



**AN INVESTIGATION INTO THE RESPONSE BY
THE PUTNAM COUNTY SHERIFF'S DEPARTMENT,
PUTNAM COUNTY DISTRICT ATTORNEY'S OFFICE
AND PUTNAM VALLEY SCHOOL DISTRICT TO
SEXUAL ASSAULT ALLEGATIONS AGAINST A TEACHER**

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STATE OF NEW YORK
COMMISSION OF INVESTIGATION

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EXECUTIVE SUMMARY

In response to a complaint from the father of a teenage girl, the New York State Commission of Investigation investigated the 2003 response of the Putnam County Sheriff's Department, Putnam County District Attorney's Office, and Putnam Valley School District to the girl's allegations that a teacher had sexually assaulted her in 2001. The complaint alleged that the three agencies had failed to adequately and properly investigate, prosecute, or otherwise address the alleged sexual assault.

During the Commission's investigation, it interviewed several witnesses, including the alleged victim, her parents, and her attorney. The Commission also interviewed members of the Sheriff's Department, members of the DA's Office, a former student, and current and former School District employees. The Commission also reviewed documents and other evidence provided by the Sheriff's Department, the District Attorney's Office, the School District, and witnesses. Finally, the Commission held private hearings, during which it called several witnesses. As a result of its investigation, the Commission found that:

- The Sheriff's Department investigator who took charge of the case should have referred the case to the Department's designated sex crimes investigators;
- The same investigator failed to conduct a proper investigation and ultimately abdicated his responsibility to investigate the case;
- The District Attorney's Office and Sheriff's Department failed to refer the alleged victim to the Putnam County Child Advocacy Center as required by a local inter-agency agreement;
- The assistant district attorney assigned to the case failed to take steps to aggressively pursue the investigation, despite her awareness that the Sheriff's Department investigator had failed to conduct an adequate investigation;
- The assistant district attorney gave the alleged victim and her father an appropriate but insufficient explanation as to how the statutes of limitation might affect her ability to prosecute the case;

- A private meeting between the school principal and the teacher alleged to have assaulted the female student was inappropriate and constituted a serious conflict of interest;
- The principal made inappropriate comments to the school staff about how to treat the teacher and the female student;
- The principal failed to respond appropriately to other female students' allegations that the teacher had made inappropriate sexual comments and had acted in other inappropriate ways with them;
- The principal was not completely candid in his testimony before the Commission; and
- Another teacher inappropriately attempted to gain access to the alleged victim's confidential student file.

Based on its findings, the Commission made the following recommendations to address the failures and prevent their recurrence:

- The District Attorney and Sheriff should ensure that the Putnam County Child Advocacy Center inter-agency agreement is enforced;
- The Sheriff's Department should establish a protocol for sex crimes investigations;
- The Sheriff's Department should increase supervision of investigations;
- The District Attorney's Office should review the Commission's criticism of its handling of this case and institute appropriate policies and procedures;
- The School District should establish procedural guidelines in sex abuse cases; and
- The School District should ensure that it complies with State Education Department requirements to report sexual abuse allegations.

INTRODUCTION

Background

On May 20, 2003, fifteen year-old Jane Doe (“Jane”),¹ complained to the Putnam County Sheriff’s Department (“Sheriff’s Department”) that a teacher at the Putnam Valley Middle School (“the Teacher”) had sexually assaulted her in February 2001. The Sheriff’s Department investigated the allegations but did not arrest the Teacher. The Putnam County District Attorney’s Office (“DA’s Office”) separately investigated the allegations and presented them to a grand jury, which voted not to file criminal charges against the Teacher. The Putnam Valley School District (“School District”) also conducted an investigation. During the investigation, the Teacher reached an agreement with the School District whereby he agreed to retire in exchange for the School District’s agreement not to file any administrative charges relating to Jane’s allegations.

Referral to the Commission

In December 2006, the Office of then-Governor George Pataki referred a complaint from Jane’s father (the “Complaint”) to the New York State Commission of Investigation (“the Commission”). The Complaint alleged that the Teacher had sexually assaulted Jane, and also alleged that the Sheriff’s Department, the DA’s Office, and the School District had each failed to adequately and properly investigate, prosecute, or otherwise address the alleged sexual assault. The Commission directed its staff to conduct a preliminary review of the allegations, which included interviewing Jane’s father and gathering additional documents and materials from him, and obtaining and reviewing records from the Sheriff’s Department, DA’s Office, and School District. In March 2007, following its preliminary review, the Commission authorized an investigation into this matter. The specific allegations reported by Jane’s father were:

- Putnam County Sheriff’s Department Senior Investigator/Detective Sergeant (“Investigator”) Donald Killarney, the investigator responsible for this case, was unqualified to conduct the investigation.

¹ Jane Doe’s real name has been withheld to protect her identity.

- Investigator Killarney failed to memorialize the Teacher’s incriminating interview statements, abdicated his investigative responsibility to school officials, and failed to follow the DA’s instructions.
- The District Attorney’s Office failed to uphold its responsibilities in that Assistant District Attorney (“ADA”) Makaria Gallagher, the ADA who was assigned to the case, gave Jane misinformation about the relevant statutes of limitation. Specifically, ADA Gallagher had incorrectly told Jane and her father, at their initial meeting, that the statute of limitation had run on any possible criminal offense associated with the Teacher’s alleged conduct.
- ADA Gallagher failed to monitor the investigation properly, and deliberately undermined the grand jury presentation by introducing irrelevant information, refusing to call pertinent witnesses, and failing to prepare witnesses adequately. She also acted in a hostile manner toward Jane and her father during their appearances before the grand jury. Additionally, ADA Gallagher attempted to discredit Jane and her father by asking about their civil suit against the School District.
- The DA’s Office and the Sheriff’s Department had failed to follow established procedures that called for the involvement of the Putnam County Child Advocacy Center from the inception of a sex crime investigation.
- ADA Gallagher failed to avail herself of a therapist’s offer to testify before the grand jury about the phenomenon of delayed reporting in child sex abuse cases.
- The School District acted improperly in that it engaged in a “cover-up” to protect the Teacher and improperly entered into a retirement agreement with the Teacher.
- School principal Edward Hallisey and the Teacher were friends at the time of Jane’s allegations, and their friendship affected Mr. Hallisey’s handling of the School District’s response. The alleged improper response included a private meeting among the principal, the Teacher, and the President of the Putnam County Federation of Teachers; and,
- Mr. Hallisey made inappropriate comments about Jane during a school staff meeting.

THE COMMISSION'S INVESTIGATION

Investigative Steps

The Commission's investigation focused on the allegations against the Sheriff's Department, DA's Office, and School District.² In so doing, the Commission sought to determine whether those agencies had failed in their respective responsibilities and, if so, what measures should be adopted to correct those failures. Accordingly, the Commission interviewed several witnesses, including Jane, her parents, and her attorney. The Commission also interviewed members of the Sheriff's Department, members of the DA's Office, a former student, and current and former School District employees. The Commission reviewed documents and other evidence provided by Jane's father, the Sheriff's Department, the DA's Office, the attorneys for the School District, and the New York State Department of Education. These documents included transcripts of various legal proceedings, witness statements, medical records, and relevant correspondence. Finally, the Commission held private hearings, during which it called several witnesses.³ The following summary of facts is based upon information gathered by the Commission during its investigation.

