



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF EDUCATION (DOE)

TITLE: DOE MOONLIGHTING

CASE ID: 2018-11-0306

DATE: February 13, 2019

The Inspector General's Chief Legal Counsel, Tiffany Mulligan, after an investigation by Special Agent Mike Lepper reports as follows:

The Indiana Office of Inspector General (OIG) investigates potential criminal activity and Code of Ethics violations within the executive branch of state government. Ind. Code § 4-2-7-3. The OIG is statutorily charged with recommending policies to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code § 4-2-7-3(2). It also is charged with providing advice to agencies on developing, implementing and enforcing policies and procedures to reduce the risk of fraudulent or wrongful acts within the agency. Ind. Code § 4-2-7-3(8).

On November 11, 2018, the OIG received a complaint alleging that an employee (Employee) with the Indiana Department of Education (DOE) was working both as a full-time employee of DOE and as a full-time employee of a private company (Company). The complaint further alleged that the Employee was telling people that she had resigned from DOE and was working as a Company employee; however, she was still employed with DOE.

Special Agent Mike Lepper conducted an investigation. During the course of the investigation, Special Agent Lepper interviewed several DOE employees, including the

Employee and her supervisor. He also communicated with human resources personnel at both the Company and the Indiana State Personnel Department (SPD). Special Agent Lepper obtained and reviewed several documents, including DOE and SPD policies, the Employee's timesheets, emails and her personnel records.

Special Agent Lepper learned that the Employee began full-time employment with DOE beginning in March of 2018. The Employee's supervisor at DOE stated that she was expected to work from 8:00 a.m. to 4:30 p.m., but she sometimes worked different hours due to the needs of the office. He also indicated that she was performing satisfactory work at DOE.

The Company hired the Employee full-time starting June 11, 2018. A human resources representative at the Company indicated that she needed to be at the Company's office to perform her job because she dealt with customers. He also stated she was expected to work at the Company's office five days a week from 8:00 a.m. to 4:30 p.m.; however, she sometimes worked from home in the evenings. The Company's representative stated that the Company did not maintain attendance records for the Employee, except for when she took a vacation day or other paid day off. The Employee's supervisors at both DOE and the Company told Special Agent Lepper that they did not know she was working the other job.

Special Agent Lepper learned that DOE allowed the Employee to telecommute from home. DOE's Employee Handbook includes a Telework Policy (Policy) that allows an employee to telework with the approval of the employee's supervisor and the Chief of Staff. The Policy requires the employee to submit a weekly schedule for his or her supervisor's approval. The schedule must identify the teleworking days and hours, as well as the days at the DOE office. The Policy also requires employees to document teleworking hours worked and a description of the work activities and present it to their supervisors if requested. Special Agent

Lepper obtained a copy of the sign-off sheet where the Employee acknowledged that she received a copy of the DOE Employee Handbook and attended DOE orientation.

According to her supervisor, DOE only required the Employee to come into the office once or twice a month. The Employee stated that her supervisor never told her she had to work certain hours. Her supervisor also indicated that he likely did not have a conversation with the Employee about the hours she was expected to work because she had been working for DOE before he became her supervisor and he assumed she knew the expectations. Neither the Employee nor her supervisor followed the Policy's requirement for a teleworking employee to submit a weekly schedule for her supervisor's approval.

The State of Indiana requires most full-time employees to work a 37.5 hour work week. The Employee's supervisor told Special Agent Lepper that he believed she had 37.5 hours of work to perform each week. He also indicated that she was responsive to DOE emails during her scheduled work hours and participated in phone calls with DOE during the day. According to the Employee's timesheets, she regularly reported 37.5 hours during her time as a full-time DOE employee; however, neither the Employee nor DOE kept records of the actual hours in the day that she worked.

Although Special Agent Lepper confirmed that the Employee was working two full-time jobs in which she was expected to work during the same hours, the OIG has insufficient evidence to support a ghost employment violation under either the Code of Ethics or criminal code. The OIG cannot show that she reported hours for which she did not perform work for the State, in part because both the Employee and her supervisor stated that her supervisor did not clearly articulate the hours she was expected to work, so she could have been working outside of her 8:00 a.m. to 4:30 p.m. schedule. Furthermore, she was performing the work that was assigned to

her, and she was responsive to work calls and emails during the day.

Special Agent Lepper also reviewed whether the Company had a contract or grant with DOE to determine if any of the Code of Ethics conflict of interests provisions were implicated by the Employee's outside employment. He found that the Company had no contracts or grants with DOE during the Employee's full-time employment with DOE; therefore, the conflicts of interests rules were not implicated here.

In summary Special Agent Lepper found insufficient evidence to support a violation of the criminal code or any rule in the Code of Ethics. As a result, the OIG is closing this case for insufficient cause; however, the OIG makes several recommendations to DOE as noted below.

Also, as a result of this investigation, DOE took away the Employee's teleworking privileges. The Employee notified Special Agent Lepper that she resigned from DOE. She also advised Special Agent Lepper that the Company terminated her employment as a result of her failure to inform them of her position with DOE.

Recommendations

Based on the findings from the investigation, the OIG makes the following recommendations to DOE to reduce the potential for Code of Ethics violations in the future and to reduce the appearance of impropriety.

Recommendation 1

DOE has a robust teleworking policy that is included in its Employee Handbook; however, this investigation demonstrated that DOE supervisors are not always enforcing the Policy. The OIG recommends that DOE remind all supervisors of the Policy and of the supervisor's responsibilities under it. If a supervisor is allowing an employee to telework, the supervisor should ensure the employee is submitting his or her weekly schedule for the

supervisor's approval pursuant to the Policy. This will require the supervisor to clearly articulate his or her expectations for the employee's working hours to the employee. A supervisor should also require a teleworking employee to document his or her teleworking hours.

Recommendation 2

The OIG recommends that DOE remind supervisors to monitor employees' workloads to ensure that they are assigning a full 37.5 hours' worth of work during every work week. Supervisors should require telework employees to record the tasks that they performed during specific working hours and submit the information to their supervisors. The supervisors should regularly review the submissions to ensure that employees are completing the expected work tasks in a reasonable time period.

Recommendation 3

The OIG recommends that DOE consider implementing an outside employment policy that would require DOE employees to disclose any paid outside employment to their supervisors. The policy also could require employees to obtain their supervisors' approval for certain outside employment, such as any full-time position or position involving conflicting work schedules. The policy should clearly articulate both the employee's and the supervisor's responsibility under the policy and should be distributed to all DOE employees. The policy also should require employees to seek advice from their ethics officer, the OIG, or the State Ethics Commission if the outside employment raises a potential conflict of interests.

Dated: February 13, 2019

APPROVED BY:



Lori Torres, Inspector General