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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.



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2. The Director of Audit (Law) violated federally protected rights under the FMLA by creating the evaluation document as retaliation because the Complainant is on re-certified intermittent FMLA and unable to work the number of hours other employees work.
3. The Inspector General (Chiu) violated federal protected rights under the FMLA by intimidating the Complainant into making up work hours for the times taken to care for infant sons while using earned sick leave, annual leave, or approved intermittent FMLA.
4. The Director of Audit (Law) violated federally protected rights under the FMLA by not allowing her to attend Continuing Professional Education (CPE) seminars.
5. The Inspector General (Chiu) violated the Health Insurance Portability and Accountability Act (HIPAA) or made other unlawful disclosure of personal medical information in disclosing information related to the Complainant's high-risk pregnancy in a public record.
6. The Inspector General (Chiu) violated School Board Policy 3.19 and 3.02 by performing a "*loud interrogation...where other employees heard*" pertaining to the status of an active project.
7. The Director of Audit (Law) violated School Board Policy 3.19 and 3.02 by reading the evaluation document with demeaning commentary. The content of the evaluation document included statements that the Complainant states were demeaning and intimidating.
8. The Director of Audit (Law) violated School Board Policy 3.08 and 3.30 by creating an evaluation document and not including all parts of the evaluation in the Human Resources personnel files.

To determine whether the allegations were substantiated, we reviewed policies, procedures, and any other records deemed appropriate. We also conducted interviews of staff and other parties, as needed. Our investigation was performed according to the *Principles and Standards for Offices of Inspector General* and *The Florida Inspectors General Standards Manual* from The Commission for Florida Law Enforcement Accreditation.

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

date of February 2, 2015. (See *Seymour Memo Intermittent FMLA dated November 24, 2014.*)

9. On July 6, 2015, Ms. Seymour received a performance evaluation with an overall rating of "At Expectation." (See *Seymour 2015 Performance Evaluation.*)
10. On December 8, 2015, Ms. Seymour met with Mr. Ernie Camerino (Camerino), HR Manager, to discuss Mr. Chiu conducting a "loud interrogation" of her about an assigned project taking "six months" to complete and to inquire if she is expected to "make up work hours while on intermittent FMLA." During this meeting, Seymour declined Mr. Camerino's offer to intervene pertaining to the intermittent FMLA leave. (See *Seymour's letter to Dr. Elvis Epps dated June 6, 2016, page 2, paragraph 5.*)
11. On May 24, 2016, Ms. Seymour attended a meeting with Mr. Law pertaining to her 2016 performance evaluation. (See *Seymour 2016 Performance Evaluation.*)
12. On May 24, 2016, Ms. Seymour contacted Mr. Camerino to discuss some pressure she had been receiving from her department and her performance review. Mr. Camerino referred her to the Office of Professional Standards. (See *Email from Seymour to Camerino dated May 24, 2016 and Ernie Camerino IG Investigative Contact Memo dated April 13, 2017, page 2, paragraph 1.*)
13. Ms. Seymour met with Dr. Elvis Epps (Epps) of the Office of Professional Standards on multiple occasions. One of those meetings was held on May 31, 2016. Per Dr. Epps, the initial contact was to simply ask a question. However, by the third meeting, the circumstance had grown from being a simple question to an extensive scenario and included complaints filed by former staff members. (See *Dr. Elvis Epps' IG Investigative Contact Memo dated April 15, 2017, page 1, paragraphs 3-4, and Seymour's letter to Dr. Elvis Epps dated June 6, 2016, page 1, paragraph 1.*)
14. On June 6, 2016, Ms. Seymour wrote a seven page letter to Dr. Epps to provide a timeline of events. As Ms. Seymour was now citing workplace issues, he referred Ms. Seymour to Ms. Deneen Wellings (Wellings), the EEO Coordinator within the Office of Professional Standards. (See *Seymour's letter to Dr. Elvis Epps dated June 6, 2016, page 1, paragraph 1 and Dr. Elvis Epps' IG Investigative Contact Memo dated April 15, 2017, page 1, paragraph 6.*)
15. On June 8, 2016, Ms. Seymour wrote this complaint to submit to the Board Chairman, Mr. Chuck Shaw. (See *Seymour Complaint dated June 8, 2016.*)
16. On June 16, 2016, Ms. Seymour met with Ms. Wellings pertaining to the information she had previously discussed and submitted to Dr. Epps. (See

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. *Pagel v TIN, Inc., 695 F.3d 622 (7th 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*

such, are required to fulfill the duties of their positions regardless of the number of hours worked in a given workweek.” Exempt employees are paid to do the job, not by the hour.