Putnam County Sheriff's Department

On May 20, 2003, Jane and her father visited the offices of the Putnam County Sheriff, where they met with Investigator Killarney. Jane told Investigator Killarney that, at some point in February 2001, when she was twelve, she had returned to the Putnam Valley Middle School after an extended absence due to illness.⁴ She said that, on or about February 7, 2001, the Teacher had instructed her to remain after school to take an

² The Commission did not re-investigate the allegations of sexual assault for several reasons. First, the case had already been sent to a grand jury, which voted not to indict the Teacher. Second, significant time had elapsed since the alleged assault. Finally, while the Commission's statutory jurisdiction would have permitted it to look into the assault allegations, *See* N.Y. Unconsol. Law § 7502(1)(c) (McKinney 2000 & Supp. 2008), its focal purposes are to investigate "the faithful execution and effective enforcement of the laws of the state . . ." and "the conduct of public officers and public employees . . ." *See* N.Y. Unconsol. Law § 7502(1)(a) and (b) (McKinney 2000 & Supp. 2008).

³ During one of the hearings, the Teacher invoked his Fifth Amendment right not to testify, and refused to answer the Commission's questions regarding the allegations.

⁴ Jane Doe was recovering from Lyme Disease and Fifth Disease.

exam that she had missed during her absence. Accordingly, she had reported to his classroom at the end of the school day, took her assigned seat, and watched the Teacher close the classroom door. The Teacher offered her a cup of water, which she drank. Within a couple of minutes of drinking the water, she felt light-headed. The Teacher then told her to approach the front of the classroom and answer a question that was written on the board. After she wrote the correct answer on the board, the Teacher put his arms around her and hugged her while he simultaneously wrapped one of his legs around the back of one of her legs and lowered her to the floor. At that point, she became very dizzy and saw “orange and black dots.”⁵ Prior to losing consciousness, Jane observed the Teacher standing over her, unzipping his pants.

Jane told Investigator Killarney that, after regaining consciousness, she saw the Teacher hovering over her, while yelling at her to leave the classroom. Dazed, she noticed that her pants and underwear were around her knees, and that her shoelaces were untied. Jane also felt pain in her vaginal area. After leaving the classroom, Jane found that she was unable to walk and descended a staircase to a lower level bathroom in a sitting position. Once there, she noticed blood and a “milky substance” in and around her vaginal area. She remained in the bathroom for approximately two hours before meeting her mother, who had been waiting outside to take her home. Jane did not tell her parents about the incident on that day.⁶

Although Investigator Killarney’s official title was Senior Investigator/Unit Coordinator for the Sheriff’s Department’s Bureau of Criminal Investigation, at the time he interviewed Jane, he functioned purely in a supervisory capacity. In fact, he had not actively investigated a case in at least fifteen years.⁷ Additionally, at that time, the Sheriff’s Department had designated two trained, experienced investigators to investigate child sex crimes cases. Despite his lack of experience investigating sex crimes,

⁵ Statement of Jane Doe to Investigator Donald Killarney, Putnam County Sheriff’s Department (May 29, 2003).

⁶ According to Jane and her parents, Jane did not tell her parents about the Teacher’s sexual assault until May 2003.

⁷ Testimony of Donald Killarney, Senior Investigator, Putnam County Sheriff’s Department, August 28, 2007 (hereinafter, “Killarney Testimony”), at 12 and 38.

Investigator Killarney nevertheless assigned himself the case. He later told the Commission that he had done so at the request of Jane's father.⁸

At some point during his interview with Jane, Investigator Killarney telephoned Assistant District Attorney Gallagher to tell her about Jane's allegations, and to ask her to come to the Sheriff's Department. ADA Gallagher told the Commission that she was shocked to receive the initial call from Investigator Killarney, and asked him, "Why are you handling this case?"⁹ Investigator Killarney responded that the designated investigators were busy. Later, in his testimony before the Commission, Investigator Killarney offered several explanations for his decision to retain this case. These included internal tensions within the Sheriff's department and office politics.¹⁰ ADA Gallagher told Investigator Killarney to consult with the designated sex crimes investigators about how to proceed with the investigation, yet he never sought their assistance.

ADA Gallagher met with Jane, her father, and Investigator Killarney at the Sheriff's Department a short time later, and learned of Jane's allegations. Both Jane and her father told the Commission that, at the end of the interview, both Investigator Killarney and ADA Gallagher told them that the statutes of limitation had expired on any possible criminal prosecution related to the Teacher's alleged conduct, but that the DA's Office and Sheriff's Department would still look into the matter. After that meeting, according to ADA Gallagher, she told Investigator Killarney to conduct an investigation to corroborate Jane's allegations.

On May 29, 2003, Investigator Killarney interviewed one of Jane's classmates. She described an incident that had occurred two years prior in the school gymnasium, during which the Teacher had wrapped his arms around her. She had reported the incident to the school guidance counselor and the principal.¹¹

⁸ Killarney Testimony at 10.

⁹ Testimony of Makaria Gallagher, Assistant District Attorney, Office of the Putnam County District Attorney, August 28, 2007, at 19.

¹⁰ Killarney Testimony at 20-22.

¹¹ Jane's classmate was also interviewed about this incident during a subsequent investigation of Jane's allegations by the School District. *See infra* at 12.

Investigator Killarney claimed that, relying solely on Jane's physical description of the Teacher, he attempted to find him during the next several days by sitting in his vehicle in the school parking lot. He claimed that he never entered the school because he did not want to alert school officials. He also went to the Teacher's home on a few occasions, but never found him. Finally, on June 2, 2003, Investigator Killarney telephoned the Teacher at home and asked him to come to the Sheriff's Department to be interviewed. The Teacher initially refused to be interviewed but subsequently acquiesced and, later that day, reported to the Sheriff's Department with his wife.

Investigator Killarney interviewed the Teacher with the Teacher's wife present. Investigator Killarney did not take notes or otherwise memorialize the Teacher's statements. During the interview, the Teacher acknowledged that he knew Jane, but denied any wrongdoing. According to Investigator Killarney, the Teacher told him that, on the day of the alleged assault, while he was providing after school instruction to Jane, she started to faint. The Teacher gave Jane a cup of water and she left the classroom. The Teacher told Investigator Killarney that he had never reported these events to anyone.

