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BY:

Robert J. Cicchino, Director
Office of Fiscal Accountability and Compliance
State of New Jersey
Department of Education
PO Box 500
Trenton, New Jersey 08625-0500

RE: Vineland Public Charter School and Dr. Ann Garcia
OFAC Case No. INV-011-11

Dear Mr. Cicchino,

On behalf of the Board of Trustees of the Vineland Public Charter School ("Board of Trustees" or "VPCS") and Dr. Ann Garcia, the Executive Director for VPCS, please accept the following submission as our appeal of the Report of Examination, August 2011, Case No. INV-011-11 ("Report"), regarding allegations questioning the conduct by Dr. Garcia arising from an investigation by the Office of Fiscal Accountability and Compliance ("OFAC") of Dr. Garcia's employment status and employment contracts with VPCS.

With all due respect, the conclusions by OFAC that Dr. Garcia intended to provide misinformation to OFAC in an attempt to impede its investigation, and that she knowingly provided a false attestation to a signature on an employment contract, have no factual basis. OFAC's conclusions are the product of raw speculation stemming from an overzealous investigative team that presumed Dr. Garcia's guilt from the start, and then had to find justification for its investigative efforts when the suspicions of conflicting employment positions was quickly found to be false. The entire investigative process leading to the Report, including the decision by OFAC to require *all* school districts and charter schools that employ Dr. Garcia to publicly discuss the Report (even though there was no corrective action recommended and the investigation dealt only with VPCS), as well as the referral of the Report to the Board of Examiners and Division of Criminal Justice, illustrate a public agency abusing its investigative authority.¹ Further, OFAC has unjustifiably tainted the reputation of Dr. Garcia through specious conclusions drawn from faulty analysis of the facts, and has placed her future employment opportunities in jeopardy. What permeates the Report is an investigations unit that seemed overly concerned with the multiple employment positions held by Dr. Garcia that is perfectly legal, and disappointed when it uncovered that there was absolutely no conflict between Dr. Garcia's employment

¹ Interestingly, the regulatory authority that OFAC relied upon to order the various school districts and charter schools to public discuss the Report, even though the Report had nothing to do with the operations of those educational institutions or Dr. Garcia's performance, does not even reference charter schools. See N.J.A.C. 6A:23A-5.6 ("Any school district or county vocational school district...") Thus, it is questionable whether OFAC even has the authority to order VPCS to publicly discuss the Report. Despite this inconsistency, the Board has already discussed the Report during a public meeting, and the confirming resolution will be submitted shortly.

as the Executive Director of the VPCS and her role as the School Business Administrator for the Winslow Township Board of Education. This disappointment motivated the compulsion to take a parting and unsubstantiated shot against Dr. Garcia that has severely damaged her reputation. Further, it appears Dr. Garcia was penalized for following the advice of counsel and choosing not to answer questions during the investigation. Additionally, the Report is fixated that certain communications were sent to OFAC *unsolicited* (as if that was itself a crime) and either late at night or early in the morning, ignoring that Dr. Garcia responds to OFAC dealing with its investigation of VPCS could not and did not interfere with her full time position with the Winslow Township School District. (We are sure that had Dr. Garcia's communications been sent during regular business hours, she would have been cited for doing VPCS work on Winslow Township School District time--a classic Catch-22.)

Moreover, and for no valid reason whatsoever, OFAC finds nefarious intent in Dr. Garcia attempting to quickly rectify an error as to the status of her employment relationship with VPCS and to point out that the contracts previously sent to OFAC were not the correct contracts for the 2009-2010 and 2010-2011 school years. That effort, which resulted in the *actual* contractual relationship between Dr. Garcia and the Board of Trustees being presented to OFAC, is mischaracterized as "a hastily developed and ill-conceived plan intended to provide misinformation to the OFAC investigators and thwart the OFAC investigation." To the contrary, rather than "thwarting" the investigation and providing misinformation, the responses provided by Dr. Garcia and VPCS went to the core of the inquiry--was Dr. Garcia being paid simultaneously out of public funds for two full-time jobs? Or, as the Report noted, "Based upon the contracts for the VPCS and Winslow, it appeared as though Dr. Garcia simultaneously held two full-time employment positions. The OFAC then deemed it necessary to further its investigation *to determine if a conflict of interest existed.*" (emphasis added). Given that the focus of the investigation was the employment status of Dr. Garcia vis-à-vis the Board of Trustees (juxtaposed with her full-time employment with Winslow), the information and documents provided to OFAC that established beyond doubt, and to which OFAC concedes, that the employment relationship has always been part time, was accurate and responsive in all respects.