The court ruled in *Walton v Ford Motor Co.*, 424 F.3d 481, 485 (6th Cir., 2005), that to establish a prima facie case of FMLA interference under 29 CFR Part 825, the complainant must allege:

- that she was entitled to FMLA leave,
- that some adverse action by the employer interfered with her right to take FMLA leave, and
- that the employer's action was related to the exercise or attempt to exercise her FMLA right.

The employee must be able to show she was prevented from taking the full 12 weeks of leave guaranteed by the FMLA, denied reinstatement following leave, or denied initial permission to take qualified FMLA leave.

Based on a review of the time and attendance records and interviews with staff of the Office of the Inspector General (OIG) for the School District of Palm Beach County, management has been flexible and accommodating with leave requests. The Complainant did not state or indicate in any way that Ms. Seymour was denied the ability to take leave at any time for FMLA.

The courts ruled in *Metzler v Fed. Home Loan Bank*, 464 F.3d 1164, 1171 (10th Cir. 2006), that to establish a prima facie case of FMLA retaliation under 29 CFR Part 825, the complainant must allege:

- that she was engaged in a protected activity (by taking FMLA leave),
- that the employer took an action that a reasonable employee would have found materially adverse, and
- that there exists a causal connection between the protected activity and the adverse action.

Retaliation claims must establish that the complainant took the FMLA leave and was adversely affected by an employment action based on incidents post-dating (and temporally proximate to) the employer's knowledge of an employee's intent to invoke FMLA rights. The U.S. Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on Retaliation and Related Issues dated August 25, 2016, Section II (B) states, *“the most obvious types of adverse actions are denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, and discharge. Other types of adverse actions may include work-related threats, warnings, reprimands, transfers, negative or lowered evaluations, transfers to less prestigious or desirable work or work locations, and any other type of adverse treatment that in the circumstances might well dissuade a reasonable person from engaging in the protected activity.”*

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.

During this assigned project, from October 24, 2016 through February 16, 2017, Ms. Seymour had used 30.5 hours under protected FMLA leave (actual usage of 4 hours in October, 26.5 hours in November, and 0 hours in December, January, and February). The request and requirement by management to have the project completed was not a request for her to “make up” any time lost due to protected FMLA leave, but to complete a project that had already extended well beyond the deadline.

Ms. Seymour is an exempt employee; she was advised of the critical nature of the deadline, the project had extended well beyond the original deadline, and the project completion was delayed due to time spent delving into areas outside the project’s scope and objectives. Per the FLSA Things to Know document retrieved from the School Board of Palm Beach County’s website, “*exempt employees are salaried employees and, as such, are required to fulfill the duties of their positions regardless of the number of hours worked in a given workweek.*” Further, the extension granted to Ms. Seymour to complete the project far exceeded the hours taken as FMLA leave and would appear to constitute a reasonable adjustment to productivity requirements and quotas to avoid penalizing Ms. Seymour for taking FLMA leave.