After Investigator Killarney concluded his interview with the Teacher, another investigator administered a type of lie detection test called a "stress analysis truth verification examination," designed to detect variations in the human voice that reflect anxiety associated with untruthful responses to questions. The Teacher failed the test and requested a second test, which he also failed. Specifically, the test results reflected that the Teacher had responded truthfully to simple questions unrelated to Jane, such as the day of the week, but had responded untruthfully to questions related to whether he had sexual contact with Jane. In spite of these test results, and without asking more probing questions or otherwise seeking a confession from the Teacher, Investigator Killarney determined that he lacked sufficient evidence to arrest the Teacher, and allowed him to leave.

The next day, June 3, 2003, Investigator Killarney went to the Putnam Valley Middle School to discuss the allegations with Putnam Valley School District Interim Superintendent Robert Pauline.¹² According to Mr. Pauline, Investigator Killarney told him that the School District should conduct its own investigation and inform him of the results.¹³

According to ADA Gallagher, throughout the early part of the investigation, she gave Investigator Killarney specific directions. She told him to seek the assistance of trained sex crimes investigators, to go to the school to assess the crime scene, to take photographs of the classroom where the alleged assault took place, and to locate and interview witnesses to gather more information. Investigator Killarney did not perform any of these assigned tasks. As a result of Investigator Killarney's inaction, ADA Gallagher and her supervisor, Chief ADA Christopher York, met with Investigator Killarney at some point to discuss the lack of investigative progress. According to Chief ADA York, during that meeting, he became very frustrated by Investigator Killarney's incompetence and impassive responses to their questions and directions. Chief ADA York also told the Commission that, at the conclusion of the meeting, he gave Investigator Killarney a list of approximately twenty investigative steps to take. Investigator Killarney never performed any of those tasks, either.

Putnam County District Attorney's Office

According to Jane's father, during the initial meeting with ADA Gallagher at the Sheriff's Department, ADA Gallagher told him and Jane that the statutes of limitation had expired on any possible criminal offense associated with the alleged conduct by the Teacher. In March 2004, approximately ten months after being told the statutes of limitation had expired, Jane's father read an unrelated article about a criminal prosecutor who successfully pursued criminal charges against a perpetrator even though the child victim had waited several years before reporting the incident to the authorities. Jane's

¹² As explained more fully below, by the time he met with Investigator Killarney, Mr. Pauline had already been advised of Jane's allegations by school officials. *See infra* at 11.

¹³ Testimony of Robert Pauline, August 28, 2007 (hereinafter, "Pauline Testimony"), at 31. Investigator Killarney disputed this allegation. Killarney Testimony at 82.

father immediately contacted ADA Gallagher and highlighted the parallels between the article and his daughter's case. According to Jane's father, ADA Gallagher asked him to send the article to her so that she could review the information.

As a result of pressure from Jane's father, in November 2004, approximately seven months after Jane's father contacted ADA Gallagher, and after approximately eighteen months of inactivity on the case by Investigator Killarney, the DA's Office commenced its own investigation. The case was assigned to District Attorney Investigator Edward Johnston, who interviewed Jane and her parents, as well as teachers, students, and school administrators associated with the case. He also went to the scene of the alleged incident to gather information.

During an interview with one student, who indicated that she had been Jane's close friend at around the time of the alleged sexual assault, the student indicated to Investigator Johnston that, prior to reporting the incident involving the Teacher, Jane had told her about a similar incident involving a young male. According to the student, Jane told her that Jane had been at a party where she had passed out after drinking something. Jane claimed that, when she awoke, she observed the boy pulling up the zipper on his pants. The student told Investigator Johnston that Jane had told her that she took a pregnancy test the next day. Investigator Johnston later related this information to ADA Gallagher, who questioned Jane about this while presenting this case to a grand jury.¹⁴

According to Jane and her father, in January 2005, ADA Gallagher met with them at the Putnam County Child Advocacy Center ("CAC"). The meeting was held at the CAC pursuant to a protocol established as part of an inter-agency agreement among the CAC, Sheriff's Department, and DA's Office that called for active collaboration to deliver a variety of social services to child sexual abuse victims and their families. At the CAC, ADA Gallagher re-interviewed Jane about the allegations but, despite the existence of the inter-agency agreement, she did not tell Jane or her father the purpose of their meeting at the CAC, the role of the CAC, or what CAC services were readily available to

¹⁴ The grand jury presentation is discussed *infra* at 9-10.

them. No CAC staff members participated in Jane's interview. According to Marla Behler, CAC Director at the time, Jane's case was never referred to the CAC by the Sheriff's Department or the DA's Office. Mrs. Behler also told the Commission that CAC staffers were upset at the manner in which Jane's case was being handled by law enforcement and the CAC's subsequent exclusion from participation in the case.

In late April 2005, ADA Gallagher contacted Jane and her father to inform them that the DA's Office lacked sufficient evidence necessary to proceed with criminal charges against the Teacher. According to Jane and her father, ADA Gallagher told them that the effective prosecution of the matter was compromised by the passing of time between the alleged incident and Jane's report to authorities, the lack of forensic evidence, and various other issues in Jane's personal life. They also alleged that ADA Gallagher told them that she suspected that Jane had fabricated the allegations to gain attention. Jane denied this assertion, and her father told ADA Gallagher that he disagreed with the DA's Office's assessment of the viability of a criminal prosecution.

On April 26, 2005, Jane's father wrote to then-Putnam County District Attorney Kevin L. Wright to request a formal meeting with him to discuss the matter further. District Attorney Wright did not reply to the letter from Jane's father, nor did he meet with him regarding this matter. Nevertheless, his office presented Jane's case to a grand jury three weeks later.

According to ADA Gallagher, in preparing for the grand jury, she spoke to most of the witnesses briefly on the day of the actual presentation, and informed them of the general purpose of the proceeding. ADA Gallagher did not discuss with each witness the particular questions she was going to ask or what matters could or could not be discussed before the grand jury.

While Jane was testifying before the grand jury, ADA Gallagher questioned her briefly about the alleged similar sexual incident that had been reported by Jane's friend to

Investigator Johnston.¹⁵ In response, Jane told the grand jury that her friend had told her about the incident that occurred during the party. According to Jane, the friend had been drinking and had unknowingly had sex with a young male.¹⁶

According to Jane's father, during the grand jury presentation, ADA Gallagher also asked Jane whether her family had initiated a civil suit against the School District stemming from the alleged assault. When questioned by the Commission about this allegation, ADA Gallagher gave conflicting responses. She initially told Commission investigators that she did not have a good reason for eliciting this information, and that she simply wanted to demonstrate bias on the part of Jane and her father before the grand jurors. Four months later, however, while testifying at a Commission hearing, ADA Gallagher told the Commission that she had inquired about the civil suit to show bias on the part of the School District employees who also testified before the grand jury. On May 13, 2005, after hearing testimony from several witnesses, the grand jury voted not to indict the Teacher.

Putnam Valley School District

On the morning of June 3, 2003, the day after his interview with Investigator Killarney, the Teacher called Putnam Valley Middle School Principal Edward Hallisey at home. The Teacher told Mr. Hallisey that he had been questioned by Investigator Killarney about an alleged sexual assault of a former student. Mr. Hallisey instructed the Teacher to call in sick and to meet him at the school to discuss the matter in greater detail. Shortly after hanging up with the Teacher, Mr. Hallisey received a telephone call

¹⁵ As described more fully on p. 8.

