



January 5, 2016

Ron O'Brien
Franklin County Prosecutor
373 South High Street
14th Floor Columbus

Dear Mr. O'Brien:

More than six months have passed since news accounts first documented that the Ohio Department of Education (ODE) intentionally omitted F grades for online schools from a key charter school evaluation. The omission not only made it appear as if some of the state's worst-performing charters were doing well, it also could have made the schools eligible for new state perks.

And more than five months have passed since members of the state school board accused ODE of breaking the law by omitting the F grades.

I cannot help but compare the ongoing data-scrubbing scandal at the state education department to the recent data-scrubbing scandal at Columbus City Schools: Columbus employees falsified student records to improve their schools' standing on state report cards. An ODE official falsified state ratings to improve the standing of traditionally low-performing charter schools.

In both instances, top-ranking officials were responsible for scandals that wasted tax dollars and hurt children.

The Columbus scandal resulted from a "top-down culture of data manipulation," Auditor David Yost said in his January 2014 [special audit](#). Your office investigated, and successfully prosecuted, several high-ranking employees who participated in the scam.

While the investigation showed no evidence that then-Superintendent Gene Harris orchestrated the cheating, she received one year's probation for dereliction of duty. You aptly called Superintendent Harris' conduct "negligent mismanagement," and noted, "You are running the railroad. You're responsible for the railroad," according to the [Columbus Dispatch](#).

The state education scandal was orchestrated by David Hansen, the agency's top political appointee overseeing school choice. According to a [July 15, 2015, report in The Plain Dealer](#), state school board members said Hansen [was required by state law to include online schools and dropout recovery schools in evaluations of charter school oversight agencies](#). Hansen left out the low grades after learning that including them made the online charters look bad, according to news accounts.

Among the key beneficiaries of the exclusion are the [Ohio Council of Community Schools](#), a non-profit agency which collects about \$1.5 million in sponsor fees a year from the more than 14,000 students attending [Ohio Virtual Academy](#), and [OHDELA](#), the online school run by [White Hat](#)

[Management](#). White Hat, the Ohio Virtual Academy, OHDELA and the Electronic Classroom of tomorrow have some of the state's highest dropout rates and notoriously low student achievement.

David Hansen has resigned but apparently no criminal investigation is underway.

Ohio law gives county prosecutors the authority to "inquire into the commission of crimes within the county." Because a prosecutor cannot initiate a felony case in Ohio without a grand jury, I respectfully request that you convene a grand jury and begin an examination into Mr. Hansen's conduct while he served at the Ohio Department of Education.

The decision whether or not to prosecute, and what charges to file or bring before a grand jury, generally rests entirely with your discretion.

Based on my review of Mr. Hansen's actions, there is good cause to believe that he could have violated several state laws that include:

§ 2913.42 Tampering with records

(A) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record.

Whoever violates this section is guilty of tampering with records.

If the value of the data or computer software involved in the offense or the loss to the victim is one thousand dollars or more and is less than seven thousand five hundred dollars, a felony of the fifth degree;

If the value of the data or computer software involved in the offense or the loss to the victim is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, a felony of the fourth degree;

If the writing, data, computer software, or record is kept by or belongs to a local, state, or federal governmental entity, a felony of the third degree.

2921.44 Dereliction of duty

(E) No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office.

(F) Whoever violates this section is guilty of dereliction of duty, a misdemeanor of the second degree.

§ 2921.31 Obstructing official business

(A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

(B) Whoever violates this section is guilty of obstructing official business. Except as otherwise provided in this division, obstructing official business is a misdemeanor of the second degree. If a violation of this section creates a risk of physical harm to any person, obstructing official business is a felony of the fifth degree.

§ 2921.13 Falsification

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:

(3) The statement is made with purpose to mislead a public official in performing the public official's official function.

(7) The statement is in writing on or in connection with a report or return that is required or authorized by law.

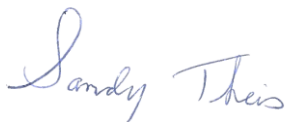
(11) The statement is made on an account, form, record, stamp, label, or other writing that is required by law.

(F) (1) Whoever violates division (A)(1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (13), or (15) of this section is guilty of falsification. Except as otherwise provided in this division, falsification is a misdemeanor of the first degree.

State lawmakers recently passed meaningful charter school reform but did so only after Ohio's \$1 billion charter school sector became the subject of national ridicule. Additional reforms, and accountability are needed. An investigation by your office is warranted and long overdue.

Please contact me if you require additional information or have questions regarding this matter.

Sincerely,

A handwritten signature in blue ink that reads "Sandy Theis". The signature is written in a cursive, flowing style.

Sandy Theis
Executive Director
ProgressOhio