Seymour contends that the Director of Audit (Law) acted in a retaliatory manner by denying her requests to attend Continuing Professional Education (CPE) seminars. Seymour is a Certified Public Accountant (CPA). A requirement for maintaining her CPA is to obtain eighty (80) CPE credits every two years. Each year the Florida Institute of CPAs (FICPA) provides hundreds of in-person, online, and self-study CPE events. The Audit Supervisor job description specifies a qualification requirement of being a CPA or Certified Internal Auditor. Seymour provided a copy of a Temporary Duty Elsewhere (TDE) document submitted on September 12, 2016, requesting to attend a seminar for October 28, 2016. (See *Seymour CPE Email dated October 10, 2016 and attached TDE.*) Law rejected the request within the online system and noted the reason for his denial of the request. Law provided an explanation of a business-related schedule conflict as the reason for not approving the request. On October 10, 2016, Seymour emailed Law a request to attend a CPE seminar scheduled for November 4, 2016. Seymour emailed our office on October 10, 2016 to advise that Law was retaliating and was intentionally not authorizing her to attend CPE seminars. Law provided a copy of the TDE submitted by Seymour to attend the seminar. The request to attend the seminar scheduled for November 4, 2016 was approved by Law and Chiu within 24 hours of it being submitted for consideration on October 10, 2016.

Medical Information Disclosure

Ms. Seymour contends that the Inspector General (Chiu) had put her high-risk pregnancy in a public record. The document in question is the proposed 2014-2015 Work Plan presented to the Audit Committee on August 25, 2014. On page 6 of the document, there is a table depicting the calculations of staff resource hours available to utilize in the completion of the proposed Work Plan. The table defines the anticipated hours an average employee will be available to work on actual Work Plan projects based on total

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.

2016 Performance Evaluation

The immediate actions and initial discussions with various parties within the District pertained to the 2016 evaluation Seymour received on May 24, 2016. The performance evaluation consisted of a single page document titled “The School District of Palm Beach County Accomplished Administrative Assessment.” Seymour received a rating of “At Expectation” on that evaluation. She stated Law advised her that the one-page document was more appropriate for her. Law instructed her that if she agreed with the evaluation, to check the box indicating agreement and sign the document. At some point during this meeting, another document (herein referred to as Page 2) was produced for discussion.¹ Law stated he was explicit with each employee that the Page 2 document reflected his notes on items to be discussed about their performance and the document would not be attached to their evaluations when submitted to the Human Resources Personnel Files. Interviews with the other staff of the Office of the Inspector General confirmed that Law clearly indicated to them the Page 2 document included points for discussion and that the document would not be included in their personnel files as part of their performance evaluation.

Documentation of employee performance and conduct is a critical function for effective management. Keeping an accurate record of an employee’s work history is necessary for performance management, employee career development, compensation, discipline, and termination decisions. These documents are for supervisors to have accurate documentation of performance (good and bad) for each of their direct reports. It is a common business practice for this documentation to be maintained outside of a centralized Human Resources Personnel File. Much of the information is used for the creation and completion of official documents upon which personnel actions transpire, which are stored collectively in the centralized personnel files. In fact, in *Poole v Orange County Fire Authority* (August 24, 2015, S215300), the California Supreme Court issued a decision that validates the practice by many supervisors in the public sector of keeping information “working files” as memory aids to be used in preparing employee evaluations and performance plans.

Seymour’s complaint related to wanting personal comments removed from the Page 2 document. Specifically, she was addressing Item No. 2 which states, “*were observed in several occasions that you were dozing off in your office and at CPE seminars/conferences.*” According to Seymour’s complaint, “*Mr. Law’s intent was to intimidate me with demeaning commentary, particularly Item No. 2 of Mr. Law’s notes.*” Additionally she stated, “*this was the first time this had been brought to my attention – at my annual evaluation – when there was no opportunity to provide documentation as to why, at times, I may not have been able to keep alert during a seminar, etc.*” It is a supervisor’s responsibility to provide performance feedback, good or bad. Seymour did not indicate

¹ We are unable to conclusively determine at what point this specific document was presented for review. The staff interviewed stated theirs were all presented prior to their signing of the evaluation instrument, but Ms. Seymour indicates hers was produced after signing.

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

productivity requirements by limiting the employee to a single project at a time and has been generous in the deadlines provided. It is also noted that no adverse action has been applied to or implied to the employee due to or arising from her intermittent FMLA leave. As there was no adverse action, there is no causal connection between the FMLA leave taken and an adverse action. Therefore, the Division of Inspector General's investigation of the Inspector General management violating federal protected rights under the FMLA and the School District of Palm Beach County policies has determined the allegation is **unfounded**.