¹⁶ During its investigation, the Commission asked both Jane and her friend about this alleged incident and confronted each girl with the other's version of the events. Both Jane and her friend denied being involved in the incident and each attributed the story to the other. During a subsequent interview, Jane's friend was asked whether she had any documentation to support her claim that Jane had been the one involved in the incident. The friend produced a handwritten note, which she claimed Jane had given her, and which refers to sexual activity by both girls, as well as a pregnancy test Jane had taken. While testifying before the Commission, Jane was shown this letter and questioned about it. She admitted the handwriting in the letter was hers but claimed she did not recall writing it. She also had no plausible explanation for the contents of the letter. Concluding that the letter might have some probative value in a civil suit initiated by Jane and her family, as well in an administrative proceeding initiated against the Teacher by the New York State Education Department, the Commission disclosed copies of the letter to Jane, the Teacher, and the State Education Department. The State Education Department proceeding is discussed *infra* at p. 14.

from Gail Gutterman, President of the Putnam Valley Federation of Teachers. Ms. Gutterman told Mr. Hallisey that she had also received a call from the Teacher and would be meeting them at the school. At approximately 7:00 a.m., the Teacher, Mr. Hallisey, Ms. Gutterman, and Federation of Teachers Vice President Gerald Carlin met in Ms. Gutterman's office at the school. After discussing the allegations, Mr. Hallisey told the Teacher to go home, and Ms. Gutterman told him to contact the Federation's state legal representative for assistance. The Teacher was subsequently placed on administrative leave and never returned to his teaching assignments. After the meeting, Mr. Hallisey and Ms. Gutterman walked to Mr. Pauline's office and told him about the allegations. Mr. Pauline immediately contacted the School District's attorneys, the Law Offices of Kuntz, Spagnuolo, Scapoli & Schiro,¹⁷ to inform them that the Teacher had been accused of committing a sex offense against Jane.

On or about June 4, 2003, the day after learning of the allegations against the Teacher, Mr. Hallisey called a school-wide staff meeting. According to Jane's father, Mr. Hallisey told the staff, in substance, that to exonerate the Teacher, they would have to "trash" Jane. According to Mr. Hallisey, the statement attributed to him at the staff meeting was taken out of context. He acknowledged that during the meeting he told the staff "to exonerate [the Teacher] we have to trash [Jane]; to exonerate [Jane], [the Teacher] gets trashed."¹⁸ Mr. Hallisey told the Commission that he was just repeating a statement made to him by a member of the Sheriff's Department and that he repeated the comment during the staff meeting in order to dissuade the staff from speaking to the press about the matter.

Through its attorneys, the School District launched its own investigation, which consisted of interviewing students and staff members. Although the School District's attorneys asked to interview Jane, her parents refused to allow Jane to speak to them. The School District's attorneys also asked to interview the Teacher, but he also refused. During the investigation, the attorneys interviewed a number of female students who

¹⁷ The firm's name is now Kuntz, Spagnuolo & Murphy.

¹⁸ Testimony of Edward Hallisey, August 28, 2007, (hereinafter, "Hallisey Testimony"), at 59-60.

alleged that the Teacher routinely acted in an inappropriate manner with them. Specifically, they alleged that the Teacher had behaved in an overtly flirtatious manner with female students, had given them candy, gifts, and money, had provided them with test answers, and had twirled their hair. The Teacher had also allegedly told female students that he liked them to wear their hair “down and dirty.”¹⁹ Finally, he had allegedly hovered over female students as they sat at their desks, and had positioned himself in front of them with one leg propped up on the desk, thereby exposing the outline of his genitalia through his pants.

The School District’s investigation also revealed two prior incidents in which accusations of inappropriate conduct had been leveled against the Teacher. The first incident, which occurred in the school gymnasium during the 2001 school year, involved a twelve year-old female student. The student had been in her gym class conversing with two other female students when the Teacher approached her from behind. He grabbed her, wrapped his arms around her, and pulled her body into his, holding her there for a few seconds before letting her go. Disturbed, the student and her friends immediately reported the incident to Putnam Valley Middle School Social Worker Leigh Ann Bale. Ms. Bale immediately reported the complaint to Mr. Hallisey, who assured her that he would investigate. Nevertheless, he never directed her to memorialize the complaint or to interview anyone else. While Ms. Bale kept a handwritten journal entry regarding the incident, it was for her own personal use, not something formally required by the school.

According to Mr. Hallisey, when he eventually called the Teacher to his office to ask him to explain his conduct in the gymnasium, the Teacher acknowledged grabbing the student but claimed that he had just been “fooling around.”²⁰ Mr. Hallisey later summoned the student to his office. According to the student, Mr. Hallisey told her that he was friendly with the Teacher, and that the Teacher had only been joking.²¹ The student’s parents contacted Mr. Hallisey, who suggested that they meet privately with the

¹⁹ School District interviews of female students, June 2003.

²⁰ Commission interview of Edward Hallisey (May 2, 2007).

²¹ Statement of [the student] to Investigator Donald Killarney, Putnam County Sheriff’s Department (May 29, 2003).

Teacher to discuss the matter.²² At some point, according to the student's mother, Mr. Hallisey told her that an incident report would be placed in the Teacher's file.

Mr. Hallisey gave the Teacher the student's home telephone number, and the parties later met at a local diner to discuss the matter. The student's father told the Commission that he was satisfied with the Teacher's explanation, but was annoyed that Mr. Hallisey never contacted him to ascertain whether the matter had been resolved satisfactorily. On January 18, 2004, the student's mother wrote to Mr. Hallisey to request a copy of the incident report that Mr. Hallisey had told her would be prepared. He never responded.

The second incident involved an alleged "kissing game" that the Teacher had required a female student to play. A friend of the alleged victim reported the incident to Ms. Bale on the day after the gymnasium incident. According to the alleged victim, the Teacher had told her that, because she was celebrating her thirteenth birthday, she was ready to "make out" with boys, and would have to do so with all of the boys in the class. Once again, Ms. Bale immediately reported the incident to Mr. Hallisey. When questioned by the Commission about this allegation, Mr. Hallisey claimed that, upon receiving the new complaint from Ms. Bale, he again spoke to the Teacher. Mr. Hallisey told the Commission that he never actually asked whether the Teacher had made the alleged offensive statements but, instead, told the Teacher, "You have to cut this stuff out. You have to quit doing this."²³ Mr. Hallisey took no further action regarding the second incident.

During the course of the School District's investigation, the Teacher and the School District reached an agreement whereby he agreed to retire at the end of the 2004 school year and, in return, the School District agreed not to pursue any formal administrative charges against him for his alleged misconduct. After executing the agreement, the School District closed its investigation without issuing formal findings.

²² Hallisey testimony at 16.