More specifically, there is no evidence uncovered during the investigation to support the conclusion that any "misinformation"² was provided to OFAC, let alone a conscious intent to do so. To the contrary, every piece of information supplied to OFAC through interviews and responses to document requests showed that the Executive Director position is, was and always intended to be a part-time position (despite what may have been reported to the Office of Education Data). That information was accurate. The employment contracts for 2009-2010 and 2010-2011 school years that were initially supplied to OFAC on February 28, 2011 were reported to OFAC as being incorrect. That correction proved to be accurate as well. It was represented to OFAC that those contracts that were initially provided through administrative error came from a file marked "voided contracts." There is nothing in the Report to suggest that representation was "misinformation." If OFAC had bothered to interview the administrative assistant (Donna Colclough) who physically obtained the contracts from this voided

²The use of the ambiguous phrase, "intend to provide misinformation" is troublesome. There is no clear statement as to what misconduct is attributable to Dr. Garcia. Is OFAC concluding that Dr. Garcia is guilty of an intentional misrepresentation akin to fraud? Is she accused of a crime of obstruction of justice? Or has she been found guilty of providing simply inaccurate information? Regardless of the semantics, there is nothing in the Report to support any conclusion that Dr. Garcia intentionally misrepresented any fact to OFAC, or intentionally tried to mislead OFAC in any aspect.

contracts file, it would have found that fact to be accurate as well. The signed contracts that were supplied to OFAC pursuant to the March 10, 2011 correspondence also accurately reflected the terms and conditions of employment between the Board of Trustees and Dr. Garcia, and accurately stated the intended contractual relationship between the parties. Indeed, the Report fails to mention that the "replacement contracts" were exactly the same as the draft template contracts provided by Hope Blackburn, Esq., attorney for the Board of Trustees, back in June 2009. Rather than being labeled "replacement contracts" as if to imply that the agreements were entirely made up after the fact, the documents that were provided to OFAC on March 10, 2011 that accurately reflected the legal relationship between the parties from the beginning should have been termed "original contracts" since those agreements reflected the true and legally binding employment relationship of Dr. Garcia and the Board of Trustees. In the face of all these accuracies and truths, and rhetorically speaking, exactly what "misinformation" did Dr. Garcia supply as to her part-time status with VPCS?

Nor is there any proof that Dr. Garcia "thwarted" the investigation. Again, the focus of the inquiry was the employment relationship between Dr. Garcia and the Board of Trustees. Every individual interviewed by OFAC reported that the relationship was part time. When it was discovered that the employment contracts that were initially sent to OFAC were inaccurate,³ contracts that reflected the true intent of the parties and which contained the governing terms and conditions of employment that both sides agreed to were submitted. Simply put, there is no evidence that Dr. Garcia, either directly or indirectly through any other party, impeded any aspect of the investigation.⁴ If her decision, on the advice of counsel, not to speak to the investigation team is the only basis for this conclusion, than OFAC is seriously misguided. There is no statutory provision, no regulation, no notice, and no procedural due process protections provided by OFAC regarding any obligation for individuals to respond or not respond to questioning by OFAC investigators. The rules are simply made up as the individual investigators proceed with their inquiry. If material is provided to OFAC voluntarily to correct an administrative error, that effort is chastised in italics and underlined font as being "unsolicited." When OFAC threatened to come to the house of Randy Ostrow, the former Business Administrator for VPCS, her decision to instead come to OFAC offices to avoid such an encounter is somehow called "voluntary."⁵ Furthermore, and given OFAC's decision to refer this matter to the Division of Criminal Justice for review and the overall abuse of authority exhibited herein by OFAC, the advice of counsel received by Dr. Garcia to not speak to the investigators proved to be well founded.

