

#148-14 (OAL Decision: Not yet available online)

BOARD OF TRUSTEES OF THE :
VINELAND PUBLIC CHARTER SCHOOL :
AND ANN MURPHY-GARCIA, :
PETITIONERS, :

COMMISSIONER OF EDUCATION
DECISION

V. :

NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, OFFICE OF FISCAL :
ACCOUNTABILITY AND COMPLIANCE :
RESPONDENT. :

SYNOPSIS

Petitioners challenged the findings and conclusions reached by the Department’s Office of Fiscal Accountability and Compliance (OFAC) subsequent to a request from the Office of Educational Data (OED) that OFAC investigate the work hours recorded for Ann Murphy-Garcia, the Executive Director of Vineland Public Charter School (VPCS). In February 2011, OED had recorded that Murphy-Garcia was working the equivalent of 2.7 full-time positions in two public school districts and three charter schools. OFAC’s investigation determined that Murphy-Garcia was not, in fact, working more than one full-time position, but also concluded that Murphy-Garcia had “orchestrated what appeared to be a hastily developed and ill-conceived plan intended to provide misinformation to the OFAC investigators.” Based upon this conclusion, the matter was referred to the State Board of Examiners and the Division of Criminal Justice. The Board of Examiners subsequently initiated a separate case alleging that Murphy-Garcia’s conduct was inappropriate and provided cause for the revocation of her certificates. Petitioners in this case have asserted that OFAC’s findings are not supported by competent evidence. The State Board of Examiners’ action seeking to revoke her New Jersey certificates is in abeyance while the instant controversy is adjudicated.

The ALJ found, *inter alia*, that: the initial investigation into whether Murphy-Garcia was working in more than one full-time position was resolved favorably for the petitioners, as the evidence credibly and overwhelmingly confirmed that her employment agreement was part-time; since the evidence confirmed that Murphy-Garcia was always treated and paid as part-time, the written contracts in the school files needed to be corrected to reflect the true nature of her employment; Murphy-Garcia worked with staff and the VPCS Board to correct her erroneous contracts and forward the corrected ones to the OFAC. The ALJ concluded that OFAC’s finding that Murphy-Garcia thwarted its investigation is wrong as a matter of fact and law; it was undisputed by all witnesses that Murphy-Garcia and her staff were attempting to “right a wrong” in regard to her employment contracts; and there was no attempt to confuse or thwart OFAC’s investigation. Accordingly, the ALJ recommended that the OFAC’s August 2011 fact finding report be rejected.

Upon review, the Assistant Commissioner – to whom this matter was delegated pursuant to *N.J.S.A.* 18A:4-34 – rejected the specific conclusions found in the OFAC’s report, *i.e.*, that Murphy-Garcia acted without the VPCS Board’s knowledge and tried to thwart OFAC’s investigation. However, the Assistant Commissioner cautioned VPCS to improve its business practices and administrative oversight to ensure that its contracts are properly memorialized and that all of its records are secured and accessible. Further, the Assistant Commissioner expressed concern that Murphy-Garcia may have contracted with more employers than she can properly serve. Petitioners’ appeal was granted subject to the above, and copies of this decision were forwarded to the State Board of Examiners and the Division of Criminal Justice.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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April 4, 2014

OAL DKT. NO. EDU 9938-12
AGENCY DKT. NO. 176-6/12

BOARD OF TRUSTEES OF THE :
VINELAND PUBLIC CHARTER :
SCHOOL AND ANN MURPHY-GARCIA, : COMMISSIONER OF EDUCATION

PETITIONERS, : DECISION

V. :

NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, OFFICE OF FISCAL :
ACCOUNTABILITY AND COMPLIANCE:

RESPONDENT. :

The petitioners in this controversy challenge the findings and conclusions of the report of an investigation conducted by the Office of Fiscal Accountability and Compliance (OFAC) of the New Jersey Department of Education. The report found that petitioner Murphy-Garcia had attempted to thwart OFAC's investigation into her hours of employment, and referred the matter to the New Jersey State Board of Examiners (Board of Examiners) and the Division of Criminal Justice. Based upon OFAC's findings, the Board of Examiners concluded that Murphy-Garcia's certificates should be revoked.¹ Both OFAC's report and the Board of Examiners' determination were appealed. The instant proceeding consists exclusively of the appeal of the OFAC report.