²³ Commission interview of Edward Hallisey (May 2, 2007).

New York State Education Department

In the summer of 2006, the New York State Education Department (“NYSED”) began formal proceedings against the Teacher to revoke his teaching certification, thereby prohibiting him from working as an educator within the State. As part of its investigation, NYSED commenced a hearing to determine whether the Teacher’s certification should be revoked.²⁴ NYSED called Jane, her father, the Teacher, Investigator Killarney, and numerous School District staff members and former students as witnesses. Mr. Hallisey appeared voluntarily as a character witness on behalf of the Teacher. On March 18, 2008, the officer designated by NYSED to conduct hearings in connection with this matter issued a report recommending that the Teacher’s certification to teach in New York State should be suspended pending the completion of certain conditions to ensure that the Teacher is capable of maintaining professional boundaries with students and does not pose a safety threat to students.²⁵

FINDINGS AND CONCLUSIONS

The Commission carefully compared the allegations in the Complaint with the information uncovered during its investigation, and found that significant failures by various law enforcement and school officials negatively impacted the effectiveness of the investigation into this matter. As noted below, the Sheriff’s Department, DA’s Office, and School District each failed to adequately investigate this matter. Furthermore, Investigator Killarney’s failure to take even the most basic investigative steps precluded any possibility of a successful criminal prosecution.

The Sheriff’s Department

The Commission finds that Investigator Killarney should have referred the case to one of the two investigators who were specially trained to handle sex crime cases. Even

²⁴ See 8 NYCRR 83 and N.Y. Educ. Law, §§ 207, 305(7), and 3004.

²⁵ Hearing Officer’s Recommendation in the Matter of a Proceeding Pursuant to 8 NYCRR Part 83, March 18, 2008. According to NYSED regulations, the certificate holder has thirty days after receipt of the Hearing Officer’s Recommendations in which to commence an appeal. As of the date of this report, the Commission was not aware whether the Teacher had filed a notice of appeal.

if the designated investigators were not available on the day that Jane first reported the sexual assault, Investigator Killarney should have turned the case over to them at the first available opportunity. Because Investigator Killarney was unaware of the inter-agency agreement among the Sheriff's Department, the DA's Office, and the Putnam County CAC, Jane never had the opportunity to receive social services from the CAC. Moreover, although Investigator Killarney knew of the CAC, he chose not to avail himself of its services or to refer Jane or her family to it. Additionally, as discussed more fully below, Investigator Killarney's lack of adequate training and experience investigating sex crimes severely compromised the investigation of this matter.

The Commission is not persuaded by Investigator Killarney's claim that he retained the case because Jane's father had asked him to do so. When asked about this by the Commission, Jane's father denied making any such request. Even assuming that Jane's father had made such a request, Investigator Killarney should have recognized his own limitations and referred the case to the sex crime investigators. Civilians should not be permitted to direct law enforcement personnel how to conduct criminal investigations. The Commission is also disturbed by Investigator Killarney's rationale that he assigned himself Jane's case due to internal tensions and office politics in the Sheriff's Department. Criminal investigations should never succumb to the petty squabbling or internal politics within a law enforcement agency charged with enforcing the law and protecting the public.

During its investigation, the Commission asked Investigator Killarney about his qualifications to investigate a child's belated allegations of sexual assault. He responded that this was not his first time investigating this type of case; he had investigated a case against a school teacher "twenty years ago."²⁶

The Commission finds that, once Investigator Killarney decided to retain the case, he failed to conduct a thorough and competent investigation of the allegations. He also displayed an utter lack of enthusiasm and failed to accomplish even the most rudimentary

²⁶ Killarney Testimony at 38.

investigative tasks, despite being given explicit instructions by the DA's Office. The Commission was astounded by Investigator Killarney's level of incompetence. His inaction hampered efforts to determine what transpired between Jane and the Teacher.

Investigator Killarney's failure to memorialize his interview of the Teacher was egregious, as were his differing accounts as to the substance of that interview. During his conversations with ADA Gallagher, Investigator Killarney said that the Teacher had told him that "nothing happened," and had issued other blanket denials of wrongdoing. Investigator Killarney repeated this version of events when he testified before the grand jury on May 13, 2005. Two years later, on May 31, 2007, however, Investigator Killarney purported to recall details of the interview. On that date, he testified at a State Education Department hearing that the teacher had told him during their interview that

[Jane] came into the room one night for some extra work, and he had written something on the blackboard, and she was standing up at the blackboard writing on the blackboard when he noticed that she started to pass out like she was fainting. He grabbed her and laid her down on the floor so she wouldn't fall and got her some water. And then when she came around he said come on, you got to get out of here [Jane], it's late.²⁷

When questioned by the Commission about the discrepancy between his grand jury testimony and his NYSED testimony, Investigator Killarney claimed that when he testified before the grand jury he did not feel that the inclusion of the detailed information that he later provided to NYSED was important. Investigator Killarney also told the Commission that he never shared this additional information with ADA Gallagher.²⁸

The Commission finds that Investigator Killarney's failure to take any notes or memorialize the Teacher's statements during their interview – the only interview of the Teacher by any law enforcement official – represented a significant failure on his part. Investigator Killarney told the Commission that the only circumstance under which he

²⁷ Testimony of Donald Killarney at New York State Education hearing, May 31, 2007, at 397.

²⁸ Testimony of Donald Killarney at New York State Education hearing, May 31, 2007, at 62.

would have made a record of the statement by the Teacher was if the Teacher had confessed to committing the crime. While the purported statements are not tantamount to a confession, they do serve to corroborate some of the information provided by Jane. For example, the alleged statement could have been used to corroborate that Jane was present in the Teacher's room on the day in question; that she and the Teacher were alone in the room at that time; that, at some point, she lost consciousness; and that the Teacher had provided her with a cup of water to drink. For prosecutorial purposes, this information would have been extremely important. In a case such as this, where physical and forensic evidence are lacking, and a significant amount of time has elapsed since the alleged incident, a suspect's statement that includes any corroborative information is crucial evidence. Investigator Killarney's failure to memorialize the Teacher's statement forced him to rely solely on his memory, which has varied significantly over time.

The Commission finds that Investigator Killarney inappropriately abdicated his responsibility to the alleged victim, school officials, and the public. As the sole criminal investigator assigned to this case, he was responsible for conducting a thorough investigation of the allegations. Instead, he approached the complaint as if it were a school matter and took virtually no meaningful action to further the criminal investigation.

Investigator Killarney never offered to collaborate with the School District and took no steps to monitor the progress of the School District's investigation.²⁹ When asked to describe Investigator Killarney's demeanor during their meeting, Mr. Pauline stated that Investigator Killarney never sat down, appeared to lack enthusiasm, and seemed interested only in "dumping [the case] on my desk."³⁰

²⁹ Pauline Testimony at 33.

³⁰ Pauline Testimony at 34.