³ So the record is clear, the 2009-2010 one page contract that was initially provided to OFAC on February 28, 2011 in the amount of \$50,000 did not mention whether Dr. Garcia's employment was full time or part time. It was only the three page contract for the 2010-2011 school year in the amount of \$60,000 that referenced Dr. Garcia's employment hours as being 8:00 am to 4:00 pm Monday-Friday.

⁴ Curiously, in its Executive Summary OFAC uses the adverb "persuaded" in describing Dr. Garcia's efforts to have Randy Ostrow and Jonathan Houdart witness her signature on the 2009-2010 and 2010-2011 contracts, all in the context of sinister late night emails sent by Dr. Garcia. Yet the Report indicates no evidence that these two business administrators were somehow coerced or were subject to any undue influence in simply being asked to witness Dr. Garcia's signature on contracts that both sides agreed were the original contracts.

⁵ We have also been made aware that OFAC investigators, under false pretenses, lured Mr. Houdart into the interview on May 24, 2011 while he was at the offices of the County Business Administrator. Such ambush tactics are inconsistent with due process.

There are three specific reasons cited by OFAC to justify its conclusion of some “hastily developed and ill-conceived plan” intended to provide misinformation and thwart the investigation, all of which are unfounded. See page 11 of the Report. First, OFAC claims that Dr. Garcia modified her original employment contracts on her own accord and without the knowledge or consent of the VPCS Board. This is not correct. There was no modification of any contractual term. The documents presented to OFAC on March 10, 2011 contained the actual terms and conditions of employment that governed Dr. Garcia’s position as the Executive Director from the beginning of her tenure. The President of the Board of Trustees was a willing participant and had full knowledge of the efforts to newly sign off on the original contracts that correctly confirmed the legally binding employment relationship between the Board of Trustees and Dr. Garcia. The other members of the Board of Trustees had knowledge of and fully supported these actions. The Board of Trustees Solicitor was also aware of these efforts. If any Monday morning quarterbacking is due, it was the Board of Trustees delay in not confirming this action until its June 19, 2011 meeting.⁶ What should not be lost, however, is that while the June 2011 ratification by the Board of Trustees could have been done sooner, the fact remains that the Board of Trustees agreed with everything done by its President, its School Business Administrators, and its Executive Director, and specifically confirmed every fact as presented by Dr. Garcia.

Second, OFAC concluded that Dr. Garcia, on her own accord and without the knowledge or consent of the VPCS Board, sought out and received witnessing signatures from the former and current school business administrator on these modified contracts via late night emails. As noted above, there were no “modified” employment contracts created. Also noted above, Dr. Garcia acted with complete transparency and support from the Board of Trustees. There is no basis for concluding anything due to the timing of an email. We fail to see the significance of the reference to an “incomplete signature page.” Neither Mr. Houdart nor Ms. Ostrow were cited for doing anything wrong in separately signing off as witnessing the signatures of the President of the Board of Trustees and of Dr. Garcia, which is often the case when documents can be scanned back and forth so easily via email attachments.

Lastly, OFAC concluded that Dr. Garcia, on her own accord and without the knowledge or consent of the VPCS Board, “authored a document to OFAC that indicated the replacement contracts developed by her were, in fact, the original employment contracts.” Again, there is no basis for the conclusion that Dr. Garcia acted unilaterally. Did the document that sets forth the 2009-2010 employment contract that was forwarded to OFAC on March 10, 2011 exist as of the June 14, 2009 Board of Trustee meeting in which Dr. Garcia was appointed Executive Director for VPCS? Of course not. Did the document that sets forth the 2010-2011 employment contract that was forwarded to OFAC on March 10, 2011 exist as of May 2, 2010, the day the Board of Trustees took action to reappoint Dr. Garcia as its Executive Director? No. Did these documents set forth, word for word, the *original* employment agreements between the parties? A resounding Yes.⁷ That is what was presented to OFAC by Dr. Garcia, and which was confirmed by the most important party to the legal transaction, the Board of Trustees.

