



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
February 25, 2010

SUMMARY OF FINDINGS/RECOMMENDATIONS

The Inspector General found apparent nepotism and undue influence in employment practices at the Office for Mental Retardation and Developmental Disabilities' (OMRDD) New York City Office's Fiscal Unit. Specifically, the Inspector General found that the last three contract employees hired for the Fiscal Unit were related to or acquainted with either Assistant Commissioner Katherine Broderick or former Director of Fiscal Services Celia Solomita. In addition, two temporary employees were hired, one related to Broderick and the other related to Solomita, in circumvention of the usual process for hiring temporary workers via a temporary employment agency.

The Inspector General further found that OMRDD lacks policies governing the hiring of contract employees or temporary employees and recommends that OMRDD implement such policies. The Inspector General is referring this matter to the Commission on Public Integrity to review the apparent violations of the state's ethics laws. This matter is further referred to OMRDD for appropriate action.

ALLEGATION

The Inspector General received an allegation that OMRDD employee Celia Solomita engaged in nepotism by hiring and supervising her family members and friends. Solomita was also alleged to have hired and supervised personnel related to OMRDD Associate Commissioner Kathy Broderick.

SUMMARY OF INVESTIGATION

Background

The New York State Office of Mental Retardation and Developmental Disabilities (OMRDD) provides a wide range of services and assistance to New York State citizens with developmental disabilities. OMRDD works closely with nearly 800 private not-for-

profit provider agencies to offer support to affected individuals and their families in areas such as housing, employment, health care, and transportation.

OMRDD employs approximately 23,000 staff statewide. In order to accomplish its mission, OMRDD operates 13 Developmental Disabilities Services Offices (DDSOs) throughout the state which organize and administer locally based programs and services. Each DDSO recruits and hires for its respective facility. The majority of these positions are filled through competitive civil service examinations and advertised through state employment Websites such as the New York State Department of Labor, the New York State Department of Civil Services and/or the Governor's Office of Employee Relations. In addition, contract employees, who are paid by not-for-profit organizations, also work at OMRDD sites. These contract workers are generally supervised by OMRDD employees.

Celia Solomita was employed by OMRDD for approximately 30 years. Solomita retired from state service in July 2009 with the title Director of Fiscal Services in the New York City Office. Katherine Broderick is an OMRDD Associate Commissioner and heads the New York City Office.

New York Prohibitions on Nepotism and Improper Influence in Hiring

New York Law has long prohibited state officials from using their position to influence the hiring of relatives. Notably, state law not only prohibits actual conflicts of interest but also bars actions that lend to the appearance of a conflict of interest which could undermine the public trust. Public Officers law § 74(3)(f) provides that “[a]n officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.” This section in conjunction with other relevant provisions of the state ethics guidelines¹ has been consistently interpreted to prohibit state officials from involvement in any decisions regarding the employment of a relation by their agency. Particularly when the state official in question holds a supervisory position in an agency, the official must be completely screened from any involvement in the hiring decision.²

In 2007, subsequent to the conduct described in this report, the state legislature enacted a specific anti-nepotism law. New York State Public Officers law § 73(14)(a) now provides, in relevant part, that, “[n]o statewide elected official, state officer or employee . . . may participate in any decision to hire, promote, discipline or discharge a relative for any compensated position at, for or within any state agency . . .” Under this

¹ See Public Officers law §§ 74(3)(d) (“No officer or employee of a state agency . . . should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.”) and 74(3)(h) (“An officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.”)

² See, i.e., Ethics Commission Op. 91-21.

statute, a “relative” is defined as “any person living in the same household as the individual and any person who is a direct descendant of that individual’s grandparents or the spouse of such descendant.”

Contract Employees

According to Broderick, contract employees are technically employed and paid by the Research Foundation for Mental Hygiene, Inc., but are selected for employment and supervised by OMRDD employees. The Research Foundation for Mental Hygiene, Inc (RFMH) is a private, not-for-profit membership corporation created to enhance “the research and training objectives of the New York State Department of Mental Hygiene and its component agencies; the Office of Mental Health, the OMRDD and the Office of Alcoholism and Substance Abuse Services.”³

The Inspector General’s review concentrated on one particular contract employee position in Celia Solomita’s former unit, Fiscal Services. Katherine Broderick’s nephew, Solomita’s son’s friend, and Solomita’s sister, were the last three contract employee hires for that position.⁴ Although an applicant for this position is technically seeking employment with RFMH, OMRDD employees interviewed the candidates and made the final determination as to who was hired.

According to Solomita, when her sister and her son’s friend were hired, OMRDD had only received two or three resumes for the position. Solomita stated that RFMH was responsible for advertising the vacant position, not OMRDD. With the exception of an internal OMRDD posting on a bulletin board, Solomita could not recall how the position was advertised. Solomita maintained that she was not involved in the interview process to fill the position and claimed that Barbara Bernstein, whom Solomita supervises, conducted the interviews.

Contrary to Solomita’s statements, Bernstein informed the Inspector General that she recalled interviewing the friend of Solomita’s son with Solomita. Bernstein further recalled only one other applicant being interviewed, a person whom Bernstein believed was unqualified for the position. Bernstein further stated that Solomita’s sister was hired as the friend’s replacement. According to Bernstein, she only received one application for the position, that of Solomita’s sister. Bernstein further related that Solomita had informed Bernstein that her sister would be interviewing for a position and that Bernstein should not treat her any differently.