The District Attorney's Office

Failure to Take Action

More than eighteen months elapsed between the time that Jane initially made her complaint to the DA and the time that the DA's Office launched its own investigation into the allegations. During the intervening period, ADA Gallagher took no steps to pursue this matter aggressively, even though she was aware that Investigator Killarney had failed to investigate the case properly and that her efforts to get him to be more productive had failed completely. She did not inform Investigator Killarney's supervisor at the Sheriff's Department, nor did she ask the District Attorney to contact the Sheriff regarding Investigator Killarney's investigative failures.

While the Commission is mindful that the DA's Office has no direct control over the Sheriff's Department, and that law enforcement personnel may wish to be cordial to each other, when faced with Investigator Killarney's incompetence, ADA Gallagher should have interceded and immediately commenced an independent investigation, rather than waiting months to do so. Accordingly, the Commission finds that the DA's Office is partially responsible for the failures in this case.

ADA Gallagher's Explanation of the Statutes of Limitation

ADA Gallagher told the Commission that she told Jane's father about the expiration of the statutes of limitation as one part of a larger discussion about possible charges that could be pursued based upon the limited factual information provided by Jane about the actual incident. Due to Jane's inability to provide specific details about what actually transpired after she "blacked out," ADA Gallagher felt that prosecuting the case as a sex crime, given the applicable statutes of limitation, could be problematic.

Generally, under New York State law, a prosecution for a felony offense must be commenced within five years after the commission thereof.³¹ For misdemeanors, a

³¹ N.Y. Crim. Proc. Law § 30.10(2)(b) (McKinney 2003 & Supp. 2008).

prosecution must be commenced within two years of the alleged offense.³² These periods of limitation are tolled, however, in cases involving a sexual offense committed against a child under the age of eighteen, thereby extending the period during which the offense may be prosecuted.³³ In such cases, the period of limitation begins to run when the child either reaches the age of eighteen or reports the incident to law enforcement, whichever occurs first.³⁴

ADA Gallagher told the Commission that she explained to Jane and her father that, if Jane could not recall facts sufficient to support a sexual offense charge, then the statutes of limitation would not be tolled. ADA Gallagher indicated that she believed that the only non-sexual offense charges that could be pursued against the Teacher were misdemeanors, such as Endangering the Welfare of a Child.³⁵ Thus, she told Jane and her father that, under those circumstances, a prosecution against the Teacher would likely be barred since the statute of limitation applicable to non-sex offense misdemeanors had already expired. Ultimately, ADA Gallagher presented allegations to the grand jury that she felt were warranted by the evidence. The Commission finds that ADA Gallagher's explanation to Jane and her father about the application of the statutes of limitation was appropriate but not clear enough to enable them to understand the law.

Failure to Refer Jane and Her Family to the Child Advocacy Center

The Commission finds that the DA's Office and the Sheriff's Department did not comply with the inter-agency agreement that called for the inclusion and assistance of the CAC. Had they been referred, Jane and her family could have availed themselves of the valuable therapeutic services offered by the CAC. The Commission is not persuaded that ADA Gallagher, by hastily arranging a meeting with Jane some twenty months after the initial report, was attempting to uphold the DA's part of the inter-agency agreement. That agreement calls for active collaboration between law enforcement and the CAC, and

³² N.Y. Crim. Proc. Law § 30.10(2)(c) (McKinney 2003 & Supp. 2008).

³³ N.Y. Crim. Proc. Law § 30.10(3)(f) (McKinney 2003 & Supp. 2008).

³⁴ *Id.*

³⁵ N.Y. Penal Law § 260.10 (McKinney 2000).

does not limit the CAC's involvement to merely providing a facility for law enforcement to conduct interviews.

ADA Gallagher's Grand Jury Presentation

While ADA Gallagher does not appear to have attempted to deliberately undermine the grand jury presentation, the Commission finds that she should have conducted a more meaningful preparatory session with each of her witnesses prior to questioning them before the grand jury. Proper preparation of witnesses ensures that they do not inadvertently introduce prohibited evidence, that all pertinent information known by witnesses is introduced, and that the grand jury receives a coherent presentation of the evidence. ADA Gallagher had ample time to prepare the witnesses adequately prior to the grand jury presentation, yet chose to speak to them only briefly, immediately before their appearances.

The Commission was also troubled by ADA Gallagher's explanations for introducing evidence of Jane's civil suit in the grand jury. Assuming that ADA Gallagher intended to demonstrate bias on the part of School District employees, the Commission finds that she should not have posed questions about the civil suit to Jane and her father; she should have posed the questions to the School District employees themselves. Introducing evidence of the civil suit might have given the grand jurors the impression that Jane and her family had ulterior motives in making the allegations against the Teacher. This evidence was not exculpatory and, if introduced, should have been accompanied by a proper charge as to the significance and use of such evidence.

ADA Gallagher's decision not to call a therapist to introduce information about the phenomenon of delayed reporting in child sex abuse cases can not be characterized as misconduct. Nevertheless, the Commission finds that such expert testimony could have helped the grand jurors understand the phenomenon.

The Commission found that ADA Gallagher also improperly elicited hearsay statements made by the Teacher. In this case, the Teacher did not testify before the grand

jury. With exceptions such as an admission, any statements he made to others were not properly admissible through others' testimony before the grand jury. Nevertheless, ADA Gallagher repeatedly elicited testimony from Mr. Hallisey and Ms. Gutterman about what the Teacher had said in conversations. When questioned about her rationale for eliciting this testimony, ADA Gallagher initially told the Commission that she was attempting to show inconsistencies in the Teacher's statements to other people. When the Commission pointed out that she could have accomplished the goal of demonstrating inconsistencies without eliciting and introducing prohibited material, ADA Gallagher then told the Commission that she was attempting to demonstrate Mr. Hallisey's state of mind. In essence, ADA Gallagher claimed that she wanted to show that Mr. Hallisey did not believe certain statements made by the Teacher. Once again, the Commission is not persuaded by ADA Gallagher's evolving and unusual explanation of her conduct.

The School District

The Principal's Private Meeting with the Teacher

The Commission finds that Mr. Hallisey's private meeting with the Teacher and Ms. Gutterman was inappropriate, and constituted a serious conflict of interest. As the chief administrator of his school, Mr. Hallisey was responsible to supervise the staff and to act, at all times, in the best interests of the students. In meeting with the Teacher and Ms. Gutterman, however, it is clear that, from the onset of his involvement in this matter, he allied himself with the Teacher.