After a six-day hearing in the Office of Administrative Law (OAL), during which two representatives of the New Jersey Department of Education (the Department) and four

¹ The Board of Examiners commenced an action to revoke Murphy-Garcia's certificates, which is still pending – but in abeyance – at the OAL under docket number EDE 1237-12. It relied on OFAC's findings and did not do its own investigation. The record does not indicate whether any action has been taken by the Division of Criminal Justice.

witnesses affiliated with petitioners testified, and over forty exhibits were entered into evidence, the Administrative Law Judge (ALJ) assigned to the case determined that the findings and conclusions of the OFAC report were not supported by the record, and thus recommended that the Commissioner reject the OFAC report. Upon review of the record, Initial Decision of the OAL (Initial Decision), OFAC's exceptions and petitioners' replies thereto, the Commissioner² concurs that the facts do not sufficiently support OFAC's conclusion that Murphy-Garcia single-handedly – *i.e.*, without the knowledge of the Board of Trustees of the Vineland Public Charter School (VPCS) – took action to misinform OFAC and thwart its investigation.

As set forth in the Initial Decision, in February of 2011, the Office of Educational Data (OED) of the New Jersey State Department of Education recorded that Murphy-Garcia had been working the equivalent of 2.7 full-time positions in 1) the Winslow Township and Voorhees Township public school districts and 2) in three charter schools: VPCS,³ Charter-Tech High School for the Performing Arts, and Environment Community Opportunity Charter School.⁴ The OED asked OFAC to investigate.

Thomas Martin of OFAC was assigned the case. To ascertain Murphy-Garcia's hours of employment, Martin interviewed administrators from the schools at which she was employed and requested documents from her various employers, including copies of her 2009-10 and 2010-11 employment contracts for her job at the VPCS. The VPCS's business administrator, Jonathan Houdart, forwarded copies of contracts which had been given to him by

² This matter has been delegated to the undersigned Assistant Commissioner, pursuant to *N.J.S.A.* 18A:4-34.

³ Murphy-Garcia is a founding member of VPCS.

⁴ The record includes a copy of a letter dated July 25, 2010, from several individuals to Deborah Yanez, who was the President of the Winslow Township Board of Education, complaining about the high salary drawn by Murphy-Garcia and questioning how she could be putting in the hours to warrant that salary while also serving four other schools or school districts. *See*, twentieth document attached to the interrogatory answers of Gary Stanker, in the Department's Exhibit P-38. The letter was copied to Governor Christie and two media organizations.

VPCS secretary Colleen Colclough. The copy of the contract for the 2009-10 school year consisted of one page, and the copy of the contract for the 2010-11 school year was three pages long. The contract for the 2010-11 school year indicated that Murphy-Garcia was a full time employee. When Martin compared that contract with Murphy-Garcia's contract with the Winslow Township Board of Education, which also listed her as a full-time employee, Martin set up interviews with VPCS employees to ascertain Murphy-Garcia's actual hours.

Soon after Houdart's transmission of the contract copies, petitioners learned that an error had been made. As Colclough ultimately testified, when she was originally asked to pull Murphy-Garcia's employment contracts, she took them out of a file marked "voided." 5T12.⁵ Since she was not able to find copies of Murphy-Garcia's contracts anywhere else, she thought they must have been misfiled in the "voided" folder. 5T13-14. When Colclough had given Houdart the contract copies, she had not told him that she had retrieved the copies from the "voided" file, 5T22, and he sent them off without reviewing them. 3T159.

After the mistake was caught, on March 11, 2011, Colclough sent Martin an email, which carried a letter signed by Houdart. The letter advised that Houdart was transmitting corrected contracts for the 2009-10 and 2010-11 school years. In the corrected 2010-11 contract, Murphy-Garcia's employment was designated as part-time. Martin was suspicious of the replacement contracts.⁶

⁵ 1T = Hearing Transcript dated January 22, 2013; 2T = Hearing Transcript dated January 31, 2013; 3T = Hearing Transcript dated March 14, 2013; 4T = Hearing Transcript dated March 21, 2013; 5T = Hearing Transcript dated May 24, 2013; 6T = Hearing Transcript dated August 7, 2013.