Temporary Employees

OMRDD’s New York City Office utilizes the company TempForce to hire temporary employees. The Inspector General investigated the hiring of two temporary

³ http://corporate.rfmh.org/corporate_info/index.asp?page=about_the_rf

⁴ According to Celia Solomita, Broderick’s nephew was hired through the Center for Policy Research, not the Research Foundation. After Broderick’s nephew was hired, the Research Foundation replaced the Center for Policy Research.

employees in Solomita's unit, Solomita's daughter and Broderick's niece. Broderick informed the Inspector General that when temporary positions became available, OMRDD employees were asked routinely if they knew someone who needed a job.

Normally, the hiring process for temporary employees at OMRDD's New York City Office from TempForce proceeds as follows: If the unit requires the services of a temporary employee, a written request is sent by OMRDD to TempForce which then forwards resumes of preapproved⁵ individuals to the DDSO. If a candidate is not selected for hire from the initial resumes transmitted, TempForce provides additional resumes it has collected. Once a candidate is selected for OMRDD for temporary employment, TempForce pays that candidate directly and, as explained later in this report, OMRDD pays TempForce the employee's salary plus a finder's fee.

Solomita asserted to the Inspector General that when both her daughter and Broderick's niece were hired, TempForce had not provided any resumes of qualified candidates to OMRDD. According to Solomita, since TempForce did not have any candidates, she found qualified candidates to be hired, specifically her daughter and Broderick's niece. Solomita's daughter was hired in July 2004 as a "computer operator" and Broderick's niece was hired in May 2005 as an "administrative assistant"; duties for both positions included general office work, including filing and some computer work. Both were college students at the time of their employ.

Notably, while hires were sent to TempForce solely to fill out payroll paperwork, in contravention of the normal practice neither was tested nor interviewed by TempForce. After completing the necessary payroll paperwork, Solomita's daughter and Broderick's niece were "hired" by OMRDD through TempForce. Solomita's daughter was employed by OMRDD until approximately September 2007 while Broderick's niece was employed by OMRDD until approximately January 2007. From payroll records, it appears that both generally worked during the summers and breaks from school.

The Inspector General interviewed employees of TempForce who work directly with OMRDD's New York City Office. Directly contradicting Solomita's claims to the Inspector General, according to TempForce, at the time of the hiring of Solomita's and Broderick's relatives, TempForce possessed resumes of qualified candidates to send to OMRDD. Specifically, TempForce informed the Inspector General that it possessed at least six to 10 resumes ready to be sent to OMRDD upon request. The availability of qualified candidates (presumably unrelated to Solomita and Broderick) notwithstanding, TempForce was contacted by Solomita and Mary Russo, another OMRDD employee, and informed that candidates had been pre-selected by OMRDD and were being sent to TempForce merely to complete payroll paperwork.

TempForce provided the Inspector General with two letters from Solomita, dated July 16, 2004, and May 13, 2005, discussing, respectively, the employment of Solomita's daughter and Broderick's niece. The letters presented the hires to TempForce and detailed their salaries. With temporary employees, the agency receives a commission for

⁵ TempForce interviews and tests all of its candidates prior to recommending them.

every hour the employee works. For instance, when Solomita's daughter commenced employment, the state paid \$13.78 for every hour Solomita's daughter worked: she received a salary of \$10.00 per hour and TempForce received \$3.78 per hour as a finder's fee and for payroll costs. However, with these particular temporary employees, the state paid TempForce for candidates that OMRDD found and whose names were simply supplied to TempForce.

Russo, who assisted in the hiring process of Solomita's daughter and Broderick's niece, reported to the Inspector General that Solomita had specifically requested that Solomita's daughter and Broderick's niece be hired as temporary employees. Initially, the salary request for Solomita's daughter was for \$10 per hour over a four-week period, for a total of \$13.78 per hour paid to TempForce. However, over time Solomita requested and received increased salaries for her daughter and Broderick's niece to \$12.00 per hour, or a total of \$17.55 per hour paid to TempForce. In a memo dated March 7, 2006, Solomita requested and received approval for an additional 1000 hours of billing at the \$17.55 rate for her daughter and Broderick's niece.

FINDINGS AND RECOMMENDATIONS

The Inspector General found that the last three hires for a contract employee position at the Office for Mental Retardation and Developmental Disabilities' (OMRDD) New York City Office's Fiscal Unit was filled by individuals related to or acquainted with Assistant Commissioner Katherine Broderick or former Director of Fiscal Services Celia Solomita. In addition, two temporary employees were hired, one related to Broderick and the other related to Solomita, by circumventing the usual processes of the temporary employment agency. As the hiring of these employees and temporary workers appears to violate New York's prohibitions on nepotism and improper influence in employment, the Inspector General's findings will be forwarded to the state Commission on Public Integrity for its review.

During the course of this investigation, the Inspector General found that OMRDD lacks any policies or procedures governing the hiring practices of contract and temporary employees and therefore recommends that OMRDD implement such. The Inspector General referred this matter to OMRDD for appropriate action.

OMRDD Response

OMRDD Commissioner Diane Jones Ritter responded that as the actions described in the Inspector General's report raise concerns under the ethical provisions of the Public Officers Law, OMRDD has counseled Assistant Commissioner Broderick regarding her conduct. Commissioner Jones Ritter further noted that the Inspector General's findings highlight the need for clear guidance from OMRDD to its employees regarding nepotism. Accordingly, Commissioner Ritter has directed OMRDD's Deputy Commissioner for Workforce and Talent Development to develop clear expectations for staff on employment practices regarding relatives to be communicated to OMRDD's workforce in the near future.