and consultation with attorneys in the Office of Legal Counsel, as appropriate. City Schools has benefited from the discussions and information shared by the OIGE, subsequent to the Augusta Fells Savage investigation, to better identify occasions where Garrity or Kalkine warnings may be appropriate.

The OIGE found the scope of the SIU's investigative responsibilities in the SIU Steps To Conducting An Investigation labeled "Case Classifications" and are listed as follows:

- Misconduct
- Neglect of duty
- Insubordination
- Incompetency
- Immorality
- Grade Change
- Corporal Punishment
- Harassment/Discrimination
- Violation of Policy/Procedure
- Child Abuse
- Safety Issue

- Substance Abuse
- Theft
- Violence or Threatening Behavior
- Test Integrity

Only Child Abuse and Theft have mandatory reporting to the Police. The SIU investigators are not sworn law enforcement but have the potential to solicit incriminating statements during their investigations. The OIGE found that the SIU did not have a policy on providing employees with Garrity or any other warnings regarding self-incrimination protections. Furthermore, the OIGE did not find a policy, procedure, or guidance that compels employees to submit to an SIU interview.

The OIGE inquired with the BCPS Office of Legal Counsel about any policy that compels an employee to submit to an SIU interview. The Office of Legal Counsel provided the following response to the OIGE,

There is not currently a written policy that compels an employee's participation in an SIU investigation, aside from the reporting requirements outlined in Baltimore City Board of School Commissioners' Policy EAB (Disclosure of Financial Impropriety and Improper Conduct), the Chief Executive Officer ("CEO") Administrative Regulation EAB-RA (Disclosure of Financial Impropriety and Improper Conduct), and SIU's Investigative Protocols.

The OIGE located the following statement regarding compelled interviews in the SIU Steps To Conducting An Investigation,

Critical witnesses, as determined by the assigned Investigator, who fail to respond to two (2) or three (3) requests for interview shall be referred to The Office of Labor Relations. The Office of Labor Relations will issue a notification that failure to appear is deemed insubordination subject to discipline.

The OIGE did not find any policy, procedures, or guidance on providing the employee with any Garrity or other protections from self-incrimination.

On July 19, 2021, the OIGE sent written guidance to all Local Educational Agencies (LEAs) in Maryland advising them:

Accordingly, the OIGE recommends that every local school system and supporting state education agency provide a Garrity warning prior to conducting an investigatory interview where there is a possibility of criminal charges being brought. It is important to be able to demonstrate that the "Garrity" warning was given before the employee was interviewed to demonstrate the statements were voluntary and not coerced. In closing, the OIGE, in collaboration with the United States Attorney's Office, the Maryland Office of the State Prosecutor, the Maryland

Office of the Attorney General, and the Maryland State's Attorney Office, encourages each local school system to serve as the example and provide their employees with a Garrity warning prior to conducting an investigation. Where Garrity has been applied properly and consistently, it has served both the employer and employee well. It has also enabled administrators to clearly understand the division between an administrative and criminal investigation, while proceeding without violating an employee's rights. Regrettably, when an employer does not provide a Garrity warning, it immunizes guilty employees by accident and renders the investigation ineffective for future proceedings.

BCPS has yet to develop a written Garrity policy.

Recommendations

The OIGE recommends that the BCPS establish a standard written policy governing the use of the Garrity warnings during the investigative process.

The OIGE understands that information may be changed or updated after an investigation has been completed. The OIGE appreciates the cooperation provided by the Baltimore City Public School system, the BCPS Legal Office, the Office of the United States Attorney, the Office of the Attorney General, the Office of the State Prosecutor, and the Baltimore City State's Attorney's Office.

Consistent with Education Article §9.10-104, the Inspector General has identified issues of concern and will report these issues to the Governor, the General Assembly, the State Board of Education, and the State Superintendent of Schools.

Respectfully,



Richard P. Henry
Inspector General

cc: Ronald S. McFadden, Chairperson, Baltimore City Public Schools Board of Commissioners
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