⁶ The ALJ asked Colleen Schulz-Eskow, of the Department's Charter School Office, whether replacement contracts had ever been submitted by other charter schools, and she testified in the affirmative. 6T71. She further stated that charter school Boards of Trustees have the prerogative to change contracts without the Department of Education's approval. 6T73. If the change is detrimental to the school's financial position, that is revealed when the Department does its annual audit of budgets submitted on March 31 of each year. 6T74.

The record also reveals that in March 2011, Gary Stanker, president of the VPCS Board of Trustees, and the other Board members learned of the issue with Garcia's employment contracts. It is undisputed that 1) Murphy-Garcia undertook to reconstruct her original contracts; 2) on March 9 or 10, 2011, Stanker knowingly signed the reconstructed contracts (OFAC's Exhibits P-9 and P-12) for submission to OFAC; and 3) Murphy-Garcia drafted the March 11, 2011 letter, which was signed by Houdart (OFAC Exhibit P-7) and attached to Colclough's March 11, 2011 email to Martin (OFAC Exhibit P-6), transmitting the reconstructed contracts.

Stanker testified that he executed the contracts after the Board members had conferred with each other informally. 4T59-60. Everyone on the board had understood that, since neither Murphy-Garcia nor the VPCS staff could find the original operative contracts for Murphy-Garcia, she was attempting to produce corrected contracts. 4T200-01. The Board was also aware of the fact that Stanker would sign P-9 and P-12. 4T85. No one felt that it was necessary to have a board meeting, because even if the contracts erroneously sent to Martin had contained incorrect provisions, everyone knew that Murphy-Garcia had always worked part-time. 4T54; 4T59. Further, the Board had consulted with its attorney, Hope Blackburn, who had advised that since no changes were being made to the original terms of Murphy-Garcia's contracts, there was no need for a formal Board resolution authorizing the reconstruction and submission of the contracts. 4T55.

Stanker further recalled that at a March 27, 2011 public Board meeting, about two weeks after Murphy-Garcia's reconstructed contracts had been sent to OFAC, Murphy-Garcia reported her actions to the Board. She advised that she had reconstructed the contracts, had gotten them signed by Stanker and the present and former VPCS business administrators, and

had seen to it that they were forwarded to Thomas Martin at OFAC. 4T162. An excerpt from the minutes of the March 27, 2011 Board meeting, which made reference to Murphy-Garcia's report to the Board, was entered into evidence as VPCS Exhibit R-7.

However, according to Stanker, the submission of the reconstructed contracts did not resolve OFAC's inquiry. Further requests for information were made by Martin, and the Board decided to get a second opinion from different legal counsel about how the Board might handle the problem. 4T201. It was stipulated that the second opinion came from Joan Josephson, Esq. 4T85. During a June 19, 2011 Board meeting, Josephson counseled the Board that it would be prudent for them to formally ratify the March 2011 actions of Murphy-Garcia, Stanker, *et al.* by way of a resolution. 4T163-65. The Board did so; its act was memorialized in the minutes for the June 19, 2011 Board meeting. 4T164; P-35.

The record contains other indications that Murphy-Garcia was not attempting to hide from OFAC an improper simultaneous employment in two full-time jobs. According to Martin's final report (OFAC Exhibit P-36), in June 2011 attorney Blackburn had told him that it was always intended that Murphy-Garcia be a part-time employee. (Exhibit P-36 at 8) To support her assertion, Blackburn emailed Martin a copy of the template she had provided to VPCS in June 2009 to serve as the basis of Murphy-Garcia's contract. (Exhibit P-36 at 9) Also, when Martin interviewed VPCS Principal Yvonne Cribbs, Stanker, and two other VPCS board members,⁷ they all told him that Murphy-Garcia had always worked part-time at VPCS. (Exhibit P-36 at 7 and 10) And Randy Ostrow, the business administrator who worked for VPCS in the first half of 2009, testified that the original 2009-10 contract for Garcia, which was lost, was similar to P-33 (a template of P-9, the corrected contract sent to Martin on

⁷ Stanker further testified that he had communicated to Martin at two separate meetings that Garcia was always part-time. 4T149-50.