We conclude *no violation of the Family and Medical Leave Act (FMLA)* has occurred pertaining to the Director of Audit (Law) creating the evaluation document as retaliation because the Complainant 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 employer has made adjustments to productivity requirements by limiting the employee to a single project at a time and has been generous in the deadlines provided. It is also noted that no adverse action has been applied to or implied to the employee due to or arising from her intermittent FMLA leave. As there was no adverse action, there is no causal connection between the FMLA leave taken and an adverse action. Therefore, the Division of Inspector General's investigation of retaliation has determined the allegation is **unfounded**.

We conclude *no violation of the FMLA* has occurred pertaining to the allegation the Inspector General (Chiu) intimidated the Complainant into making up work hours for the times taken under approved intermittent FMLA leave. The Complainant only used 30.5 hours under protected FMLA leave during the entire Gardens School of Technology Arts project, which extended over a period of several months. The request and requirement by management to complete the project was not based on her use of FMLA leave, but because the deadlines assigned to the project had been extended, there was a significant legal consequence for not completing the project timely, and because the project completion was delayed due to time spent delving into areas outside the project's scope and objectives. Additionally, the School District of Palm Beach County has indicated that exempt employees are salaried employees and are required to fulfill the duties of their positions regardless of the number of hours worked. Therefore, the Division of Inspector General's investigation of intimidating the Complainant into making up work hours for the times taken under approved intermittent FMLA leave has determined that the allegation is **unfounded**.

We conclude *no violation of the Family and Medical Leave Act (FMLA)* has occurred pertaining to the allegation the Director of Audit (Law) acted in a retaliatory way in denying her requests to attend Continuing Professional Education (CPE) seminars. There was a justifiable business reason for not approving the request made for a seminar on October 28, 2016. The request to attend a seminar on November 4, 2016 was approved by Law and Chiu within 24 hours of submission for consideration. Therefore, the Division of

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**.

We conclude *no violation of the School Board Policy 3.08 or 3.30* has occurred pertaining to the allegation the Director of Audit (Mr. Law) violated School Board Policy 3.08 by creating an evaluation document and failed to include all parts of the evaluation instrument in the Human Resources personnel files. The document in question is Page 2 of items discussed during the employee's performance evaluation meeting. Within her complaint, Seymour acknowledged that the Page 2 document was, in fact, Law's notes. It is a standard business practice to use talking points to ensure all pertinent items are discussed during a performance evaluation meeting, but use of this form of document does not necessarily make the document an actual part of the evaluation. Additionally, it is business appropriate for supervisors to maintain "desk files" on employee performance and conduct. Therefore, the Division of Inspector General's investigation has determined the allegation is **unfounded**.

E. RECOMMENDATIONS

Notwithstanding our determination in this regard, we believe several recommendations are warranted. They are as follows:

We recommend the Inspector General take precautionary measures to remove obstacles within the office that could lead to a negative work environment. It was noted during the investigation that there are some concerns that the office is quiet, stressful, serious, and at times uncomfortable. It was also noted that there is little interaction between the staff members on a regular basis, some being attributed to the office layout and how the audit assignments are done. It is strongly encouraged that the Inspector General find ways to encourage open participation and interaction, bolster a team environment, and find ways to enhance employee morale.

We recommend the District establish mandatory training for all Office of Inspector General supervisors, that includes interpersonal and communication skills, documentation practices and guidelines, addressing personnel performance issues when first observed, and monitoring the working environment. As much of the investigation centered around supervisory and communication skills, it would be advantageous if the supervisors were well versed in what to look for and how to handle problems in the work environment. It is an essential skill for supervisors to be aware of how they and their communication is received and perceived by their staff. Additionally, as employment laws change, it is beneficial to provide supervisors refresher courses on best practices for staff management.

The Honorable Chairman and Board Members
of the School District of Palm Beach County
July 31, 2017
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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 line extending to the right.

Hector Collazo Jr.
Inspector General/Chief Audit Executive

cc:

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