

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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February 22, 2016

John B. King, Ph.D.
Acting Secretary
U.S. Department of Education
400 Maryland Ave, SW
Washington, D.C. 20202

Dear Dr. King:

The Department is turning a blind eye to serious internal ethical problems. From fiscal years 2012 through 2015, the Inspector General (IG) has conducted and closed ten investigations involving *senior* Departmental officials (defined as GS-15 level or higher).¹ The IG's investigations demonstrate a concerning pattern of insufficient punishment by the Department; one that allows senior staff to remain in positions of leadership and influence.

In one instance, a GS-15 employee was accused of sexually harassing three contract employees and lying to a supervisor when questioned about the allegation.² While the IG substantiated the allegation, the Department of Justice declined the matter, leaving punishment in the hands of the Department.³ Despite the serious nature of this substantiated allegation, the Department only suspended the GS-15 employee for twelve days.⁴

The IG also identified eighteen Department employees, including three members of the Senior Executive Service (SES) and five GS-15s, who appeared to violate the Hatch Act.⁵ The Office of Special Counsel eventually concluded that two of the GS-15s and one of the SES staff violated the Hatch Act and administered a written warning.⁶ When considering administrative action, the Department merely provided written counseling and additional Hatch Act training.⁷

Another SES employee allegedly: 1) misused his position and authority to circumvent the hiring process and filled positions with people he worked with prior to being hired by the Department; 2) retrieved a standard letter sent to the Secretary of Education for signature, altered

¹ U.S. Dep't of Educ., Office of Inspector General, Information Request provided to H. Comm. on Oversight and Gov't Reform Chairman Jason Chaffetz on Feb. 12, 2016.

² U.S. Dep't of Educ., Office of the Inspector General (11-000486) (Jan. 25, 2012).

³ *Id.*

⁴ *Id.*

⁵ U.S. Dep't of Educ., Office of the Inspector General (09-110123) (Jan. 25, 2012).

⁶ *Id.*

⁷ *Id.*

the letter, and signed the letter himself; and 3) directed work to be performed by a Department vendor that resulted in the Department receiving a bill for work it was not authorized to pay for.⁸ In this case, the Department of Justice again declined, and the employee retired before any action could even be carried out.⁹

The IG also determined that a Special Government Employee (SGE) attempted to secure a contract for his non-government employer; however, the SGE had obtained ethics guidance from the Department's ethics official and attempted to follow it.¹⁰ In other words, the ethics guidance the Department gave was insufficient, which caused the inappropriate conduct by the SGE in the first place. As a result, the IG referred the matter to the Department based on its own procedural weaknesses, and not for action against the SGE.¹¹

Additionally, the IG substantiated evidence that twelve federal laws, regulations and directives may have been broken by Mr. Danny Harris, the Department's Chief Information Officer (CIO), including perjury and intentionally failing to report outside income on his tax returns.¹² Under your leadership, Mr. Harris received, as discipline, written ethics guidance that was woefully inadequate, and a mere three pages in length.¹³ On February 19, 2016, Mr. Harris announced his retirement from the Department before any additional action could be carried out.

Setting a strong example that these types of behavior will not be tolerated at the Department is important, now more than ever before. When you were called upon to make the final determination on how to discipline Mr. Harris, you chose inadequate verbal and written guidance, perpetuating a culture of ethics failures and putting the interest of federal insiders over the best interests of the students the Department is supposed to serve.

As current Acting Secretary and the President's nominee for Secretary of Education, you have the ability to reset the tone for the Department. You can send a strong message to Department staff that nobody is above the law, and that all staff must conduct themselves in a manner that is befitting public servants, focusing first and foremost on promoting student achievement.

⁸ U.S. Dep't of Educ., Office of the Inspector General (11-041375) (Aug. 30, 2013).

⁹ *Id.*

¹⁰ U.S. Dep't of Educ., Office of the Inspector General (12-000510) (Apr. 26, 2013).

¹¹ *Id.*

¹² U.S. Dep't of Educ., Office of the Inspector General, Office of Investigation Services, Report of Investigation Concerning: Danny A. Harris, Chief Information Officer (11-000468) (Apr. 2, 2013) (hereinafter "Harris ROI"). These 12 Fed. laws, regulations and Departmental directives are: 18 U.S.C. § 1001, False Statements; 18 U.S.C. § 1621, Perjury Generally; 5 U.S.C. § 3110, Employment of Relatives; 31 U.S.C. § 1301(a), Purpose Statute; 26 U.S.C. § 7203, Willful Failure to File Return, Supply Information, or Pay Tax; 5 C.F.R. § 2635.101, Basic Obligation of Pub. Serv.; 5 C.F.R. §§ 2635.501 and 502, Impartiality in Performing Official Duties; 5 C.F.R. §§ 2635.701, 702, and 704, Misuse of Position; 5 C.F.R. § 2635.809, Just Financial Obligations U.S. Dep't of Educ. PMI 310-1: Employment of Relatives; OCIO 1-104, Personal Use of Gov't Equipment and Info. Resources; Potential Contracting Improprieties, Fed. Acquisition Regulation, Parts 3 and 6.

¹³ Memorandum from Susan Winchell, Assistant General Counsel for Ethics, to Danny Harris, Chief Information Officer, on Follow-Up Ethics Guidance (Jul. 9, 2015).

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Given the serious allegations raised in the ten IG investigations involving senior staff in positions of leadership and influence, I urge you to reconsider appropriate administrative action in these cases, and take steps to ensure that the Department creates a strong culture of accountability and ethical behavior.

Please contact Katie Bailey of my staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Chaffetz", written in a cursive style.

Jason Chaffetz
Chairman