March 11, 2011) as opposed to the one-page document erroneously sent to Martin on March 3, 2011 (OFAC Exhibit P-4). 3T261-64. Ostrow corroborated that Murphy-Garcia's contract had been drafted by Hope Blackburn, and that it had contemplated part-time employment. 3T264.⁸

Nonetheless, on an unspecified date in August 2011, OFAC issued a report accusing Murphy-Garcia of orchestrating a "hastily developed and ill-conceived plan intended to provide misinformation to the OFAC investigators and thwart the OFAC investigation." (Exhibit P-36 at 11) The report further found that Murphy-Garcia, "of her own accord and without the knowledge or consent of the VPCS Board, undertook the following:

Modified her original employment contracts....

Sought out and received witnessing signatures from both a current subordinate and a former subordinate on incomplete signature pages of those modified contracts via late night emails.

Authored a document to the OFAC that indicated the replacement contracts developed by her were, in fact, the original employment contracts.

(Exhibit P-36 at 11. [Emphasis added.]

In the OFAC report, great weight was placed on a sentence in the March 10, 2011 letter (OFAC's Exhibit P-7) transmitting the corrected contracts to him. That sentence stated: "We have attached the contracts for Dr. Garcia that were in our minute books and also I have certified an excerpt for your records." The "'certified excerpts,'" entered into evidence as OFAC Exhibits P-10 and P-13, are portions of the VPCS Board's June 14, 2009 and May 2, 2010 meeting minutes in which approval of Murphy-Garcia's contracts for the 2009-10 and 2010-11

⁸ Ostrow testified that she did not mind signing Murphy-Garcia's corrected 2009-10 contract (by signing a signature page, OFAC Exhibit P-15, which Murphy-Garcia had scanned and emailed to her) because she knew that there had been such a contract for Murphy-Garcia in 2009. 3T265-66; 3T274. When she signed the corrected contract she was no longer working at VPCS and Murphy-Garcia had no influence over her. 3T271. She signed the emailed signature page (P-15) in 2011 to replace the 2009-10 contract, which could not be found. 3T273-74.

school year are memorialized.⁹ Martin's interpretation of the above-quoted sentence appears to be that Murphy-Garcia was purporting to send him the exact physical contracts authorized by the VPCS Board at its June 2009 and May 2010 meetings. The Commissioner is not persuaded that the above referenced language necessitates such an interpretation.

Considering the foregoing, the Commissioner agrees with the ALJ's finding that:

...the VPCS Board was fully aware and authorized the action taken by Garcia to correct her employment contracts, consistent with the advice of legal counsel. Garcia collaborated with the Board and school administrators to effectuate the correction plan; albeit in an informal or piecemeal way. The overarching intent was to recreate the lost contracts with the same terms and conditions that existed at the time they were originally approved by the Board.

(Initial Decision at 11)

Thus, as stated above, the Commissioner must reject the conclusions of the OFAC report, which attribute to Murphy-Garcia an intent to mislead Martin and thwart the OFAC investigation into her hours.¹⁰

The Commissioner notes that the bulk of OFAC's exceptions to the Initial Decision pertain to Murphy-Garcia's and Houdart's invocation of the Fifth Amendment to the Constitution. The Commissioner has reviewed the exceptions, but rejects them. First, the Commissioner declines to draw a negative inference relating to Houdart's decision to terminate his testimony. While the possibility that his statements about his transmittal of incorrect contracts might subject him to criminal sanctions seems remote, it nonetheless existed by virtue of OFAC's transmittal of its report to the Division of Criminal Justice. The Commissioner is further unpersuaded that a negative inference flowing from Houdart's actions can be imposed

⁹ While the approvals disclose the salary to be received by Murphy-Garcia, they do not mention her hours.