⁶ I have been advised that the Board’s decision not to act sooner to ratify the actions was due to advice of its former Solicitor.

⁷ We believe 2009-2010 and 2010-2011 employment contracts for Dr. Garcia did in fact exist as of June 14, 2009 and May 2, 2010, respectively, and were fully signed by all parties. We further believe these documents were lost during the move of the VPCS to its present location. The OFAC investigators never inquired of Ms. Randy Ostrow regarding these circumstances.

Finally, as to conclusion that Dr. Garcia *intentionally* and inappropriately witnessed a signature on Ms. Ostrow's employment agreement that was not Ms. Ostrow's signature, there is absolutely no basis for that finding anywhere in the record. We are unaware of any of the investigators having the qualifications as handwriting experts. If Ms. Ostrow did not recognize her signature on the employment contract, and if indeed the signature was not hers, there is no basis for concluding that Dr. Garcia's actions were anything other than harmless, inadvertent error. Of particular note is Dr. Garcia's decision to not take part in the interview with the investigators is cited as the reason OFAC could not resolve the discrepancy between the issue date of Ms. Ostrow's employment contract (July 1, 2009) and the handwritten date of July 1, 2010. Yet OFAC is magically able to determine that Dr. Garcia acted with intent to improperly attest to Ms. Ostrow's signature without any other proof. To send this matter to the Board of Examiners and the Division of Criminal Justice for such trivial and unsubstantiated accusations further illustrates the overzealous nature of this entire investigation.

Accordingly, for all of the above reasons, the Vineland Public School Board of Trustees and Dr. Garcia appeal the Findings of the August 2011 Report of Examination, Case No. INV-011-11 and respectfully request that OFAC reconsider the conclusions reached in its Report. This was not an investigation, but an inquisition performed with a predetermined result with little regard for the truth, procedural guarantees of due process, the individual rights of Dr. Garcia, or the jurisdictional boundaries of OFAC. Moreover, OFAC takes the unprecedented step to send this matter to the Board of Examiners and Division of Criminal Justice for review. Further showing its raw overreaching and bias toward Dr. Garcia for simply working hard and doing what the Commission of Education has encouraged (the consolidation of administrative services), OFAC sends the Report to other public entities that employ Dr. Garcia and directs that there be a public discussion (which turned into a public lynching) with no basis. While this directive was later rescinded, it shows the overall malicious flavor of how OFAC approached and conducted this investigation. While the initial inquiry came about due to an unusually high FTE report concerning Dr. Garcia, OFAC's investigation determined that the FTE report as presented was in error. It is undisputed by OFAC that at all times, Dr. Garcia held a part time position with VPCS that in no way conflicted with any other public employment. It is also undisputed that the Board of Trustees was aware of all actions taken by Dr. Garcia in response to the investigation, that she did not act unilaterally in any manner, she did not engage in any undue influence, and that she did not provide, nor direct anyone to provide, any untrue statement to OFAC regarding her employment status.

Dr. Garcia, without hesitation and with nothing to hide, addressed an administrative error regarding her employment contracts for the 2009-2010 and 2010-2011 school years by providing OFAC the original employment contracts that accurately reflected her employment status with the Board of Trustees. Unable to accept these representations as the truth since the investigators had already made up their minds that Dr. Garcia's multiple employment positions had to create a conflict of interest, the Report relies upon trivial and irrelevant facts (when emails are sent) and unsubstantiated findings to sour Dr. Garcia's previously unblemished reputation as an educational leader and administrator in New Jersey.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joe Betley". The signature is fluid and cursive, with the first name "Joe" and last name "Betley" clearly distinguishable.

Joseph F. Betley, Esq.
Capehart Scatchard

JFB:mms

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Cc Vineland Public Charter School Board of Trustees
Dr. Ann Garcia
Winslow Township School District