At no time prior to the meeting did Mr. Hallisey tell Mr. Pauline about the allegations or his intention to meet with the Teacher and Ms. Gutterman. According to Mr. Hallisey, he didn't contact Mr. Pauline because he didn't have his home telephone number, a claim that Mr. Pauline disputes. Mr. Pauline told the Commission that, based upon the demeanor of Mr. Hallisey and Ms. Gutterman and tenor of the meeting, he had formed the opinion that they were going to attempt to stonewall any investigation. Specifically, Mr. Pauline testified that:

[T]heir sense was that they wanted to protect [the Teacher]. They couldn't believe that something like this might happen. They couldn't believe that he was that kind of person, that might [be] involved with young girls in this way ...and my sense was that, as I recall, that they were friends enough that they would, if they had the opportunity, stonewall [the investigation]³⁶. They just said that they felt it didn't rise to the level of a full blown investigation, we could handle this in-house if we needed...we could handle it in-house [and] it wouldn't be necessary for me to call the attorneys.³⁷

Mr. Hallisey aligned himself with the teachers' union president and made it clear to Mr. Pauline that he was motivated by his loyalty to his friend, the Teacher, with no consideration for the student. With little or no information, other than what had been relayed by the Teacher, Mr. Hallisey and Gail Gutterman determined that a full investigation was not warranted. Their efforts to suppress an investigation were thwarted by the Superintendent's insistence that the matter be referred to the School District's Attorneys, who ultimately conducted a lengthy investigation that revealed other claims against this Teacher. In his capacity as Principal, upon receiving the early morning telephone call from his friend and subordinate, Mr. Hallisey should have immediately recognized the conflict of interest, refused to speak with the Teacher about the allegations, directed the Teacher to consult with his union representative for assistance, and contacted Mr. Pauline to make him aware of the allegations. Clearly, Mr. Hallisey and Ms. Gutterman demonstrated no desire to conduct a full and unbiased investigation, and no concern for Jane or for other students similarly situated.

The Principal's Inappropriate Comments

The Commission finds that Mr. Hallisey's statement to his teaching staff that, "to exonerate [the Teacher] we have to trash [Jane]; to exonerate [Jane], [the Teacher] gets trashed," was inappropriate. The Commission is not persuaded by his explanation that he was just making this statement because he did not want the staff to speak to the media about the allegations. The goal of keeping the staff from speaking to the press could have

³⁶ Pauline Testimony at 45.

³⁷ Pauline Testimony at 46.

been accomplished by simply admonishing them not to speak to anyone regarding the allegations or investigation. His choice of words reflected his loyalty to the Teacher and his lack of concern for the student.

The Principal's Failure to Properly Investigate Other Students' Complaints
Against the Teacher

The Commission finds that Mr. Hallisey failed to respond appropriately to prior complaints from other students. On two occasions, Ms. Bale, the school social worker, immediately reported to him that students had accused the Teacher of inappropriate behavior. On both occasions, Mr. Hallisey failed to take any meaningful action to address the allegations. Upon receiving information from Ms. Bale about the first incident, he should have requested that she formally memorialize the information while the events were still fresh in the student's memory. Memorializing information at or near the time it is first received ensures that facts are accurately recorded. Incidents of inappropriate conduct involving teachers should be formally memorialized by the school for future reference, especially in a case such as this where the Teacher acknowledged engaging in inappropriate conduct. Instead of dealing with this complaint directly, Mr. Hallisey abdicated his responsibility entirely by facilitating a private meeting between the student's parents and the Teacher at an off-campus site.

With regard to the "Kissing Game" incident, Mr. Hallisey should have attempted to speak to the accuser directly or interviewed other students present at the time of the alleged incident. At a minimum, he should have had a meaningful discussion with the Teacher about the allegation. By his own admission, Mr. Hallisey never actually asked the Teacher about the accusations. According to Mr. Hallisey, he never asked because he didn't believe that the incident had occurred. This claim is undermined by Mr. Hallisey's testimony that he directed the Teacher to "cut this stuff out." Accounts of this incident were well known throughout the student population and among the faculty, yet Mr. Hallisey took no investigative action. Even if he believed that the student was fabricating the incident, he was still obliged to investigate fully. Additionally, while Ms. Bale, the

social worker, did make a personal note about the incident, Mr. Hallisey should have asked her to memorialize the allegations in a report and included it in a school file.

The School District's Separation Agreement with the Teacher

The Complaint alleged that the School District acted improperly when it agreed to close the investigation without any formal findings in exchange for the Teacher's resignation for purposes of retirement. In October 2003, the School District and the Teacher entered into a formal separation agreement. The second clause of that agreement states that the Teacher agreed to furnish the School District with a letter of resignation. The third clause of the agreement, entitled "Disciplinary Charges," states, in part, that "the district agrees that it will forbear from preferring disciplinary charges against the Employee based upon his employment with the District."³⁸ Upon the execution of the agreement, the School District closed its investigation into the allegations by Jane and the subsequent investigation into the allegations of inappropriate touching of other students by the Teacher. The School District never issued findings related to its investigation.

The Commission finds that the separation agreement reached between the School District and the Teacher is not unusual. The School District apparently determined that it was in its best interest to settle the matter with the teacher rather than face the possibility of a long, costly legal and administrative battle with the Teacher and his union. Allowing a teacher accused of misconduct to retire is often the end result of a school district's cost-benefit analysis, which invariably includes an analysis of the strength of the evidence.

Other Misconduct

In addition to the specific issues raised in the Complaint and subsequently by the alleged victim and her father, the Commission uncovered other misconduct on the part of the Sheriff's Department and the School District that should be addressed.

³⁸ Separation Agreement between the Putnam Valley School District and the Teacher (executed October 2003), at 1.

Investigator Killarney Improperly Interviewed Jane in her Father's Presence

Investigator Killarney's only interview with Jane was conducted in her father's presence. Neither Jane nor her father requested that he be present during the interview. When questioned by the Commission about his decision not to interview Jane alone, Investigator Killarney responded, "I felt awkward interviewing the girl myself, alone, one-on-one with her."³⁹ The Commission finds that Investigator Killarney's decision to interview Jane in the presence of her father was inappropriate, and further supports the Commission's conclusion that Investigator Killarney lacked the skills and experience necessary to investigate this matter effectively.

In virtually all sex crimes cases, investigators interview the alleged victim outside the presence of other witnesses or family members. This helps the victim to be comfortable and enhances the investigator's chances of obtaining a candid description of a sexual attack. It also assures that the victim is not suffering from the undue influence of a third party. In some cases involving very young victims, it is sometimes necessary to conduct an interview with a parent or social worker present. At the time of Jane's interview, however, she was a fifteen-year-old high school student. Accordingly, proper protocol would not have required her father to be involved in her interview.

Investigator Killarney Improperly Interviewed the Teacher in the Presence of his Wife

Investigator Killarney's only interview of the Teacher was conducted in the presence of the Teacher's wife. When questioned about his decision to interview the suspect in a sex crimes case while his wife was present, Investigator Killarney told the Commission that "[the Teacher] wanted her there and I didn't have a problem with that."⁴⁰

The Commission finds that Investigator Killarney violated a basic interviewing principle. Allowing a suspect's wife to be present during his interview, especially in a

³⁹ Killarney Testimony at 26.

⁴⁰ *Id.* at 50.

case of this nature, virtually assured that the suspect would deny any wrongdoing. Investigator Killarney should have interviewed the Teacher alone. His failure to do so is another reflection of his poor investigative skills.