¹⁰ Since the OFAC report did not expressly allege impropriety by the VPCS Board, the Commissioner does not find it necessary to comment on the ALJ's analysis of the Board's actions *vis-à-vis* the Open Public Meetings Act, *N.J.S.A. 10:4-15 et seq.* See, OFAC's Exception VI to the Initial Decision.

upon Murphy-Garcia. Most importantly, however, is that Houdart's testimony would add little to this controversy. It is undisputed that Murphy-Garcia gave Houdart reconstituted contracts to transmit to Martin, and that Stanker testified that the Board knew of Murphy-Garcia's actions. Houdart is not in a position to divine what the Board did or did not know.

For similar reasons, the Commissioner is not inclined to draw a negative inference from Murphy-Garcia's invocation of her Fifth Amendment right not to testify against herself. OFAC does not argue that Murphy-Garcia did not have that right, but rather argues that it was abrogated by her responses to discovery. The Commissioner is, however, reluctant to withhold from Murphy-Garcia a constitutional right in a controversy where her testimony is unnecessary to a resolution. Murphy-Garcia does not deny reconstituting the contracts and asking Board President Stanker and the former and present VPCS business administrators to execute the signature pages of same. The chief issue is whether she acted clandestinely, or with the knowledge of the VPCS Board. Stanker testified multiple times that the Board knew that Murphy-Garcia was trying to reconstruct the lost contracts and send them to Martin. Murphy-Garcia is in no position to rebut Stanker's representation about what he and the Board knew.

Notwithstanding that the Commissioner finds the OFAC report's conclusions about Murphy-Garcia to be unsupported, the Commissioner finds much of concern in the OFAC report. It is clear that the investigation was a very frustrating exercise for Martin. Multiple copies of contracts for Murphy-Garcia were given to OFAC and the Charter School Office of the Department of Education. The copies conflicted in every respect – from format and content to dates and signatures – and Martin's interviewees did not offer much clarity. While the Commissioner finds that the reconstructed contracts submitted to Martin on March 11, 2011, were valid representations of Murphy-Garcia's relationship with VPCS, he is dismayed at the

disorganization evident in VPCS's administration, especially as regards record-keeping, and the casual manner with which the Board oversaw the administration.

The record does not include any direct evidence that Murphy-Garcia reconstituted the VPCS contracts to hide financial irregularities. Indeed, Stanker testified that Murphy-Garcia, who was a founder of VPCS, donated back to VPCS all of her 2009-10 salary and half of her 2010-11 salary. 4T167 However, the Commissioner is concerned about the collective number of hours of Murphy-Garcia's employment.

Colleen Schulz-Eskow, of the Department's Charter School Office, testified that it was common for business administrators – but not lead personnel – to work at multiple charter schools. 6T52-53. Since she was aware that – at the time VPCS was starting up – Murphy-Garcia was doing business administrator work at other schools or districts, Schulz-Eskow questioned Murphy-Garcia about whether her time and commitment to VPCS would be sufficient to adequately oversee the school. 6T44-47. Ultimately, when the DOE approved VPCS, they were not worried about Murphy-Garcia being at the school on a part time basis. 6T55.

It is not clear to the Commissioner, however, whether Schulz-Eskow was aware of how many schools employed Murphy-Garcia. If she was, it appears that she did not share the concerns of her Department of Education colleague, Martin, about the implications of Murphy-Garcia's multiple employment. However, as a matter of common sense, the Commissioner must register misgivings about Murphy-Garcia's – or anyone else's – ability to actively devote to each of five employers the respective number of hours of work which were promised them. It is likely that such a concern motivated OFAC's continuation of its investigation into Murphy-Garcia's employment.

In sum, after a full review of this case, the Commissioner rejects the specific conclusions about Murphy-Garcia on page 11 of OFAC's report. However, the Commissioner cautions petitioner VPCS to improve its business practices and administrative oversight and to ensure that its contracts are properly memorialized and that all of its records are secure and accessible. The Commissioner also reiterates his concern that petitioner Murphy-Garcia may have contracted with more employers than she can properly serve.

Accordingly, the petition seeking rejection of the August 2011 OFAC report is granted, subject to the Commissioner's cautions contained herein. Copies of this decision will be forwarded to the New Jersey State Board of Examiners and the Division of Criminal Justice.

IT IS SO ORDERED.¹¹

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: April 4, 2014

Date of Mailing: April 8, 2014

¹¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).