The Principal's Statements in Legal Filings

On January 21, 2004, as part of the School District's response to a notice of claim filed by Jane's family, Mr. Hallisey submitted a sworn affidavit on behalf of the School District. In that affidavit, Mr. Hallisey swore, in part, that:

I have attached to this Affidavit the complete employment file of [the Teacher] who has worked for the School District for some thirty-two years.... As can be seen from the file, [the Teacher] has reports, reviews and good student and parent feedback throughout his many years with the District. Overall, [the Teacher] has shown positive attributes throughout his long career. His annual reviews bear this out...I have no personal, direct, or indirect knowledge of any inappropriate conduct at all involving this teacher and [Jane].

Ongoing teaching and peer review conducted at the School District universally confirmed the positive information contained within [the Teacher's] employment file.⁴¹

At the time of Mr. Hallisey's affidavit, he was fully aware of the prior complaints against the Teacher that had been reported to school officials in 2001. Mr. Hallisey had been present during student interviews in 2003 in which the Teacher's inappropriate conduct was discussed by numerous female students. Mr. Hallisey told the Commission that he was "upset"⁴² as he listened to the statements from the students and that he found their accounts to be credible. As part of its investigation, the Commission subpoenaed voluminous documentation from the School District, including the Teacher's complete personnel file. A review of the Teacher's personnel file by Commission investigators revealed that the Teacher's annual evaluation for the 2001 academic year was conspicuously absent. It was the only evaluation missing from his file. In response to the

⁴¹ Sworn Affidavit in Opposition submitted by Edward Hallisey dated January 21, 2004.

⁴² Hallisey Testimony at 52.

Commission’s inquiry regarding the missing evaluation, the School District’s Attorneys stated that the Teacher was given an oral evaluation that year.

The Commission concludes that Mr. Hallisey’s affidavit was misleading to the extent that it attempted to convince the Court that the Teacher’s reputation was beyond reproach and that there had been no negative reports made against him. Mr. Hallisey omitted significant evidence of the Teacher’s inappropriate conduct at the time he signed the affidavit.

Moreover, Mr. Hallisey was evasive when he testified before the Commission about his affidavit. When confronted by the Commission with the misleading statements, Mr. Hallisey told the Commission that, in his affidavit, he was referring only to the Teacher’s history prior to Jane’s 2003 allegations. According to Mr. Hallisey, since the student interviews did not take place until after Jane made her allegations, he did not refer to them in the affidavit. Only when the Commission confronted him with the fact that he was aware of the two reported incidents prior to Jane’s allegations did he finally admit that the affidavit was “inaccurate.”⁴³

Another Teacher Attempted to Inappropriately Gain Confidential Information About Jane

During the course of its investigation, the Commission uncovered evidence that a school teacher inappropriately attempted to access Jane’s student file after learning of the allegations against the Teacher. According to Mr. Hallisey, after conducting the staff meeting referred to earlier in this report, he was approached by Glen Buckhout, the school Physical Education teacher, who described himself as a “close friend” of the Teacher. Mr. Buckhout told Mr. Hallisey that he wanted to look at Jane’s student file. Under New York State law, student academic files are confidential and can only be accessed by authorized individuals.⁴⁴ In this case, in addition to containing academic information, Jane’s file contained sensitive material about her personal life, and mental

⁴³ Hallisey Testimony at 67.

⁴⁴ In New York, academic institutions receiving federal funding are governed by the federal Family Education Rights and Privacy Act (FERPA), 20 USC 1232(g).

and physical health concerns. Mr. Hallisey told the Commission that he did not provide Jane's file to Mr. Buckhout but, instead, responded to his request by stating, "I don't want to know."⁴⁵ When questioned about this allegation, Mr. Buckhout denied making a request for access to Jane's student file.⁴⁶

The Commission concludes that Mr. Buckhout inappropriately attempted to gain access to Jane's confidential student file, and that both his attempt and Mr. Hallisey's response were inappropriate. The Commission was not persuaded by Mr. Buckhout's denial that he made the request because his claim is undermined by a written statement prepared by Mr. Hallisey contemporaneously with the School District's investigation in 2003 in which he recalls being asked for Jane's file by Mr. Buckhout. Also troubling is the fact that the request was made after the staff meeting in which Mr. Hallisey was accused of making inflammatory comments about Jane and further illustrates the sentiment born out of that meeting. Mr. Hallisey should have issued a stern reprimand to Mr. Buckhout advising him that any attempt to inject himself into the School District's investigation would be grounds for disciplinary action.

RECOMMENDATIONS

Based on its findings, the Commission concludes that significant failures by various law enforcement and school officials negatively impacted the effectiveness of the investigation of Jane's allegations. To address these failures and to prevent their recurrence, the Commission makes the following recommendations:

The District Attorney and Sheriff Should Ensure that the CAC Agreement Is Enforced

The District Attorney and Sheriff's Department should establish a procedure to ensure that the inter-agency agreement calling for collaboration with the Putnam County Child Advocacy Center is followed. It is vitally important that victims of sexual abuse and their families receive the social services that the CAC is designed to provide.

⁴⁵ Written statement of Edward Hallisey dated June 9, 2003.

⁴⁶ Commission interview of Glen Buckhout (May 17, 2007).

The Sheriff's Department Should Establish a Protocol for Sex Crimes Investigations

The Sheriff's Department should establish a protocol for the investigation of sexual offenses and crimes involving child victims. The protocol should mandate that these cases immediately be assigned to officers who are trained to investigate sex crimes.

The Sheriff's Department Should Increase Supervision of Investigations

The Sheriff should be more involved in the direct supervision of cases being handled by investigators in his department, especially highly sensitive or high priority cases. This measure will help ensure that cases receive appropriate attention and progress accordingly. Increased oversight by the Sheriff will further ensure that investigators behave in a manner consistent with the high standards espoused by the Department.

The District Attorney's Office Should Review Criticism of its Handling of This Case

The Commission recognizes that the District Attorney's Office has undergone a change in administration since the investigation of this matter. While much of the Commission's criticism is reserved for the prior administration, to the extent that procedures and personnel remain from the prior administration, the current District Attorney should be mindful of the Commission's criticisms. Specifically, the District Attorney should institute training, policies and procedures that ensure that grand jury presentations are conducted properly.

The School District Should Establish Procedural Guidelines in Sex Abuse Cases

The School District should establish procedural guidelines to be followed by staff members when an allegation of abuse is made against a teacher. These guidelines will further ensure that school officials do not have the opportunity to engage in improper conduct or otherwise interfere with a formal investigation. The guidelines should include a formal process to notify school administrators of any allegations in a timely manner.

The School District Should Ensure that it Complies with State Education Department Reporting Requirements

The School District must take steps to ensure that its employees are in compliance with the State Education Department rules and regulations regarding the reporting of child abuse/sex abuse in an educational setting. The SED regulations are clear and publicized. School District administrators are responsible for disseminating the information and making sure that each staff member acts in accordance with the policy.

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